



DETERMINATION OF MERGER NOTIFICATION M/21/023 - DCC ENERGY/ JONES OIL

Section 21 of the Competition Act 2002

Proposed acquisition by DCC Energy Limited of sole control of Jones Oil Limited

Dated 11 June 2021

Introduction

1. On 30 April 2021, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby DCC Energy Limited (“DCC Energy”), a wholly-owned subsidiary of DCC Public Limited Company (“DCC”), would acquire sole control of Jones Oil Limited and its subsidiaries (“Jones Oil”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement between (i) Patrick Nevin, Paul Curran, Des Broderick and Jones Oil Holdings DAC (together “the Sellers”), (ii) DCC Energy and (iii) DCC Fund Services Unlimited Company, dated 27 April 2021 (the “SPA”). Pursuant to the terms of the SPA, DCC Energy will acquire the entire issued share capital of Jones Oil.
3. Following completion of the Proposed Transaction, DCC Energy will have sole control of Jones Oil.

The Undertakings Involved

The Acquirer – DCC



4. DCC is a public limited company registered in the State and is listed on the London Stock Exchange. DCC is the parent company of an international sales, marketing and support services group of companies which is organised and managed in four separate business divisions: DCC LPG, DCC Retail & Oil, DCC Healthcare and DCC Technology, each of which is focused on its specific market sectors.¹ Each of these business divisions is active in the State.

DCC Energy/Emo Oil

5. DCC Energy is a private company limited by shares registered in the State. It is a wholly-owned indirect subsidiary of DCC and forms part of DCC's Retail & Oil business division. This business division operates in eight European countries: Austria, Denmark, France, United Kingdom, Germany, Ireland, Norway and Sweden.
6. DCC Energy's key oil/fuel distribution company in the State is Emo Oil Limited ("Emo Oil"). DCC Energy/Emo Oil has operational depots in Greenshills, Tallaght (Dublin 24), Trim (Co. Meath), Kilkenny, Clew Bay (Co. Mayo), Ballyhaunis (Co. Mayo), Limerick, Carlow and Kilcullen (Co. Kildare). It also has a dry depot in Kinsealy, Co. Dublin².
7. Following completion of their acquisition of sole control of Campus Oil Limited ("COL") in February 2021,³ DCC Energy/Emo Oil also controls operational depots in Dunleer (Co. Louth), Blessington (Co. Wicklow), Kilternan (Co. Dublin), Carlow (Co. Carlow) and Gorey (Co. Wexford). It also acquired a dry depot in Ringsend (Dublin 4).
8. In the State DCC Energy/Emo Oil are involved in the following activities:

¹ See <https://www.dcc.ie/about-us>.

² A dry depot is where fuel transportation vehicles are stationed whereas a wet depot has large tanks to store bulk fuel.

³ This transaction was notified to the CCPC on 22 December 2020. On 3 February 2021, the Commission determined that that transaction would not substantially lessen competition in any market for goods or services in the State. See M/20/038 *DCC Energy/Campus Oil*, available at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-20-038-dcc-energy-campus-oil/>.



- a) the wholesale distribution of fuel⁴ to both independent re-sellers/retailers, who operate under their own respective trading names, and authorised distributors who re-sell to distributors and commercial and retail customers under the *Emo* brand;
 - b) occasional trading in one-off transactions (e.g. one such transaction per annum) for large volumes of fuel for use in generators that support windfarm operations;
 - c) the direct distribution/resale of bulk fuel to domestic, agricultural and commercial customers;
 - d) the operation of an oil retail website, www.supersaveroil.ie;
 - e) the retail sale of fuel at 34 *Certa*-branded 'company owned, company operated' ("CoCo") filling stations, plus 8 CoCo filling stations (6 *Emo*- and 2 *Great Gas*-branded) in addition to the operation of 6 'dealer owned, company operated' filling stations;
 - f) the wholesale supply of motor fuels to 101 'dealer owned, dealer operated' filling stations;; and
 - g) the provision of a fuel card to commercial and domestic customers.
9. For the financial year ended 31 March 2020, DCC's worldwide turnover was approximately €14.6 billion, of which approximately €[...] billion was generated in the State.

The Target – Jones Oil

10. Jones Oil, a private company limited by shares incorporated in the State, is a fuel supply company operating in Ireland. Jones Oil supplies all grades of refined fuel products to the agricultural sector, commercial enterprises and domestic customers. Jones Oil is headquartered in Dublin.

⁴ This includes motor diesel (also known as DERV (diesel engine road vehicle) or road diesel), petrol (also known as gasoline), gas oil, kerosene (also known as Kero) and fuel oil. Motor diesel and petrol are the main refined products consumed in the State and are primarily used in road transport. Gas oil is mainly used for off-road and agricultural purposes. Specifically, Sulphur Free Gas Oil ("SFGO"), also known as "gas oil (10 ppm)", is typically used by agricultural and commercial customers. Marked gas oil, referred to as "gas oil (1,000 ppm)", is mainly for marine customers and is generally only sold in coastal counties and is typically used in older equipment/machinery.



11. In the State, Jones Oil is involved in the following activities:
 - a) the direct distribution/resale of fuel to domestic, agricultural and commercial customers;
 - b) the commercial sale of fuel from its 16 depots (plus one loading terminal⁵) nationwide;
 - c) the commercial supply of marine diesel; and
 - d) the provision of a loyalty scheme for all customers through a mobile app.
12. Jones Oil has operational depots in Cavan (Co. Cavan), Letterkenny (Co. Donegal), Kilkenny, Portlaoise (Co. Laois), Carrick on Shannon (Co. Leitrim), Dundalk (Co. Louth), Ballina and Claremorris (Co. Mayo), Birr (Co. Offaly), Sligo (Co. Sligo), Clonmel (Co. Tipperary), Waterford, Athlone and Mullingar (Co. Westmeath), Tallaght (Dublin 24) and Arklow (Co. Wicklow). Jones Oil also uses a depot in New Ross, Co. Wexford, as loading terminal.
13. For the financial year ended 31 December 2019, Jones Oil's worldwide turnover was approximately €138 million, the entirety of which was generated in the State.

Rationale for the Proposed Transaction

14. The parties state the following in the notification:

“DCC Energy/Emo Oil wishes to expand its customer base and geographic coverage by acquiring a well-established Irish fuel supplier. The Proposed Transaction will allow DCC Energy/Emo Oil to compete more effectively and efficiently in this sector, as it will result in routing efficiencies and expand DCC Energy/Emo Oil's operations in regions/counties where it currently has no presence (e.g., in Cavan, Donegal plus parts of Connacht and Munster). [...]”

⁵ A loading terminal (or loading facility) is any premises-owned, leased or subject to a throughput arrangement that a lorry/truck may use to fill its tank with fuel. In general, this term refers to the bigger storage terminals used to hold imported fuel at Dublin and other ports, however, it can also refer to smaller local terminals or depots. The New Ross facility is owned by Campfreight Limited (“Campfreight”) (a haulage company) – Jones Oil pays a throughput fee to Campfreight so that its vehicles may fill their tanks at this facility since Jones Oil does not have its own depot in the region.



Third Party Submissions

15. No submission was received.

Competitive Analysis

Horizontal Overlap

16. There is a horizontal overlap between DCC Energy and Jones Oil. Both DCC Energy and Jones Oil are involved in the direct distribution/resale of fuel to domestic, agricultural and commercial customers. In particular, both parties make sales direct to end users (such as hauliers and large commercial users), either from their depot yards (“Yard Sales”) or directly from product sourced from terminal/port facilities.⁶

Wholesale supply of refined fuel products

Product Market Definition

17. The Commission, in its determination in M/18/075 – Irving/ Tedcastles, considered the wholesale (or non-retail) supply of refined fuel products without coming to a definitive view on the precise product market definition.⁷ For the purpose of conducting its competitive assessment in that case, the Commission analysed the impact of the merger by reference to the following potential product markets: (i) wholesale supply of gasoline (including biofuel); (ii) wholesale supply of motor diesel (including biofuel); (iii) wholesale supply of gas oil (10ppm); and (iv) wholesale supply of gas oil (1000ppm). The Commission also considered a potential market for the wholesale (or non-retail) supply of all types of refined fuel products. The wholesale (non-retail) supply of fuel in that case included wholesale distribution to resellers/retailers and direct sale to end users.

⁶ Jones Oil conducts Yard Sales of DERV/road diesel from 15 of its 16 depots including to private motorists; it does not supply petrol. The range of services that are available at a filling station including convenience shopping, car wash and or bathroom facilities are not provided at any of the relevant depots.

⁷ Please see paragraph 38, of the determination available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/09/M.18.075-Irving-Tedcastles-Public-Version.pdf> .



18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In the current case, it is not necessary for the Commission to conclude on the relevant product markets in respect of the wholesale supply of refined fuel products because, regardless of whether the potential product market is defined narrowly, (i.e., the wholesale supply of refined fuel product by fuel type), or more broadly, (i.e., the wholesale supply of all types of refined fuel products), the Proposed Transaction is unlikely to raise any competition concerns.
19. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the potential market for the wholesale supply of all types of refined fuel products⁸. The Commission has also analysed the impact on competition of the Proposed Transaction by reference to the following narrower potential product markets: (i) wholesale supply of gasoline (including biofuel); (ii) wholesale supply of motor diesel (including biofuel); (iii) wholesale supply of gas oil (both 10ppm and 1000ppm); (iv) kerosene; and (v) fuel oil. For completeness the Commission has also analysed separately the impact of the Proposed Transaction with reference to the direct supply of fuel to end-users.

Geographic Market Definition

20. The European Commission has previously considered the geographic scope of the markets for wholesale supply of refined fuel products to be at least national.⁹ The Commission has previously examined this market on both regional and national geographic bases.¹⁰ In previous determinations, the Commission has left open the precise geographic market while recognising the possibility of regional markets, i.e. 50-80km from an individual depot.¹¹

⁸ Direct Sales to end users are included in the potential market for the wholesale supply of all types of refined fuel products.

⁹ Please see COMP/M.4532 – Lukoil / ConocoPhillips (2007); COMP/M.3291 – Preem/Skandinaviska Raffinaderi (2003).

¹⁰ Please see paragraph 43, <https://www.cpc.ie/business/wp-content/uploads/sites/3/2018/09/M.18.075-Irving-Tedcastles-Public-Version.pdf>

¹¹ Please see, for example, M/15/020 – Topaz / Esso; and M/18/075 – Irving / Tedcastles.



21. The parties state in the notification that DCC Energy and Jones Oil supply their customers either directly from terminals or, where necessary, from their respective depots. Domestic, agricultural and smaller commercial end-users can typically be serviced within a radius of approximately [...]km of Dublin Port, while larger commercial end-users can be serviced within a radius of [...]km or more from sea-fed terminals where Jones Oil and DCC Energy source their oil products, namely Dublin Port, Foynes Port (Co. Limerick) and Whitegate refinery (Co. Cork). As regards sales from depots, the parties state in the notification that each party's sales are made predominately within a radius of around 50km from each of their respective depots.
22. In this case, it is not necessary for the Commission to conclude on the relevant geographic market in respect of the wholesale supply of refined fuel products. The Commission notes that regardless of whether the potential geographic market of the wholesale supply of refined fuel products is defined narrowly, (i.e., regional or local), or more broadly (i.e., national), the Proposed Transaction is unlikely to raise any competition concerns.
23. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to both potentially regional and local geographic markets. For the sake of completeness, the Commission has also analysed the impact of the Proposed Transaction by reference to the State.

Competitive Analysis

The wholesale supply of all refined fuel products

National

24. As shown in Table 1 below, the parties estimate, based on their sectoral knowledge, that DCC Energy currently holds an [5-15]% share in the wholesale supply of all refined fuel products in the State, while Jones Oil held a [0-5]% share in the State for the 12



months ending 31 October 2020.¹² Thus, following implementation of the Proposed Transaction, DCC Energy would hold an estimated [5-15]% share of the wholesale supply of all refined fuel products in the State. The Commission notes that DCC Energy and Jones Oil currently face a competitive constraint from other wholesale competitors that operate at a national level, e.g., Irving Oil Limited (“Irving”), Circle K Ireland Energy Group Limited (“Circle K”), Valero Energy (Ireland) Limited (“Valero”), Applegreen Public Limited Company (“Applegreen”), and Inver Energy Limited (“Inver”). These competitors would continue to exert a competitive constraint on DCC Energy in the State, following the implementation of the Proposed Transaction.

Table 1: Wholesale supply of all refined fuel products in the State 2020¹³

Name	Volume of Fuel Product (Litre)	Share of Supply
DCC Energy/Emo Oil	[...] million	[5-15]%
Jones Oil	[...] million	[0-5]%
(Combined DCC Energy/Emo Oil and Jones Oil)	([...] million)	([10-20]%)
Others (including Irving, Circle K, Valero and Applegreen)	[...] billion	[85-95]%
TOTAL	6.246 billion	100%

Source: The parties’ estimates

Regional

25. DCC Energy and Jones Oil’s wholesale businesses operate throughout the State. Currently DCC Energy is predominately based in Leinster and holds a [10-20]% share of the wholesale supply of all refined fuel products while Jones Oil holds a [0-5]% share in the Leinster region.¹⁴ Thus, following implementation of the Proposed Transaction, DCC Energy would hold an estimated [15-25]% share of the wholesale supply of all refined fuel products in the Leinster region.

¹² Share of supply estimates are based on the total volume of all refined fuel products sold by DCC Energy and Jones Oil in the State as a percentage of the total annual oil consumption in the State.

¹³ For the 12 months ending 31 October 2020, based on the parties best estimates.

¹⁴ The Commission notes that these market share estimates are based on the parties’ information.



26. Following implementation of the Proposed Transaction DCC Energy would hold a market share of [5-15]% in Connacht. There would be minimal change in DCC Energy's market share in Munster, which would remain at [0-10]% following implementation of the Proposed Transaction.¹⁵
27. In relation to the Ulster counties in the State, namely Co. Cavan, Co. Monaghan and Co. Donegal, the parties estimate that DCC Energy currently holds a [15-25] % share of the wholesale supply of all refined fuel products in these counties while Jones Oil holds a [0-5]% share.¹⁶ Thus, following the implementation of the Proposed Transaction DCC Energy will hold an estimated [15-25]% share of the wholesale supply of all refined fuel products in Counties Cavan, Monaghan and Donegal.

The local level

28. There are six local areas where the parties have adjacent depots, namely Dublin (City and County), Co. Mayo, Co. Kilkenny, Co. Louth, Co. Wexford and Co. Wicklow.
29. The parties state in the notification that it is very difficult to estimate shares of supply accurately on a county-by-county basis, particularly given the widespread cross-county border trade. The parties supplied the Commission with the names of all local suppliers in these areas, which indicate that, following implementation of the Proposed Transaction, the merged entity would face competition from a number of other suppliers, including a mix of large oil companies and smaller, local suppliers as follows:
- Dublin City and County: Inver, Top Oil, Valero/Texoil, Capital Oil Supplies Ltd ("Capital Oil"), Glen Fuels Services Limited ("Glen Fuels"), Ultima Oil Distributors Limited ("Ultima Oil"), Liffey Oil Ltd, Burke Oil, Airside Oil, M50 Oil Limited, Butterly Fuels Limited, McLoughlin Oil Limited, A1 Direct Oil, HPH Fuels Limited, and O'Neills Oil; Newline Oil Company Limited ("Newline Oil");
 - Co. Kilkenny: Inver, Top Oil, Circle K, East Cork Oil Company Unlimited Company ("East Cork Oil"), Michael O'Reilly Oil Company Limited ("O'Reilly Oil"), Morris

¹⁵ The Commission notes that these market share estimates are based on the parties' information.

¹⁶ The Commission notes that these market share estimates are based on the parties' information



Oil Company Limited (“Morris Oil”), Dunkeen Oil Limited, Mr Oil, Corrib Oil Company Unlimited Company (“Corrib Oil”), Capital Oil Supplies Ltd;

- Co. Mayo: Inver, *Top Oil*, *Valero/Texoil*, Corcoran Fuels and Corner Shop, Corrib Oil, Grange Fuel Services Limited, Oil Direct, Sweeney Oil Limited, O’Reilly Oil, Frank Convey Fuels, Moy Fuel Oil Limited, J & E Hughes Fuel Oil Limited, Mitchell Oil;
- Co. Louth: Inver, *Top Oil*, Circle K, Capitol Oil, Dundalk Quality Fuel Products Limited, Niall Clarke Oils Limited, Morgan Fuels Ireland Limited, E.K. Fuels Limited, Local Fuels, Tiger Oil Company Limited, Malone Oil Products Limited.
- Co. Wicklow: Glen Fuels, Ultima Oil, Burke Oil, Local Fuels, O’Neills Oil;
- Co. Wexford: Inver, *Top Oil*, *Valero/Texoil*, Glenfuels, Kenny Fuels, Newline Oil, Ultima Oil, Burke Oil.

30. In light of the above, the Commission considers that, if the potential relevant product market were defined as including all refined fuel products, the Proposed Transaction would be unlikely to raise any horizontal competition concerns regardless of whether the geographic market is defined as national, regional or local.

The wholesale supply of refined fuel products by fuel type

National

31. In the notification, the parties submitted market share estimates in relation to the wholesale supply¹⁷ of refined fuel products – by fuel type – on the basis of the National Oil Reserves Agency (“NORA”) statistics for annual oil consumption¹⁸ and their own estimates in the State for the year 2020.¹⁹ Table 2 shows that DCC Energy’s market share by type of fuel product will range from approximately [0-5]% to [15-25]% following implementation of the Proposed Transaction.

¹⁷ Market share estimates are based on the total volume of refined fuel products sold by DCC Energy and Jones Oil in the State and NORA’s statistics for total annual oil consumption in the State. Thus, the market share estimates in relation to the wholesale supply of refined fuel products are a best estimate of market shares in relation to the wholesale supply of refined fuel products in the State.

¹⁸ For more information concerning the volume of oil consumption which is subject to the NORA levy, please see <http://www.nora.ie/statistics.312.html>.

¹⁹ NORA’s figures do not segment oil consumption on a regional basis.



Table 2: Estimated Market Share of DCC Energy and Jones Oil in relation to the wholesale supply of refined fuel products (by fuel type) in the State in 2020²⁰

Refined petroleum type/category	NORA total Annual consumption (Million Litres)	DCC Energy/Emo Oil volumes sold (Million Litres)	Jones Oil volumes sold (Million Litres)	DCC Energy/Emo Oil/ Jones Oil Combined Totals (Million Litres)
Petrol/Gasoline (incl. Biofuel)	814.371	[...] ([0-5]%)	[...] ([0-5]%)	[...] ([0-5]%)
Motor Diesel/Diesel Energy Road Vehicle ("DERV") (incl. Biofuel)	3,190.576	[...] ([5-10]%)	[...] ([0-5]%)	[...] ([5-15]%)
Gas Oil (Both 10 ppm and 1000 ppm)*	932.739	[...] ([10-20]%)	[...] ([5-10]%)	[...] ([15-25]%)
Kerosene	1,265.493	[...] ([10-20]%)	[...] ([0-5]%)	[...] ([15-25]%)
Fuel Oil	35.238	[...] ([0-5]%)	0	[...] ([0-5]%)
Total	6,238.417	[...] (10.9%)	[...] ([0-5]%)	[...] ([5-15]%)

* DCC Energy/Emo Oil sell both types of gas oil.

Source: The parties and NORA statistics.

Regional/ Local

32. Estimated market share information related to each type of refined fuel product at a regional/local level was not available to the Commission. NORA's figures do not segment oil consumption on a regional basis. While there are overlaps between the parties in relation to some local areas, the Commission considers that, following the implementation of the Proposed Transaction, the merged entity would continue to face strong competition in the wholesale supply of

²⁰ 12 months ending 31 October 2020



refined fuel products from a number of large national suppliers of refined oil products such as Circle K, Irving/*Top Oil*, Valero/*Texoil*, and East Cork Oil as well as from smaller regional suppliers as listed in paragraph 29 of this determination. The parties also noted that the competitive significance of depots is diminishing as a very significant number of customers (particularly wholesale customers and large commercial customers) are supplied with product directly from terminal/port locations. Customers do not face high switching costs in this market. According to the parties, long-term contracts are not a feature of either wholesale or direct sales, and suppliers compete for uncontracted volumes largely on the basis of price.

33. The Commission also notes that many suppliers sell via freely available transactional websites, making price comparison across multiple suppliers quick and transparent. Transactional websites such as www.irvingoil.com <https://www.capitaloil.com/> and www.applegreenstores.com enable greater switching and competition for customers. There are also independent comparison websites such as www.cheapestoil.ie which allow consumers and end users to compare heating oil prices across the State.
34. On the basis of the information available to it, the Commission considers the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the wholesale supply of refined fuel products by type regardless of whether the geographic market is defined as national, regional or local.

Direct supply of fuel to end users

Market definition

35. This section of the determination concerns the sale of fuel products directly to residential and commercial customers for their own use. The Commission has in previous decisions considered narrower markets such as the sale of home heating



oil.²¹ The parties state that, from the suppliers' perspective, it is easy to switch between supplying all relevant fuel types, (i.e. heating oil, transport fuel, agricultural fuel) without incurring additional costs. Most suppliers supply all relevant fuel types.

36. The parties' direct distribution/resale of oil products is made either directly from terminals/ports (i.e. both DCC Energy and Jones Oil will typically deliver directly to a customer's premises), in particular for larger end-customers (such as haulage companies and large commercial customers), or from their depots for smaller commercial or domestic customers. Large commercial end-users of both DCC Energy/Emo Oil and Jones Oil (i.e. those with greater volume requirements) may choose to pick up fuel at terminals using their own vehicles (or availing of the services of third-party hauliers).
37. In respect of the direct sale of fuel to end users, the Commission considers that it is not necessary to conclude on the relevant product market. The Commission notes that regardless of whether the potential product market is defined narrowly (i.e., a separate market for direct sale of fuel to end users), or broadly (i.e., as part of the potential market for the wholesale supply of all types of refined fuel products to encompass both wholesale supply to resellers and direct sale to end users), the Proposed Transaction is unlikely to raise any competition concerns. However, given that both the parties make direct sales of fuel to end users, for completeness the Commission has analysed the potential impact of the Proposed Transaction on the potential market for the direct sale of fuel to end users in the State.

Competitive Analysis

38. As shown in Table 3 below, the parties estimated that DCC Energy currently holds a [5-15]% share in the direct supply of fuel to end users in the State, while Jones

²¹ M/16/009 – Tedcastles Oil Products (TOP) / Sirio Retail & Property <https://www.cccp.ie/business/mergers-acquisitions/merger-notifications/m16009-tedcastles-oil-products-top-sirio-retail-property/>



Oil also holds a [5-15]% share in the State for the 12 months ending 31 October 2020. Thus, following implementation of the Proposed Transaction, DCC Energy would hold an estimated [15-25]% share of the potential market for the direct sale of fuel to end users in the State. The Commission notes that DCC Energy and Jones Oil currently face a competitive constraint from other direct sales competitors, e.g., East Cork Oil, Irving and Inver Energy. In the Commission's view, these competitors would continue to exert a competitive constraint on DCC Energy in the State, following implementation of the Proposed Transaction.

Table 3: Direct sales in the State 2020 – estimated figures

Name	Volume of Fuel (litres)	Share of Supply
DCC Energy/Emo Oil	[...] million	[5-15]%
Jones Oil	[...] million	[5-15]%
(Combined DCC Energy/Emo Oil and Jones Oil)	[...] million	([15-25]%)
East Cork Oil	[...] million	[5-15]%
Irving/Top Oil	[...] million	[5-15]%
Inver Energy	[...] million	[0-5]%
Capitol Oil	[...] million	[0-5]%
Texoil	[...] million	[0-5]%
Corrib Oil	[...] million	[0-5]%
Glen Fuels	[...] million	[0-5]%
Morris Oil	[...] million	[0-5]%
Euro Oil	[...] million	[0-5]%
O'Dwyer Oil	[...] million	[0-5]%
LCC	[...] million	[0-5]%
SUB TOTAL	[...] billion	[55-65]%
Others smaller operators²²	[...] million	[35-45]%
TOTAL	1.6 billion	100%

Source: Parties' estimates based on their sectoral knowledge

39. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the direct sale of fuel to end users.

²² These smaller operators comprise local fuel delivery companies that typically have fewer than 5 trucks.



Vertical relationship

40. The parties informed the Commission that there is no vertical relationship between the parties in the State. The Commission has not identified any vertical relationship between the parties.
41. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any vertical foreclosure concerns in the State.

Conclusion

42. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

43. The parties state in the notification that Clause 7.2 of the SPA contains certain post-transaction restrictions on the Sellers which the parties believe are directly related and necessary to the implementation of the Proposed Transaction. The Commission notes that the restrictions referred to by the parties appear to be contained in Clause 7.2.1(a)-(d) and Clause 7.2.4 of the SPA, with the remaining sub-clauses of Clause 7.2 related to other restrictions and to the interpretation and application of the various restrictions set out in Clause 7.2.
44. The Commission notes that Clause 7.2.1(a)-(c) of the SPA contains restrictive obligations on the Sellers, including a number of non-compete and non-solicitation provisions. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission.²³ The Commission considers the non-compete and non-solicitation obligations contained in Clause 7.2.1(a) and (b) to be directly related to and necessary for the implementation of the Proposed Transaction. The Commission considers that the non-solicitation obligations

²³ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" [2005] OJ C56/03. For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



contained in Clause 7.2. (c) go beyond what is directly related to and necessary for the implementation of the Proposed Transaction.

45. The Commission notes that Clause 7.2.4 of the SPA states that: “[...].
46. The Commission is of the view that, when read in the context of Clause 7.2 of the SPA as a whole, Clause 7.2.4 of the SPA appears to function as a ‘non-disparagement’ clause rather than a ‘non-compete’ clause. For this reason, the Commission has not reached a view as to whether or not Clause 7.2.4 of the SPA is directly related and necessary to the implementation of the Proposed Transaction. Clause 7.2.4 of the SPA will not therefore benefit from the protections offered by sections 4(8) and 5(3) of the Act.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby DCC Energy Limited, a wholly-owned subsidiary of DCC Public Limited Company would acquire sole control of Jones Oil Limited and its subsidiaries, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission