Completed acquisition by FleetCor UK Acquisitions Limited of the fuel card business of Arval UK Group Limited

ME/5302/11

The OFT's decision on reference under section 22(1) given on 11 May 2012. Full text of decision published 28 May 2012.

Please note that the square brackets indicate 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.

PARTIES

1. FleetCor UK Acquisitions Limited **(FleetCor)** is a company incorporated in the United Kingdom. It is owned by a US parent, FleetCor Technologies Inc.

2. FleetCor is an international specialty payments company, providing specialist payment products and services to commercial fleets, oil companies and petroleum markets in various countries including the UK. Its payment processing IT platform is widely accepted throughout the world.

3. CH Jones Limited **(CH Jones)** is a subsidiary of FleetCor operating in the UK, and carries on a bunkering fuel card business (which allows customers to pay for fuel on account). It runs the business through the brand name Keyfuels.

4. The Fuelcard Company UK Limited **(TFCC)**, which is a subsidiary of FleetCor Technologies Inc, resells other companies' fuel cards, primarily the cards of oil majors like Shell and Esso as well as Keyfuels.

5. Arval UK Limited and AllStar Business Solutions Limited **(AllStar)** are subsidiaries within Arval UK Group Limited **(Arval)**. Arval itself is a wholly-owned subsidiary of the French bank, BNP Paribas.

6. The AllStar fuel card business was held within the two subsidiaries of Arval. It issues branded retail fuel cards that are used by its customers to purchase fuel. AllStar also provides back office services for fuel cards issued by some companies, for example, Asda and Waitrose.

TRANSACTION

7. On 13 December 2011, FleetCor acquired AllStar for £194 million. The OFT launched an own-initiative merger investigation on 12 December 2012. Following an extension under section 25(2) of the Enterprise Act 2002 (the Act), the statutory deadline is 12 May 2012. The administrative deadline was 23 April 2012.

JURISDICTION

8. As a result of this transaction the enterprises FleetCor and AllStar have ceased to be distinct. The parties overlap in the supply of fuel cards and supply at least 25 per cent of fuel cards in the UK.[1] Therefore, the OFT considers that the share of supply test in section 23 of the Act is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

FRAME OF REFERENCE

Product scope

9. The parties overlap in the supply of fuel cards. Fuel cards are accepted at fuel forecourts and are used by commercial fleet operators to acquire fuel on account with the card issuer. Apart from specialist payment system operators like the merger parties, fuel cards are also offered by the oil majors such as Shell, BP and Esso.

10. In addition to facilitating easy payment for fuel, card issuers also provide fleet customers with a range of services including data on their fuel purchases and mileage, and prepare automated VAT details for them.

[1] The parties submitted that they supply [25-35] per cent of fuel cards in the UK.

11. The type of fuel card that a fleet operator chooses will depend on the type of vehicle demand that they have. The key types of fuel cards are explained below.

a) **Retail fuel cards** permit the cardholder to withdraw fuel generally at pump price (although a few large customers have a rebate on pump price) from those forecourts[2] which accept them. Successful retail-priced cards will be accepted at a wide network of forecourts, since this allows cardholders to save on the cost and time of travelling in search of a fuel station which accepts their card. AllStar is the most successful such card, and has approximately 90 per cent network acceptance amounting to around 8,800 forecourts.

b) **Oil company fuel cards** come in two forms. Some are retail-priced and effectively act in the same way as other retail-priced cards. Some (typically for larger customers) are PAYG (pay-as-you-go) commercial cards, for which fuel is supplied at wholesale or commercial (Platts-plus)[3] prices at the oil major's own forecourts. The most successful of these cards are issued by the oil majors, such as Shell, Esso and BP.

c) **Bunkering cards** permit the cardholder to withdraw fuel at a commercial price from the forecourts which accept them.[4] These forecourts will typically be truck stops and other forecourts amenable to large vehicles in the UK. Keyfuels and UK Fuels are the only suppliers of these cards. There are two types of bunkering cards:

i) **Direct bunkering cards** permit the cardholder (the commercial fleet company) to buy fuel directly from fuel wholesalers or refineries at commercial price and to draw the fuel from the forecourts on the card network, where the fuel is stored. In return, the cardholder pays a handling fee to the card issuer (part of this fee is passed onto the corresponding forecourt). It is the card issuer's responsibility to arrange the transportation of the fuel from the refinery and deliver the fuel across its network of forecourts. Cardholders may withdraw the same amount of fuel they have purchased and contributed to the network but not necessarily the same physical fuel. Keyfuels and UK

[2] The term 'forecourt' is used in a wide sense that includes truck stops.

[3] 'Platts-plus' pricing links the price paid to the spot price (Platts price) of oil.

[4] Such forecourts are also known as bunkering sites.

Fuels are the only two companies providing this type of card.

ii) **PAYG bunkering cards** are similar to the PAYG cards of the oil companies, but use the same forecourt bunkers as the direct bunkering cards. Unlike direct bunkering cards, the fuel is purchased and sold by the card issuer or a fuel card reseller (instead of the wholesaler), which may be a subsidiary of the card issuer (for example, The Fuel Card Company is a subsidiary of FleetCor) or an independent reseller (for example, DCC). The fuel is typically supplied at a fixed Platts-plus weekly price. The fuel price includes the handling fee for the delivery of the fuel across the network, part of which is the site fee paid to the relevant forecourts.

12. Fuel cards can be grouped into two broad categories: retail-priced cards (or retail cards) and wholesale-related priced cards (or commercial cards). In the main, fleet operators running predominately cars or light commercial vehicles (LCVs) will opt for retail cards and those running heavy goods vehicles (HGVs) will opt for commercial cards. However, the distinction between retail and commercial cards is occasionally blurred. In some instances, commercial cards operate as such in some sites but as retail cards in others. Some Keyfuels cards, for example, operate as bunkering cards in Keyfuels' forecourts and as a retail card in Tesco's forecourts. Other examples are the oil majors' cards when cross-acceptance agreements are in place: these cards operate as commercial cards in an oil major's (for example Shell) forecourts and as a retail card in the forecourts of the oil majors that have signed the cross-acceptance (for example, a Shell fuel card is accepted on Esso sites).

13. Another way of grouping fuel cards is according to whether the fuel card issuer owns or controls either all or a large proportion of the network where its fuel cards are accepted. 'Independent' fuel cards are issued by companies which do not own or control the forecourts where its cards operate. In the UK there are only three independent fuel card suppliers: Keyfuel's, AllStar and UK Fuels. All other suppliers – generally referred to as 'non-independents' – include the oil majors and supermarkets. This distinction is important from a card issuer's perspective, as independents need to seek acceptance for their cards, whereas non-independents have their own base of forecourts accepting their cards. In addition, from the forecourt's perspective, oil majors' cards or other independent cards can be accepted in a forecourt only if that forecourt is part of the network of the

oil major (or of another company with whom cross acceptance agreements are in place). Conversely, the independent fuel cards can be in principle accepted by all forecourts.

14. Commercial cards can be further sub-divided into oil majors' cards, direct bunkering and PAYG bunkering cards. Direct bunkering cards typically provide the cheapest fuel price, although this depends on the arrangements between wholesalers and fleet customers. The other commercial (PAYG) cards typically provide cheaper fuel than retail cards, but more expensive fuel than direct bunkering cards.

15. The parties submitted that retail fuel cards are not in the same market as commercial cards such as bunkering fuel cards since they are aimed at different customer groups, involve different payment models, are accepted at different forecourts and involve differing levels of information provision to the customer (so that they can manage their fuel efficiency). The OFT has examined the following issues in considering the product market in this case. Whether:

- all cards (including cash and credit cards) form one market
- retail fuel cards are in a different market to commercial fuel cards, and within this whether direct bunkering cards are in a different market to PAYG commercial fuel cards
- different commercial fleet operators (in particular, HGV operators and non-HGV operators) are in different markets
- fuel cards can be characterised as two-sided markets, and
- there may be separate 'upstream' markets in terms of the supply relationship between card issuers and fuel retailers/forecourts.

All cards

16. The parties suggested to the OFT that if it were to consider different types of fuel cards together it should also consider other payment mechanisms such as the use of credit cards or cash. Third parties told the OFT that neither cash nor credit cards permit end users to automatically record VAT payments[5] to facilitate the claiming back of VAT, which is a large

[5] Purchasing cards of this nature can provide Line Item Detail invoices, known as VAT at LID level or sometimes referred to as VAT Level 3 invoices.

percentage of a typical commercial fleet's costs. Using credit cards or cash, drivers would need to manually collect the VAT invoices from each transaction. Further, some third parties noted that fuel cards allow for tighter cost control as the cards are limited for purchasing fuel only, whereas credit cards or cash may be used to buy other goods.[6] Finally, third parties also noted that the fuel cards permit them to monitor fuel usage and mileage by vehicle and therefore provides valuable data that cash and credit cards do not provide.

17. The OFT has not found it necessary to conclude in this case. It has taken a cautious approach in its analysis and examined the case on the basis that cash and credit cards are separate from fuel cards.

Retail fuel cards and commercial fuel cards

18. A range of third party comments were received on the use of retail fuel cards compared with commercial fuel cards. Some third parties indicated that some fleet operators rely solely on commercial fuel cards, whilst others rely solely on retail fuel cards. Additionally, some third parties referred to some fleet operators who use both commercial and retail fuel cards.

19. The OFT considers that all fuel cards can provide a similar function in terms of providing useful information for fleet operators. As discussed above, the cards all provide data on fuel consumption, mileage, and automated VAT details. However, regardless of the information data associated with the cards, the OFT's review confirmed that the main drivers of competition between fuel cards are fuel price and network size.

20. The consideration of price and network size will to some extent differ between HGV fleets and non-HGV fleets.[7] Third parties indicated that HGV fleets require access to forecourts with high canopies and high-pressure fuel pumps. The majority of forecourts, which are targeted at cars, do not have these features. Several third parties indicated that, in choosing a fuel card, HGV fleets place significant weight on the number of forecourts within a card's network that are HGV-accessible but not on the total

[6] Some credit cards can be limited to use in fuel forecourts, but they can still be used to purchase others goods at the forecourt.

[7] Non-HGV fleets comprise cars and LCV fleets.

network size. At the same time, HGV fleet operators attribute considerable weight to fuel price because of the vehicles' high fuel consumption. The parties submitted evidence in the form of a survey[8] which showed that fuel pricing is the most important factor for HGV fleets when selecting a fuel card and in switching cards.

21. In comparison, third parties using a retail fuel card (such as AllStar) indicated that the size of network of forecourts accepting the card is the key determinant of selecting a fuel card alongside price. The relative importance of network size for non-HGV commercial fleet customers is influenced by a number of factors including the short distances driven, the need to refuel more often and the combination of urban and motorway driving. In addition, the cost of fuel may not be as important a factor because fuel costs are often a smaller proportion of the product or service sold.

22. As alluded to above, commercial cards can be further sub-divided into oil majors' cards, direct bunkering and PAYG bunkering cards. The OFT has considered whether it would be appropriate to define a separate market for direct bunkering cards. The OFT notes that direct bunkering services requires commercial fleet operators to have a certain set of skills such as expertise to purchase from the wholesale fuel market and demand for a sufficiently sizeable amount of fuel. Further, direct bunkering cards give access to multiple wholesalers and the ability for commercial fleet operators to switch easily from one to the other while using the same card. Based on information from third parties, the OFT considers that it is unlikely that commercial fleet operators who purchase fuel for direct bunkering are likely to switch to a PAYG model or to switch to oil majors' cards in response to a five per cent increase in card handling fees. Similarly PAYG card users or oil major's card users, in the OFT's view, are unlikely to develop the necessary skills to move into direct bunkering services from a similar price increase in card handling fees.

23. The OFT has not found it necessary to conclude on market definition in this case. Given the above evidence, the OFT has assessed this merger on the basis of retail fuel cards being separate from commercial fuel cards and

[8] '*The Fuelcard company – understanding customer churn*'. Presented by Brass, September 2011.

within commercial fuel cards, that direct bunkering cards are separate from PAYG commercial cards.

Are different commercial fleet operators in different markets?

24. In merger analysis, in identifying the relevant product market the OFT pays particular regard to demand side factors, including the behaviour of customers and its effects.[9]

25. The OFT therefore considered whether the markets for fuel cards might appropriately be segmented by customer type. The parties submitted that Keyfuels and AllStar do not compete in the same product market as they target different customers. They indicated that the AllStar card is aimed at non-HGV fleet customers and Keyfuels' card is targeted at HGV customers. End-users (the commercial fleet operators) with different fleet types have different preferences. Thus, the parties submitted that it is possible to distinguish between the provision of fuel cards issued to HGV and non-HGV fleet operators in addition to dividing the market into retail and commercial bunker cards.

26. Third parties broadly supported this distinction, indicating that non-HGV fleet operators are willing to pay pump price for fuel as their vehicle fuel consumption is lower than for HGVs and fuel costs account for a smaller proportion of overheads. The OFT considers that HGV operators have different preferences to non-HGV commercial fleet operators.

27. In addition, third party responses indicated that there is no clear distinction between LCV and car requirements. The OFT, through its market testing, found mixed fleets more often consisted of LCV and car fleets rather than HGV and LCV mixed fleets. Therefore, the OFT does not consider the need to further segment the relevant market and whenever the merger effect on LCV fleets is examined, car fleets are included.

28. The OFT recognises that while commercial cards are typically targeted on HGV fleets, several third parties noted that commercial cards and retail cards can compete to supply mixed HGV/non-HGV fleets. However, the OFT contacted several mixed fleets and found that mixed fleets have similar preferences to HGV fleets for the fuel cards assigned to their HGV

[9] OFT/CC *Merger Assessment Guidelines*, September 2010 (OFT1254), paragraph 5.2.6

drivers and similar preferences to non-HGV fleets for the cards assigned to non-HGV drivers.

29. Given this evidence, the OFT has assessed this merger on the basis of segmenting commercial fleet customers into HGV and non-HGV customers. This segmentation to a large extent mirrors the distinction between commercial and retail fuel cards, albeit the relationship is not perfect.

Are fuel cards in a two-sided market?

30. Two third parties commented that the supply of fuel cards could be characterised as a two-sided market, with supply to commercial fleets on one side and with supply of fuel card services to fuel retailers (forecourts) on the other.

31. A key characteristic of two-sided markets is that they exhibit network effects. The number of customers in each group affects the profitability of the product, because the value that one group of customers realises from using the supplier depends on the volume of customers from the other group ('indirect network effects'). Prices charged to each group of customers take account of the need to get both groups 'on board'.[10]

32. In respect of retail fuel cards, the parties submitted that AllStar (a retail fuel card) purchases the fuel from a forecourt at pump price, with a fixed discount agreed with these branded forecourts, and therefore that AllStar is a customer of the forecourts, not a supplier. However, and in contrast, third parties consistently referred to this discount as a fee.

33. In addition, the evidence suggests that these customer groups (commercial fleets and fuel retailers) are interdependent. Fleet customers need access to forecourt filling stations and value fuel cards more highly the greater the forecourt network they offer. At the same time, fuel forecourt retailers gain extra business (including important non-fuel sales in the forecourt shop) if they accept a particular fuel card, by attracting customers that hold this card, and this gain in business will be greater the greater the number of cardholders. Third parties confirmed this linkage, and made comparisons with other forms of payment card, including credit cards, which are also characterised as two-sided markets.

[10] OFT/CC *Merger Assessment Guidelines*, September 2010 (OFT1254), paragraph 5.2.20.

34. On balance, the OFT therefore considers retail card suppliers can to some extent also be viewed as suppliers, as opposed to customers, of the forecourts, and that retail card suppliers operate in a two-sided market characterised by network effects. The OFT notes the two-sided nature of the market is important because two sided markets can be harder to enter and can sometimes 'tip' in favour of one or two significant players. In this case, fuel cards are only likely to be accepted by forecourts once they have reached an established customer base. Similarly, it is easier for a fuel card to reach a large customer base the greater the likelihood that it will be accepted by forecourt filling stations.

35. The evidence the OFT received for commercial fuel cards is less clear-cut on this issue. Some third parties argued that the situation was analogous to retail fuel cards in that network coverage is an important factor for commercial fleet customers in selecting a fuel card and that forecourts and bunkering sites are more likely to accept cards with a broad customer base. In this aspect, commercial fuel cards are similar to retail fuel cards.

36. A complication in the commercial cards market is that oil company cards are to some extent vertically integrated into forecourt retail. In addition, the parties submitted that in relation to bunkering, Keyfuels is an intermediary in a vertical supply chain in which forecourt operators act as upstream suppliers and commercial fleet operators are downstream customers. According to the parties, forecourts provide 'storage space' for Keyfuels to stock the fuel purchased from wholesalers (PAYG bunkering) or purchased by commercial fleet customers (direct bunkering) and allow card users to withdraw this fuel using their fuel cards. For this service, Keyfuels receives a handling fee from the commercial fleet customers and pays forecourts a site fee.

37. Overall, the evidence is not conclusive as to whether commercial cards constitute a two-sided market. However, the OFT has not had to conclude on this point, since the assessment of the merger does not rely on it. The OFT notes that the market nevertheless appears to exhibit the network effects typically associated with a two-sided market.

Are there separate 'upstream' markets in terms of the supply relationship between card issuers and fuel retailers/forecourts?

38. Irrespective of whether card issuers supply forecourts (as in a two-sided market) or forecourts supply card-issuers (as in a vertical supply chain), there is clearly an important supply relationship between card issuers and fuel retailers/forecourts. This gives rise to the issue of whether there may be separate markets in respect of this supply relationship, and in particular whether independent retail cards should be viewed as separate from independent bunkering cards in this respect. The OFT also considered whether both of these (that is the supply relationships between independent card issuers and fuel retailers/forecourts) should be viewed as separate 'upstream' markets from 'non-independent' oil company cards (and any other vertically integrated cards).

39. A number of distinctions between retail cards and direct bunkering cards are relevant in this respect. The distinctions set out above in respect of how payments are made are clearly relevant. In addition, retail card forecourts sites sell fuel in largely the same way as they would to any other customer, aside from the need for a fuel card. In comparison, for sites which are part of a bunkering network, there are physical differences, as the fuel is drawn from pumps that lie away from the canopies where the branded fuel is sold.

40. Contracts for retail fuel cards are also typically signed at brand level. For example, AllStar negotiates with BP for acceptance at all BP forecourts. In comparison, contracts for acceptance of bunkering cards are typically signed directly with forecourt owners (some of which own a network of sites). For example Keyfuels negotiates directly with each forecourt owner (for example, MOTO), even when it supplies fuel to retail cardholders under a brand (such as BP, for example). This difference, in terms of the counter-party to the supply contract, is important because it suggests that switching from one type of card to another is unlikely to occur in reaction to a five per cent change in fees.[11]

41. The OFT also notes that the different customer groups targeted by retail and bunkering cards tends to suggest that these fuel cards are complementary, rather than substitutes from a fuel retailer's perspective, in

[11] That is a five per cent increase in the fees received by retail cards or five per cent decrease in the fees received from commercial bunkering cards.

that they deliver different groups of additional business to the forecourt owners.

42. Finally, the OFT notes that AllStar, Keyfuels and UK Fuels are independent fuel cards (see above), in that are issued by companies that do not own or control a forecourt network. By contrast, for oil company cards, supermarket cards and other non-independent cards, the same company that controls the fuel retail network issues the cards. Non-independent cards are not typically made available to unbranded forecourts. Nor are they made available to many branded sites, although the OFT notes that there may be cross-acceptance agreements between oil companies in some cases. Finally they do not offer a direct bunkering function. As such, for the bunkering sites that form the bedrock of Keyfuels' (and UK Fuels') network, the non-independent cards do not appear to be a significant competitor to the independent bunkering cards. It should also be noted that when forecourt owners are part of an oil major's network they may have restrictions as to their ability to accept bunkering cards, which would further decrease the likelihood of switching between retail and bunkering cards.

43. Given its overall assessment of this merger, the OFT does not need to conclude on market definition in terms of the 'upstream' supply relationship between fuel card issuers and fuel retailers/forecourts. However, the OFT has assessed the merger on the basis of three separate 'upstream' markets for i) independent retail fuel cards, ii) independent bunkering fuel cards and iii) non-independent cards.

GEOGRAPHIC SCOPE

44. The parties consider the geographic market for the provision of fuel card services to be at least national in dimension. Fuel card companies typically offer their products and services on a national basis. Both parties are active in all four countries of the UK.

45. For the purposes of this merger, it is not necessary for the OFT to come to a definitive conclusion on the scope of the geographic market as, no matter how it is defined, no substantial lessening of competition arises. However, the OFT has assessed the merger on a UK-wide basis.

Conclusions on market definition

46. The OFT has assessed the merger on the basis of the following downstream markets:

- the supply of direct bunkering cards to UK commercial fleet customers
- the supply of PAYG commercial fuel cards other to UK HGV commercial fleet customers, and
- the supply of retail fuel cards to UK non-HGV commercial fleet customers.

47. In terms of the supply relationship between fuel card issuers and fuel retailers/forecourt owners (the upstream market), the OFT has also assessed the merger on the basis of:

- independent retail fuel cards
- independent commercial (bunkering) fuel cards, and
- non-independent cards.

COUNTERFACTUAL

48. In reviewing mergers, the OFT is required to assess whether the merger creates a realistic prospect of a substantial lessening of competition (SLC). In order to do this the OFT needs to assess the post-merger competitive environment against that without the merger (otherwise known as the counterfactual). The OFT generally adopts the prevailing conditions of competition (or the pre-merger situation in the case of completed mergers) as the counterfactual against which to assess the impact of the merger.[12]

49. In this case, no arguments have been proposed that the counterfactual should be other than the pre-merger situation. Therefore, in line with the OFT's guidance the OFT has taken the pre-merger situation as the relevant counterfactual in this case.

UNILATERAL EFFECTS

50. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint,

[12] OFT/CC *Merger Assessment Guidelines*, OFT1254, September 2010, section 4.3.

allowing the merged firm profitably to raise prices on its own and without needing to coordinate with its rivals.[13]

Market shares

51. The parties provided estimates of the volume of fuel sold through fuel cards to HGV, and non-HGV fleets. Based on these data, the OFT has calculated market shares, as set out in Table 1 and Table 2, broken out between HGV and non-HGV sales.

52. In Table 1 the amount of fuel sold through fuel cards resold by fuel card resellers is attributed to the fuel card resellers. In Table 2, instead, the fuel sold through cards resold by resellers is attributed to the card issuer, which may give a better indication of the card issuer's position in the market. The parties disagree with the latter treatment of resellers, on the basis that resellers control the customer relationship and are able to switch customer volumes to different cards.

Table 1: Shares of fuel card payment of fuel, resold cards attributed to resellers (per cent, 2011).

Company	Non-HGV	HGV	Total fuel card
AllStar	[20-30]	[0-5]	[15-25]
Keyfuels (incl. TFCC)	[0-5]	[20-30]	[5-15]
Combined	**[30-40]**	**[20-30]**	**[20-30]**
Resellers	[15-25]	[25-35]	[20-30]
Other indep. cards	[0-5]	[10-20]	[5-10]
BP	[10-20]	[10-20]	[10-20]
Shell	[5-10]	[0-5]	[5-10]
TOTAL	[5-10]	[0-5]	[5-10]
Esso	[5-10]	[0-5]	[0-5]
Texaco	[0-5]	[0-5]	[0-5]
Other oil companies	[0-5]	[0-5]	[0-5]
Total fuel cards	100	100	100

Note: Shares based on volume.
Source: The parties.

[13] OFT/CC *Merger Assessment Guidelines*, OFT1254, September 2010, paragraph 5.4.1

Table 2: Shares of fuel card payment of fuel, fuel from resold cards attributed to the original issuers (per cent, 2011).

Company	Non-HGV	HGV	Total fuel card
AllStar	[30-40]	[0-5]	[20-30]
Keyfuels	[0-5]	[25-35]	[10-20]
Combined	**[30-40]**	**[30-40]**	**[30-40]**
UK Fuels	[0-5]	[5-10]	[0-5]
Other indep. Cards	[0-5]	[10-20]	[5-10]
BP	[15-25]	[15-25]	[15-25]
Shell	[5-10]	[5-10]	[5-10]
TOTAL	[5-10]	[5-10]	[5-10]
Esso	[5-10]	[5-10]	[5-10]
Texaco	[5-10]	[5-10]	[5-10]
Other oil company cards	[0-5]	[0-5]	[0-5]
Total fuel cards	100	100	100

Note: Shares based on volume.

Source: The parties.

53. The OFT considers that these market shares may be subject to some uncertainty. Other data sources, such as the Datamonitor report,[14] attribute higher shares to the parties.

54. The shares reported above indicate that AllStar is focused on retail fuel cards (aimed at non-HGVs) whilst Keyfuels is focused on commercial fuel cards (aimed at HGVs). Third parties agreed with this. Further, regardless of which data are accepted as accurate, the increase in market shares within HGV and non-HGV respectively is not material. For the purposes of this merger investigation, the OFT did not have access to market share data which split out HGV sales into direct bunkering and PAYG fuel cards. However, UK Fuels and Keyfuels are the only suppliers of direct bunkering cards. As such their shares of the PAYG commercial cards market may be lower than is suggested in the tables above. In any case, given that AllStar has very limited presence in HGV sales, this would not be expected to change the above conclusions.

[14] Commercial Fuel Cards in Europe: Market Size, Issuer Strategies, and Competitive Success: 2010.

Closeness of competition

55. The OFT also takes into consideration whether the parties are sufficiently close competitors such that the merger would give the merged entity strong incentives to raise prices.

56. In this case, the parties submitted that they are not close competitors, and that their fuel cards are used by different customers. In particular, Keyfuels products are aimed at HGV fleets, whereas AllStar cards are aimed at non-HGV fleets. Further, the parties submit that there are differences in their business models. They point out that Keyfuels business, in addition to the IT component (collection of payment information) also has a logistic component (fuel delivery) which makes Keyfuels' business model, according to the parties, crucially different from AllStar's.

57. Third parties generally confirmed the view that the parties target different end customers, although several third parties commented on Keyfuels having a leading market share in fuel cards for commercial use and AllStar similarly having a leading market share in fuel cards for retail use.

58. These considerations are also reflected in the diversion rations based on switching data proved by the parties (Table 3 and Table 4).

Table 3: Keyfuels HGV and non-HGV customer switching (2010)

Destination of lost volume	HGV		Non-HGV	
	Litres (millions)	Diversion (per cent)	Litres (millions)	Diversion (per cent)
UK Fuels	[ ]	[ ]	[ ]	[ ]
BP	[ ]	[ ]	[ ]	[ ]
Own yard	[ ]	[ ]	[ ]	[ ]
AllStar	[ ]	[ ]	[ ]	[ ]
Shell	[ ]	[ ]	[ ]	[ ]
Fuel Genie	[ ]	[ ]	[ ]	[ ]
Total	[ ]		[ ]	

Notes: Volumes may not sum to totals and diversion ratios may not correspond to volumes due to rounding.
Source: FleetCor.

Table 4: AllStar HGV and non-HGV customer switching (2010)

Destination of lost volume	HGV		Non-HGV	
	Litres (millions)	Diversion (per cent)	Litres (millions)	Diversion (per cent)
BP	[ ]	[ ]	[ ]	[ ]
Total	[ ]	[ ]	[ ]	[ ]
Shell	[ ]	[ ]	[ ]	[ ]
Keyfuels	[ ]	[ ]	[ ]	[ ]
Own yard	[ ]	[ ]	[ ]	[ ]
Fuel Genie	[ ]	[ ]	[ ]	[ ]
Total	[ ]		[ ]	

Notes: Volumes may not sum to totals and diversion ratios may not correspond to volumes due to rounding.
Source: FleetCor.

59. Table 4 support the claim that the parties are not close competitors. In particular, only [ ] per cent of AllStar's non-HGV customers switched to Keyfuels in 2010. [ ] . As for switches in the other direction, although [ ] per cent of Keyfuels' non-HGV customers switched to AllStar, the OFT considers that this switch was due to a small number of individual customers and that, overall, the available evidence indicates that Keyfuels' presence in the non-HGV market is limited. When calculated without distinction between HGV and non-HGV, the overall switch from Keyfuels to AllStar is less than [ ] per cent.

60. Table 3 and Table 4 also show that the oil majors play an important role in this dynamic, since their business models are closer to both Keyfuels and AllStar than the parties are to each other. Table 3 shows that Keyfuels' closest competitor, after [ ], is [ ] ([ ] per cent diversion in supply to HGVs). Table 4 shows that, based on diversion ratios in the non-HGV market, AllStar's closest competitors are [ ] ([ ] per cent), [ ] ([ ] per cent) and [ ] ([ ] per cent).

61. In conclusion, and on the basis of the available evidence, the OFT accepts the parties' view that there is little substitutability between the parties' fuel cards and therefore a realistic prospect of a SLC does not arise as a result of the merger in regard to the loss of direct competition. Furthermore, the OFT considers that, on some occasions, the parties' cards may in fact be complements. For example, one third party stated that, for their HGV fleets, drivers are provided with an AllStar card for emergencies because of the wider network coverage.

Potential competition

62. Unilateral effects may also arise from the elimination of potential competition.[15] Several third parties stated that, although the parties originally focused on different markets, they are now increasingly competing on mixed HGV/LCV fleets and mixed LCV/car fleets. Furthermore, one third party provided the OFT with evidence that it was Keyfuels' intention to expand in the non-HGV market, creating a card, MyFuel, which was designed, according to Keyfuels' own presentation, to compete directly against AllStar. In addition, Keyfuels has recently

[15] OFT/CC *Merger Assessment Guidelines*, OFT1254, September 2010, paragraph 5.4.13

expanded its network by signing an agreement with Tesco to operate its fuel cards in Tesco's forecourts as a retail card.[16]

63. However, the parties pointed out that the MyFuel card was never issued and has never been in commercial operation. Indeed, Keyfuels could not establish a sufficient number of retail sites to accept the card. Thus, according to the parties, Keyfuels abandoned its plan to launch the MyFuel card in 2010.

64. Similarly, AllStar submitted that it has no plans to launch a bunker card. AllStar also submitted that the closest to a bunker-card-type product that it had considered launching was the 'iDiesel' card. The card was aimed at offering customers a combination of a Platts-based weekly fixed commercial rate at certain sites with retail pump pricing across the rest of the AllStar network, and was originally developed as a defensive response to losing a small number of customers to BP and Shell on Platts-based deals. However, the parties explained that the concept had not taken off, as it appeared unlikely that it could be made into a cost-effective product and there was not sufficient demand.

65. Although the evidence indicates that both parties considered entering each other's market with a new card, neither forecourt owners nor commercial fleet operators were interested. Moreover, even if the parties had been successful with these endeavours, there is no clear evidence that the parties would have been close competitors. The OFT notes that the oil majors would also have remained a considerable presence in the market and would have represented a considerable competitive constraint. Therefore, the OFT does not consider that the merger results in a realistic prospect of a SLC with regard to a loss of potential competition.

CONGLOMERATE EFFECTS

Leverage through vertical foreclosure

66. Mergers which bring together non-competing products in related markets are typically more likely to generate efficiencies than anti-competitive effects. In this case, the parties submitted that their rationale for acquiring AllStar was to broaden the service offering and add value to AllStar by

[16] www.fleetnews.co.uk/news/2011/9/1/tesco-fuel-deal-signals-new-era-for-Keyfuels/40490

drawing on their experience and expertise in commercial cards to improve the technology used in the business, and also to increase sales through leasing company resellers.

67. However, a merger may raise competition concerns on the basis of conglomerate effects if the combination of products in related markets confers on the merged entity an enhanced ability and incentive to leverage a strong market position from one product to another (by means of tying, bundling, or other exclusionary practices) by dint of customers buying both products.

68. In this case, the OFT has analysed whether the merger would significantly enhance the ability or incentive of the merged firm to engage in such vertical foreclosure, and if so the extent of the likely effect of such foreclosure.

The leverage concern

69. The particular concern examined by the OFT in this case is whether the merger would significantly increase the likelihood that the merged entity would foreclose its key bunkering competitor, UK Fuels, through securing exclusivity of supply of bunkering fuel cards at a number of key independent HGV-compatible target forecourts. The core argument here would be that, because AllStar is very strong in independent retail fuel cards, the merged firm would have stronger bargaining power vis-à-vis relevant forecourt owners than Keyfuels would alone. In addition, the merger with AllStar could potentially give Keyfuels an important link into UK Fuels supplied sites that it did not previously deal with itself.

70. Both of these factors would give the merged firm an enhanced ability to induce exclusivity amongst key UK Fuels sites, for example through threatening to withdraw the parties' cards from sites that refused to accept these terms, or alternatively by giving the fuel retailers/forecourt owners financial incentives to provide exclusivity.[17]

[17] The financial incentives in return for exclusivity proposition is not considered further, because such a strategy could occur pre or post merger and is therefore not merger specific, as the merger does not add anything to the ability of the parties to undertake this strategy.

71. Weakening or fully excluding UK Fuels as a competitor, through blocking its access to key sites, would in turn be profitable because Keyfuels and UK Fuels are the only players in the direct bunkering market for sales to HGV fleet customers. They are also the only players in the independent bunkering market in terms of the supply relationship between card issuers and forecourt owners. Thus, it might be expected that Keyfuels would then follow-up on this strategy by increasing fees to recoup the initial losses.

Does the merger provide enhanced ability to engage in vertical foreclosure?

72. When considering whether the merger enhances the merged firm's ability to pursue a leveraging strategy through vertical foreclosure of the sort described above, three key factors are important. First, the merged firm must have sufficient bargaining power over the forecourts it deals with to induce them to accept exclusive supply. Second, it must have a sufficiently large pool of forecourts in common with the potential target competitor (in this case UK Fuels) that this has the potential to impact on that competitor's ability to compete. Third, the merger must enhance either this bargaining power over forecourts or the extent of overlap in the pool of forecourts.

73. Keyfuels and UK Fuels are the only suppliers of direct bunkering cards and the only suppliers of independent PAYG commercial cards. Moreover, Keyfuels is significantly larger than UK Fuels (Table 2). As such, Keyfuels may well have significant bargaining power over those forecourts it deals with even prior to the merger. In addition, AllStar, Keyfuels and UK Fuels deal with a large set of common forecourts, in excess of 500. AllStar and UK Fuels also overlap on over 100 additional sites at which Keyfuels is not present.

74. Despite this pool of common forecourts, the parties further submitted that AllStar and Keyfuels negotiate separately with different forecourt groups for their business and that contractual terms would inhibit them from changing this approach post-merger. AllStar signs agreements for the acceptance of its card at brand level, while Keyfuels and UK Fuels negotiate with site owners separately (see paragraph 40 above).[18] The parties also highlighted that the AllStar brand level relationship will tend to

[18] In the specific example of MOTO forecourts, Keyfuels' fuel is sold in a separate area of the fuel station where canopies are not branded BP.

cover a far wider set of forecourts than deals with Keyfuels or UK Fuels. It is improbable that the merged parties would risk the much larger relationship for AllStar across a whole brand, for a small added foreclosure effect on UK Fuels. As such, the parties argue that Keyfuels would not be able to leverage any market power achieved through the merger on those forecourts.

75. The OFT identified nevertheless that both parties do negotiate directly with Morrisons and Murco. Specifically, the merger parties' and UK Fuels' cards are accepted by Morrisons and Murco on almost 400 of the same forecourts. Moreover, AllStar appears to be an important trading partner for both Morrisons and Murco, and thus may potentially provide the merged firm with significant additional bargaining power with these two fuel suppliers. Therefore, the OFT paid particular attention in its investigation to whether the merged firm could leverage AllStar's bargaining power with Morrisons and Murco to enhance its ability to foreclose the access of UK Fuels on these 400 forecourts.

76. The OFT also noted that there may be other forecourts, or forecourt groups, which similarly deal directly with both AllStar and Keyfuels, albeit they are all individually much smaller than Morrisons and Murco. However, many of these will have a strong focus on HGV fuel, and it is not obvious how much additional bargaining power the acquisition of AllStar will give the merged party in respect of these HGV-focused forecourts. The OFT also notes that some of these other forecourts may in any case have some protection through ongoing contracts with Keyfuels/AllStar. As such these forecourts are not considered further, and the OFT's analysis instead focuses on Morrisons and Murco.

77. The extent of the merged firm's bargaining power with forecourts derives from the proportion of fuel sold in the forecourts that is sold through their cards. Keyfuels and AllStar will, post-merger, control [ ] per cent of Morrisons' fuel card volumes and (up to) [ ] per cent of Murco's volumes.[19] This corresponds to [ ] times the volumes controlled by UK Fuels in

[19] The OFT is not aware of the total amount of fuel sold by Murco through fuel cards. The larger this number the lower the percentage controlled by the parties. The [ ] per cent is based on the assumption that all the fuel sold through fuel cards in Murco's forecourts is sold through AllStar or Keyfuels or UK Fuels. Therefore, this is the maximum percentage attributable to the parties.

Morrisons forecourts and [ ] times the volumes controlled by UK Fuels in Murco's forecourts (see Table 5 below).

Table 5: AllStar's, Keyfuels' and UK Fuels' volumes in Morrisons' and Murco's forecourts.

	Total fuel cards volume	**AllStar** (million litres)	**Keyfuels** (million litres)	**Combined (million litres)**	**UK Fuels** (million litres)
Morrisons	[ ]	[ ] ([ ]% of total fuel card volume)	[ ] ([ ]% of total fuel card volume)	[ ] ([ ]% of total fuel card volume)	[ ]
Murco	>[ ]	[ ] (<[ ]% of total fuel card volume)	[ ] (< [ ]% of total fuel card volume)	[ ] (<[ ]% of total fuel card volume)	[ ]

78. Conversely, forecourts' relative bargaining power derives from both the amount of fuel and the number of forecourts they control. The OFT considers that Morrisons and Murco control less than [0-five] per cent and less than [0-five] cent of AllStar's network, respectively. Although AllStar's business proposition depends on near universal acceptance of the AllStar card, the OFT notes that such proposition would not be affected by the loss of less than [0-five] per cent (and even less so by the loss of less than [0-five] per cent) of its forecourts. In particular, AllStar's fleet customers would be unlikely to switch to other fuel cards as a result, especially considering that the nearest competitor to AllStar has a network acceptance below 50 per cent. Rather, customers are likely to continue using AllStar and move from Morrisons' or Murco's forecourts to the other forecourts that accept AllStar. Two third parties agreed that if a petrol station stopped accepting AllStar, their drivers would travel to the next nearest AllStar stations, as there are so many.

79. The OFT therefore considers that the parties would be unlikely to face significant losses in business from withdrawing the AllStar card from Morrisons and Murco, whereas Morrisons and Murco are likely to face considerable losses if this were to occur. This in turn means that AllStar may be expected to enhance the bargaining power of the merged firm with respect to Murco and Morrisons, which in turn is likely to enhance their

ability to induce these fuel retailers to accept exclusivity and cease dealing with UK Fuels.

80. This enhanced bargaining power is more marked with respect to Morrisons than to Murco. Keyfuels already has significantly greater volume at Murco than UK Fuels, placing it in a position where it could threaten to withdraw its business if these fuel retailers did not cease dealing with UK Fuels. The additional volumes of AllStar, and therefore the potential increase in bargaining power resulting from the merger, are proportionately much greater at Morrisons.

81. Nevertheless, and on a cautious basis, the OFT has found that there is a realistic likelihood that the merger would significantly enhance the merged firm's bargaining power with respect to both Morrisons and Murco and that this may well be sufficient to induce these fuel retailers to sign exclusive agreements.

Incentive of the merged firm to pursue the leveraging conduct

82. When analysing the incentive to pursue the leveraging conduct the OFT may also consider if the merged entity would find such a strategy profitable, and whether the merger enhances this incentive.[20]

83. The parties submitted that Keyfuels would not have the incentive to induce forecourts to sign exclusive arrangements as a result of the merger, either through financial compensation or by threatening to withdraw its cards from their sites unless they do so.

84. The parties put forward two specific arguments in this regard. First, the AllStar business was based on universal network coverage, meaning that the removal of AllStar from individual sites would have a disproportionate effect on AllStar's ability to compete for subscribers to the network. Second, the potential cost to AllStar's business for each site lost would exceed the benefit of excluding Keyfuels' nearest competitor – UK Fuels. The parties estimated that the AllStar business is worth around 13 times more than the UK Fuels business and deals in over six times the volume of fuel. Therefore, the parties submitted that they would have more to lose

[20] OFT/CC *Merger Assessment Guidelines*, OFT1254, September 2010, paragraph 5.6.6 (b).

from AllStar being removed from sites than they would to gain from having UK Fuels excluded.

85. AllStar's business model places significant weight on universal coverage. However, the OFT notes that this business model would not change whether AllStar was accepted in, say, 87 per cent or 92 per cent of forecourts in the UK and would be unlikely to diminish the customers using the card or have a disproportionate effect on AllStar's ability to compete for subscribers. For example, one third party told the OFT that it would not switch to a competing fuel card if AllStar's coverage decreased from 90 per cent of forecourts to 80 per cent. Such a fall in network coverage would still leave AllStar by far the largest network and would still mean that an AllStar driver would be able to conveniently drive to a fuel retailer that accepted the card.

86. Further, the OFT considers that the parties' analysis of the merged firm's incentives is incomplete. The first limitation is that it does not consider the likelihood that the threat to exclude is successful, with UK Fuels being excluded without AllStar being forced to lose sites. A high likelihood of success would increase the potential benefit and reduce the potential cost.

87. The second limitation lies in the underestimation of the potential gains from the foreclosing strategy. The foreclosure of UK Fuels' access to part of its existing forecourt network might be expected to have wider implications for the ability of UK Fuels to compete effectively against Keyfuels in the bunkering market, given the important network effects highlighted above, and could even induce the exit by UK Fuels from the market completely. This might in turn be expected to substantially enhance Keyfuels' market position in bunkering, given that UK Fuels is its only competitor in this market. In particular, a considerable proportion of the forecourts that are now accepting UK Fuels, but are not accepting Keyfuels, would be likely to turn to Keyfuels after the withdrawal of UK Fuels from the market.

88. Nevertheless, the OFT recognises that any incentives to foreclose UK Fuels mainly derive from the Keyfuels market position, and not the position of AllStar. Therefore, the OFT accepts that the merger may not enhance the incentives of the merged firm to foreclose UK Fuels. The OFT does not, though, find compelling the parties' arguments that the merged firm would not have an incentive to foreclose UK Fuels, if it were able to. Thus, given the discussion in the previous section, the OFT considers, on a cautious

basis, that the merged firm would have not only an enhanced ability, but also the incentive, to foreclose UK Fuels from Morrisons and Murco sites.

The likely effect of the merger on leveraging

89. Given the above, the OFT must consider whether the likely effect of such action by the merged firm would be sufficient to reduce competition in the affected market to the extent that it gives rise to a realistic prospect of a SLC.[21]

90. In considering this it is important to note that AllStar predominately serves non-HGV commercial fleets and sells fuel at pump price, whereas Keyfuels and UK Fuels focus on serving HGVs and sell fuel at a Platts plus price. This distinction is important as HGV fleet operators are relatively unimportant for AllStar (see tables 1 and 2). By contrast, [ ] of UK Fuels' volumes are derived from HGV sites.

91. Moreover, while AllStar's fuel volumes are spread across a great many sites, the evidence shows that relatively few sites account for a very large proportion of UK Fuels' and Keyfuels' volumes. UK Fuels' top 100 sites account for around [ ] per cent of its volumes and its top 115 sites account for around [ ] per cent of its volumes. These sites are mainly HGV sites and a considerable number are unbranded truck stops. In addition, for these forecourts, the oil majors' cards are an important source of income. Likewise, the parties submitted that Keyfuels typically earns over [ ] per cent of its revenue in 100 key forecourts, and these forecourts are typically large truck stops where AllStar is either not accepted or is of little importance to the forecourt.

92. Given this, the parties submitted that the loss of Murco's and Morrisons' forecourts would not be sufficient to foreclose UK Fuels from the market. This would occur only if the forecourts involved constituted a substantial share of those forecourts (the top 100) that were key for UK Fuels, or at the least a substantial share of those forecourts that were HGV-compatible. The parties also argued that the parties have long-term contracts in place with key forecourts (including Murco and Morrisons) which would impede them from withdrawing their fuel cards from forecourts, at least until the contracts have expired.

[21] OFT/CC *Merger Assessment Guidelines*, OFT1254, September 2010, paragraph 5.6.6(c)

93. The available evidence in this case shows that [ ] forecourts and [ ] are in the list of the key UK Fuels 100 sites. These account for less than [ ] per cent of the fuel sold in the top 100 UK Fuels' forecourts. In addition, although Morrisons and Murco combined, account for around [ ] per cent of UK Fuels volumes ([ ] per cent and under [ ] per cent respectively), a substantial proportion of the Morrisons' volumes, in particular, relate to sales in non-HGV compatible sites. Sales through Morrisons' and Murco's HGV-compatible sites jointly account for less than [ ] per cent of UK Fuels' total volumes sold through HGV-compatible sites.

94. Given the network effects identified above, it is also important to consider the wider potential impact on UK Fuels sales, across its network, from losing the Morrisons and Murco forecourts from that network. As discussed above, the HGV commercial fleet operators, on which UK Fuels' business is focused, do value network. However, the network of forecourts that are relevant to them is formed only of HGV accessible forecourts. The loss of Morrisons' and Murco's forecourts would reduce the number of HGV forecourts on UK Fuels network by 31, from 432 to 401 forecourts.

95. As for the non-HGV segment, the potential loss of the Morrisons and the Murco sites would have a much greater impact on the UK Fuels site network, given that there are a substantial number of non-HGV compatible Morrisons sites in this network. However, the non-HGV business is a significantly smaller proportion of UK Fuels' business than the core HGV business. In addition, the OFT notes that there are several strong competitors in the non-HGV fuel card market, such as the oil majors and supermarkets' retail cards. Therefore, the loss or weakening of one competitor would not substantially alter the level of competition in the non-HGV market.

96. On the basis of the evidence above, the OFT considers that the likely effect of foreclosing UK Fuels from the Murco and Morrisons sites, even if this were to occur as a result of the merger, would be insufficient to constitute a substantial lessening of competition. On this basis, the OFT concludes that there is no realistic prospect of a SLC with respect to conglomerate effects and foreclosure.

Competition laws and the merger regime

97. Ordinarily the OFT does not rely on competition laws to solve merger related issues.[22] However, it is noteworthy that in this instance the OFT has an ongoing Competition Act 1998 investigation into FleetCor,[23] assessing allegations of the use of exclusive agreements on fuel retailers. Additional consideration has been given to how this might affect market participants and the likelihood of foreclosure. The OFT recognises that this ongoing case could make foreclosure less likely to occur, since first customers are aware of the process and may be more likely to complain and second parties may be more reluctant to pursue anti-competitive behaviour. Nevertheless, the OFT does not consider that this would have been sufficient to overcome any SLC identified in this case.

BARRIERS TO ENTRY AND EXPANSION

98. Entry by potential rivals, or expansion by existing rivals, can mitigate the effect of a merger on competition. In assessing entry or expansion the OFT is concerned whether such entry or expansion would be timely, likely and sufficient in scope.

99. The parties argue that barriers to entry and expansion as a reseller are low: a new entrant simply needs to reach agreement with an oil company or independent fuel cards. They estimated the start-up cost as being between £50,000 and £100,000 depending on the functionality required.

100. Several third parties, however, stated that even the entry of a new reseller would be difficult. Some third parties commented that they have tried to replicate the AllStar wide acceptance model and been unsuccessful due to a lack of desire amongst oil majors to have a second AllStar. The OFT notes that the parties stated that they failed to gain acceptance on commercially viable terms with the new cards when they attempted to enter each other's market (Keyfuels' own entry in the retail market through MyFuel was not successful, paragraphs 62 to 65).

101. [ ].

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[22] OFT/CC *Merger Assessment Guidelines*, OFT1254, September 2010, paragraph 5.6.14.

[23] www.oft.gov.uk/OFTwork/competition-act-and-cartels/ca98-current/bunker-fuels.

102. For the OFT to be able to rely on the prospect of entry or expansion to remove competition concerns that would otherwise arise, it must have evidence to indicate that such entry or expansion is timely, likely and sufficient, and moreover that it must not be dependent for its success on the merging parties. The OFT has not seen such evidence in this case.

103. Nevertheless, the OFT has not found it necessary to conclude on whether barriers to entry and expansion are high, given its finding that there is no realistic prospect of a SLC arising from this merger.

COUNTERVAILING BUYER POWER

104. Countervailing buyer power arises where an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise its prices. Where individual negotiations are prevalent, the buyer power possessed by one customer will not typically protect other customers from adverse effects that might arise from the merger.

105. The parties submit that some of the firms they deal with including major fuel retail chains such as the big oil companies' retail arms, may possess significant buyer power. Third party evidence suggests that the evidence in respect of these parties is in fact mixed. Moreover, as discussed above the buyer power of Morrisons and Murco, the fuel retailers identified as being most likely to be affected by this transaction, is unlikely to be sufficient to resist attempts by the merged firm to induce exclusivity. Independent forecourts are also unlikely to have strong buyer power.

106. The OFT also considered the buyer power of fleet customers. Few third parties indicated they had strong alternatives to Keyfuels or AllStar and thus buyer power again appears to be weak.

107. Nevertheless, given the outcome of its competition assessment, the OFT has not found it necessary to conclude on countervailing buyer power.

THIRD PARTY VIEWS

108. Third party views were sought and where relevant have been discussed above. In general, competitors were concerned about the merger and commercial fleet operators were less concerned. Two further concerns, not addressed above, have been summarised below.

109. One third party raised concerns that post merger the parties may introduce card fuel readers which are incompatible with other fuel cards, thus the parties would use their post merger market power to impose the use of these readers on forecourt owner and operators. This was mentioned alongside a generic concern that new facilities would be introduced that competitors would not be able to compete with. The parties argued that sites within both networks are not prevented from accepting multiple cards and indeed most do. In addition, the merger itself does not create this incompatibility if a single reader before the merger could not read various rival fuel cards.

110. Two third parties speculated that, post-merger, the merged firm may introduce a 'super' card that could deal with both market places with very little effort, giving fleets access to both a smaller network at Platts-plus prices and a wide network at retail prices, all with one card. The suggestion was that the super card would reduce competition and handling fees would be significantly reduced.

111. The OFT notes that Keyfuels already manages its network like this with the recent addition of Tesco to its offering. However, the OFT also notes that any such fuel card may not be preferable for current Keyfuels' customers, if it gives drivers access to more convenient but also more expensive forecourts outside the restricted Keyfuels network. According to third parties, this would increase the cost of fuel for fleet operators, as drivers prefer refuelling in expensive but convenient sites. Furthermore, third parties submitted that the inconvenient position of current Keyfuels' sites would not lead many drivers to refuel in Keyfuels' forecourts, where the fuel would be cheaper than with the current AllStar card. This would make any advantage of the 'super' relative to AllStar almost irrelevant. As such, the OFT has not considered this concern further.

ASSESSMENT

112. The OFT did not find it necessary to conclude on market definition for the purpose of this merger assessment. It has assessed the merger, across the whole of the UK, on the basis of the following downstream markets:

- the supply of direct bunkering cards to UK commercial fleet customers

- the supply of PAYG commercial fuel cards to UK HGV commercial fleet customers, and
- the supply of retail fuel cards to UK non-HGV commercial fleet customers.

113. In terms of the supply relationship between fuel card issuers and fuel retailers/forecourt owners, the OFT has also assessed the merger on the basis of:

- independent retail fuel cards,
- independent bunkering fuel cards, and
- non-independent cards.

114. In terms of a loss of direct competition (whether actual or potential), the evidence in this case shows that AllStar is a very significant player in retail fuel cards but it is only used to a limited extent for HGVs (accounting for around [0-five] per cent). Conversely, Keyfuels' primary business is tailored to HGV fleets. It accounts for less than [0-five] per cent of non-HGV fuels acquired by using a fuel card. Third parties do not view the parties as being close competitors.

115. Moreover, whilst there is evidence that Keyfuels did attempt to enter into retail fuel cards in 2010, it was unsuccessful and the OFT is not aware of any evidence that the parties are currently potential competitors.

116. The OFT has examined whether the merger itself would raise a realistic prospect of a SLC through the merged entity using its combined position in retail and commercial fuel cards to induce exclusivity with forecourts and thereby foreclose UK Fuels, the only competitor of Keyfuels in the supply of bunkering cards, including direct bunkering cards targeted at HGV operators.

117. In this regards, the available evidence shows that AllStar, Keyfuels and UK Fuels overlap at over 500 sites, and by adding AllStar to its business Keyfuels will overlap with UK Fuels on 100 additional sites. However, when reaching agreement with forecourts, AllStar contracts with the brand owner while both Keyfuels and UK Fuels contract with each individual site owner. Where this is true, the OFT does not consider that the merger is

likely to enhance Keyfuels' ability to induce exclusivity and thereby foreclose UK Fuels.

118. The OFT has, however, identified two forecourt owners – Morrisons and Murco – where AllStar, Keyfuels and UK Fuels all negotiate directly with the brand owner. There may be other forecourt/brand owners where this relationship is replicated, but the OFT's investigation has found that these will be much smaller than Morrisons and Murco and are likely to have a strong focus on HGVs. AllStar is therefore unlikely to contribute significantly to the merged firm's bargaining power in relation to these other forecourts. The OFT therefore focused its analysis on the likely impact of the merger on the Morrisons and Murco.

119. Keyfuels and AllStar together account for [ ] per cent of Morrisons' fuel card volumes (over [ ] times that of UK Fuels) and over [ ] per cent of Murco's ([ ] times that of UK Fuels). On a cautious basis, and based on this evidence, the OFT considers that the merger would enhance the ability of merged firm to induce exclusivity from Morrisons and Murco. The OFT also considers that the merged firm would have the incentive to do this.

120. However, although Morrisons and Murco together account for around [ ] per cent of UK Fuels' volumes, a significant proportion of this relates to sales in non-HGV compatible sites, whereas UK Fuels' core business relates to HGV compatible sites. The parties submitted that key to a successful commercial fuel cards business, targeted at HGVs, is a small number of large volume HGV-compatible sites. Indeed, UK Fuel's top 100 sites account for around [ ] per cent of its volumes. It is these sites, the parties submitted, which are crucial to a firm's ability to foreclose UK Fuels. However, Morrisons and Murco together account for less than [ ] per cent of UK Fuels' volumes out of its valuable top 100 sites and less than [ ] per cent of UK Fuels' total volumes at HGV-compatible sites.

121. Based on this evidence, the OFT considers that the likely effect of inducing exclusivity at the Murco and Morrison sites, even if this were to occur as a result of the merger, would be insufficient to constitute a substantial lessening of competition.

122. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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