

Acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Limited and their affiliates

The OFT's decision given on 9 January 2012. Full text of decision published 12 January 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. **Rontec Investments LLP** (Rontec) is a special purpose joint venture partnership between GMR Capital Limited (GMR), Investec plc (Investec), Grovepoint Capital LLP and others. GMR wholly-owns Snax 24 Limited (Snax) which operates 68 service stations in England, Scotland and Wales, of which 44 are owned by Snax. These sites combine petrol retailing, car-washing facilities at certain locations and convenience store retailing. GMR, via Snax is the only member of the joint venture group that has overlapping activities with, or that is upstream or downstream from, the activities of the target business.
2. **Total Downstream UK plc and Total UK Limited** (Total) is active in retail and fuel distribution activities in the UK, the Isle of Man and the Channel Islands. Total is an ultimate subsidiary of Total SA, an international oil and gas corporation with its headquartered in Paris.
3. **The target business** (the Target) comprises Total's retail fuel network in the UK, Isle of Man and Channel Islands made up of 810 Total branded sites;¹ Total's non-retail fuel distribution activities including its wholly-

¹ 489 of these sites are owned by Total. The remainder are owned and operated by independent dealers pursuant to a brand licence and exclusive supply agreement with Total.

owned trading division, Butler, and its 60 per cent shareholding in Oakleys Fuel Oils; and certain logistics assets, including a 100 per cent shareholding in its Nottingham oil storage terminal. The worldwide turnover of the Target in 2010 was approximately £1.7 billion of which approximately £1.6 billion was achieved in the UK.²

THE TRANSACTION

4. The parties notified the proposed transaction to the OFT on 4 August 2011 which was conditional upon obtaining OFT clearance. Rontec subsequently acquired the Target from Total by way of an asset purchase which completed on 1 November 2011.
5. On 1 November 2011, Shell UK Limited (Shell) acquired from Rontec 251 of the 810 sites operated by Total (the Shell Transaction). The Shell Transaction constitutes a concentration with a Community dimension for the purposes of the EU Merger Regulation (EUMR). On 1 August 2011, the European Commission adopted a decision pursuant to Article 4(4) of the EUMR to refer the whole of the Shell Transaction to the OFT for investigation.
6. Further, on 1 November 2011, DCC plc (DCC) acquired from Rontec certain oil distribution assets currently owned by Total in Britain, the Isle of Man and the Channel Islands. In particular, DCC acquired: (i) Total Butler, comprising a network of 40 depots across England and Wales and a fleet of approximately 200 leased delivery vehicles; (ii) the contractual rights for the 321 independently owned and operated sites pursuant to a brand licence and exclusive supply agreement where DCC will have inter alia the benefit of a confirmed five year supply agreement with Rontec to distribute fuel under the Total brand for the duration of each of the existing contracts with the independents; and (iii) Total's oil distribution and retail service station businesses on the Isle of Man and the Channel Islands (the DCC Transaction).

² The non-UK turnover of the Target was all attributable to the Channel Islands.

JURISDICTION

7. The OFT believes that the proposed transaction has resulted in two or more enterprises ceasing to be distinct under section 23(1) of the Enterprise Act 2002 (the Act).
8. As set out in paragraphs 5 to 7 above, Rontec initially purchased the Target. However, certain assets of the Target were on-sold via the Shell Transaction and DCC Transaction. The OFT therefore considers that the relevant merger situation in this case comprises those assets that remain with Rontec. This is consistent with the OFT's Jurisdictional and Procedural Guidance³ which notes the OFT's discretion in dealing with subsequent transactions.
9. The annual UK turnover associated with the Target which is retained by Rontec exceeds £70 million so the turnover test in section 23(1)(b) of the Act is met. The proposed transaction falls outside the jurisdiction of the European Commission since two-thirds of the EEA turnover of the undertakings concerned is achieved in the UK.
10. The OFT therefore considers that the proposed transaction qualifies for review under the Act
11. Consequently, the OFT considers a relevant merger situation has been created.

BACKGROUND

12. In its decision of 20 October 2011 (the Decision), the OFT stated that it believes that it is or may be the case that the merger gives rise to a realistic prospect of a substantial lessening of competition on the basis of unilateral effects arising in the retail of fuel in one local area of overlap in Haverfordwest. In particular, the OFT noted that there was a high level of diversion from Total's site to Snax' site and vice versa, and that Snax had relatively high margins in comparison to its other sites.

³ Mergers, Jurisdictional and Procedural Guidance, June 2009, at paragraph 3.40.

13. In assessing local aspects, the OFT adopted a filtering methodology to identify prima facie areas of concern by reference to: (1) 10-minute drive time isochrones for urban areas and 20-minute drive time isochrones for rural areas such that the proposed transaction gives rise to a reduction in the number of fascia from four to three or fewer; and/or (2) the 'price marker' lists of Snax and Total.
14. On the basis of the filtering methodology, the proposed transaction gave rise to five prima facie local areas of concern. The concerns with regard to the remaining four areas were dismissed during the investigation for the reasons stated in the Decision.

DIVESTMENT UNDERTAKINGS OFFERED BY RONTEC

15. To address the OFT's concerns, Rontec offered undertakings in lieu of reference (UILs), specifically, to divest Total's Crossways site to deal with the adverse finding in Haverfordwest.
16. The OFT stated in its Decision that the proposed undertaking is a structural remedy that will, in that local area, remove the overlap between the parties. The OFT therefore considered that Rontec's proposed UILs were capable, in principle, to act as a clear-cut and comprehensive remedy to address the competition concerns identified.
17. For the specific reasons stated in its Decision,⁴ the OFT considered that it was not necessary to include an up-front buyer provision with respect to the proposed divestment in this case.
18. The OFT therefore announced that it was suspending its duty to refer the transaction to the Competition Commission under section 33 of the Act since it was considering whether to accept appropriate UILs from Rontec.

CONSULTATION

19. On 18 November 2011, the OFT published the proposed UILs, inviting interested parties to provide their views by 12 December 2011 pursuant to paragraph 2(1) Schedule 10 of the Act. The consultation text published

⁴ See paragraphs 226 to 232.

on the OFT's website alongside the proposed UILs is set out in the Annex to this decision.

20. The consultation text included details of the purchaser Rontec has proposed to the OFT, Dragon Service Stations Limited (Dragon). Dragon has committed formally, and subject to OFT approval and acceptance of these undertakings in lieu, to acquire the Divestment Business from Rontec.
21. The OFT received no comments during the consultation period. In light of the above, the OFT does not believe that any change in the content of the proposed UILs is warranted.

DECISION

22. The OFT's Decision concluded that the merger would be referred to the Competition Commission if the parties failed to give suitable undertakings in lieu of reference pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
23. The OFT considers that the undertakings provided by Rontec are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore decided to accept the undertakings in lieu of reference offered by Rontec.
24. The merger will therefore not be referred to the Competition Commission and the undertakings, which have been signed by Rontec, will come into effect from this date.

Annex I

Rontec/Total undertakings consultation

Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of proposed undertakings in lieu of reference pursuant to section 73 of the Enterprise Act 2002.

OFT's duty to refer

On 20 October 2011, the Office of Fair Trading (OFT) announced its decision that it believed that it is or may be the case that the proposed acquisition by Rontec of Total's petrol forecourts and associated assets has resulted or may be expected to result in a substantial lessening of competition in the supply of retail fuel in the Haverfordwest area. [see note 1]

Consequently, the OFT found itself under a duty to refer the merger to the Competition Commission (CC) under section 33 of the Enterprise Act 2002. However, the OFT suspended its duty to refer the merger to the CC because it was considering whether to accept appropriate undertakings from Rontec in lieu of reference.

The text of the OFT's decision published on 9 November 2011 provides details on the OFT's findings.

Divestment undertakings offered by Rontec

To address the OFT's competition concerns, Rontec offered to divest the Total Crossways petrol forecourt at Haverfordwest (the Divestment Business), thereby effectively removing the overlap created by the merger in that local area.

Rontec's proposed purchaser for the Divestment Business is Dragon Service Stations Limited (Dragon). Dragon has committed formally, and subject to OFT approval and acceptance of these undertakings in lieu, to acquiring the Divestment Business from Rontec.

Dragon as a suitable purchaser

The OFT considers that Dragon is a suitable purchaser for the Divestment Business on the basis that it fulfils the purchaser approval criteria in paragraph 3.1 of the proposed undertakings. Specifically, on the information available to it, the OFT considers that Dragon:

- has the necessary expertise and technical capacity to run the Divestment Business in competition with Rontec. Dragon already owns and operates a petrol station in Pembrokeshire. Its experience in operating a successful independently owned and operated petrol forecourt leads the OFT to conclude that Dragon can reasonably be expected to run the business in competition to Rontec
- does not need to obtain any approvals, licenses or consents from any regulatory or other authority. In addition, the Total Crossways site is a freehold site such that Dragon will not need to obtain third party consents for the acquisition
- is independent of and unconnected to Rontec, its Associates or Affiliates, and
- has the necessary incentives to maintain and operate the business in competition with Rontec.

As such, the OFT believes that sale of the Divestment Business to Dragon will remedy the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it.

Process going forward

The acceptance by the OFT of these proposed undertakings in lieu is dependent on this public consultation.

The OFT considers that the proposed undertakings offered by Rontec are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the decision.

The OFT therefore gives notice that it is minded to accept undertakings in lieu in the form of the proposed undertakings.

- Download the [proposed undertakings in lieu](#) (pdf 103kb)

Before reaching a decision as to whether to accept the proposed undertakings and Dragon as a buyer, interested parties are invited to make their views known.

Representations should be made in writing to:

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Deadline for comments: **17.00 on 12 December 2011.**

Note 1: ME/5139/11, Anticipated acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Limited and their affiliates, OFT decision of 9 November 2011.