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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

DCC Germany Holding GmbH
Werner-von-Siemens-Straße 18
97076 Würzburg
Germany

Subject: **Case M.11360 – DCC / PROGAS**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 18 January 2024, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which DCC Germany Holding GmbH ("DCC", Germany) will acquire sole control over PROGAS GmbH & Co. KG ("Progas", Germany, together with DDC, the "Parties") by way of purchase of shares (the 'Proposed Transaction')[3].

1. THE PARTIES

(2) Both DCC and Progas are companies active in the supply of liquid petroleum gas ("LPG").

(3) DCC is controlled by DCC plc (Ireland). It is active in the sale, marketing and distribution of oil and LPG which is used for various applications, including

[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.
[2] OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').
[3] OJ C, C/2024/1118, 25.1.2024.

heating, cooking, and as a fuel for vehicles. In Germany, DCC is active in the distribution of LPG through its subsidiary TEGA – Technische Gase und Gasetechnik GmbH ("TEGA"). TEGA operates three LPG storage and filling stations suitable for LPG in bulk distribution (collectively referred to as "depots") in Germany.

(4) Progas belongs to the holding company Familie Julius Thyssen Beteiligungsgesellschaft mbH (Germany) and focuses on sales of LPG to end costumers. It operates in Germany through a network of 21 LPG depots. Progas further holds shares in 2 LPG terminals (Brunsbüttel, 50% [4] and Duisburg, 31,2% [5]).

2. THE CONCENTRATION

(5) On 28 September 2023, the Parties concluded a Share Purchase Agreement whose execution is expected to be completed before 28 September 2024.[6] According to the Share Purchase Agreement, DCC will acquire 100% of the shares in, and therefore sole control of Progas within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The Proposed Transaction has an EU dimension pursuant to Article 1(2) of the Merger regulation. DCC and Progas have a combined aggregate global turnover of over EUR 5 000 million (DCC: EUR 26 000 million; Progas: EUR […] million in 2022[7]). Each of them has an EU-wide turnover exceeding EUR 250 million (DCC: EUR […] million; Progas: EUR […] million in 2022[8]), and they do not achieve more than two-thirds of their Union-wide turnover within one and the same Member State.

4. COMPETITIVE ASSESSMENT

4.1. Market overview

(7) The Parties' activities overlap with respect to the supply of LPG in Germany and, more specifically, the supply of (i) LPG in bulk, (ii) automotive LPG, (iii) LPG in cylinders, and (iv) LPG as aerosol propellant.[9]

(8) LPG consists of a mixture of butane and propane gas, which are by-products of either oil refining or natural gas extraction.[10]

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4 Progas has a share of 50% in Nordsee Gas Terminal GmbH & Co. KG, which operates the LPG terminal in Brunsbüttel. Nordsee Gas Terminal GmbH & Co. KG does not offer any services to the market, the facility can only be used by the shareholders. All activities are captive and thus do not give rise to any vertical relationship. See Form CO, footnote 5.

5 Progas has a share of 31.2% in Westdeutsche Flüssiggas Lager GmbH, which operates the LPG terminal in Duisburg. The remaining shareholders in Westdeutsche Flüssiggas Lager GmbH are Primagas (41.71%), Westfa (13.59%), and Knauber (13.5%).[details on control structure].

6 Annex 3.3 to the Form CO.

7 The turnover information on DCC refers to the fiscal year ending 31.03.2023.

8 *Idem.*

9 The Parties also overlap with respect to wholesale of LPG to resellers. However, TEGA's sales in this regard are minimal and do not give rise to an affected market.

10 Form CO, paragraph 9.

(9) LPG in bulk is mainly used by household consumers and small commercial, recreational, or industrial customers for heating purposes. Other applications include agriculture (e.g. for heating stables or drying crops) as well as industry and construction (e.g. space and process heating, drying construction sites). In this context, customers in Germany almost exclusively possess LPG tanks with a capacity of up to 2.9 tonnes, because tanks with a capacity of 3 tonnes or more require a special permit under German law.[11]

(10) LPG in cylinders is primarily used for combustion in grills and camping stoves, patio heating, caravan heating, for catering operations and stationary heating systems, but also for industrial applications such as roofing or asphalt plastering, or to power forklifts.[12]

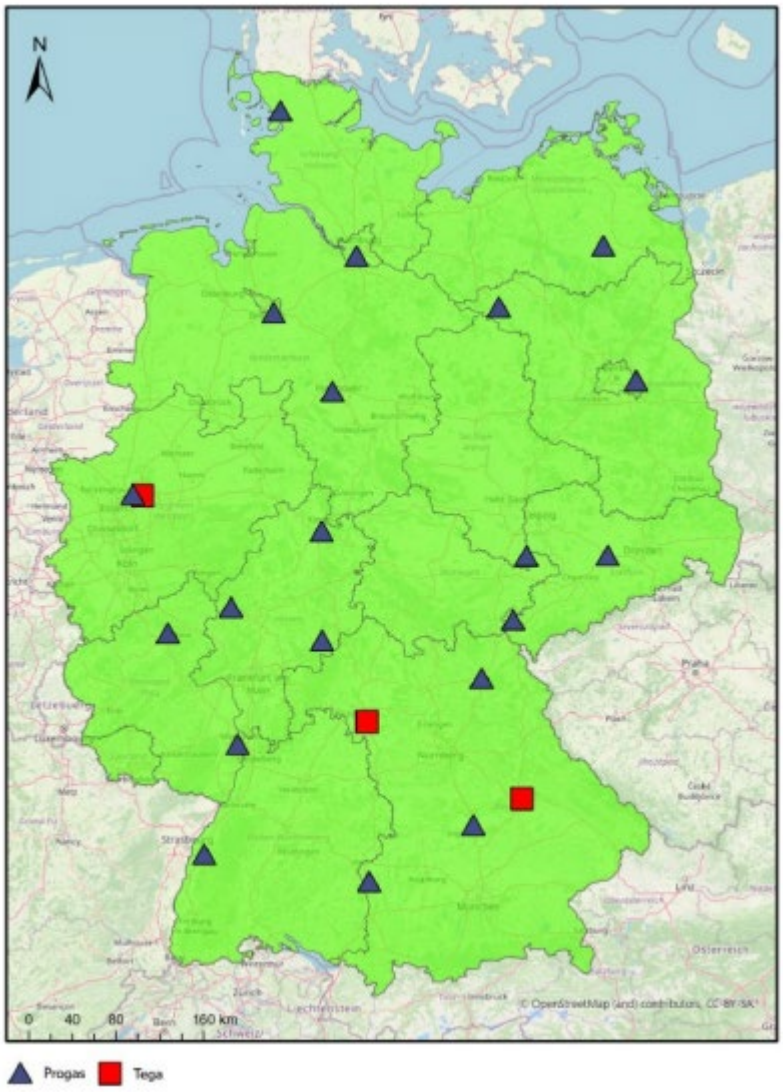
(11) Automotive LPG is delivered as fuel for cars or forklifts. LPG suppliers most frequently distribute LPG via third-party gas stations, while a limited number of specialised LPG gas stations is operated by LPG suppliers. In addition, logistics-intensive companies such as beverage wholesalers sometimes maintain on-site filling stations that are supplied with LPG.[13]

(12) Specialised Hydrocarbon Aerosol Propellants ("SHAP") are a mixture of butane and propane used as a propellant by producers of aerosol cans such as cosmetics, paint sprays or mosquito repellent. To use LPG as propellant, LPG must be deodorised and delivered at a certain pressure required for this purpose.[14]

(13) While DCC's presence in Germany (through TEGA) is limited to three depots, Progas is one of the five largest LPG distributors in Germany and has a broader geographic footprint. The following figure illustrates the locations of TEGA's and Progas' depots.[15]

11 Form CO, paragraphs 11, 141.
12 *Ibid.*
13 *Ibid.*
14 *Ibid.*
15 Form CO, paragraph 10.

Figure 1: TEGA's and Progas' depots in Germany



Source: Form CO.

(14) LPG is sourced by distributors such as TEGA and Progas from oil refineries, where it is produced as a by-product, or from marine terminals, where it is imported by vessels.

(15) Important refineries for LPG distribution in Germany are located in the Netherlands (Rotterdam, Vlissingen) and Belgium (Antwerp). Additional relevant refineries are located in various locations in Germany.[16]

(16) The important marine terminals, via which LPG is imported e.g. from the US or Norway, are located in the Netherlands (Rotterdam), Belgium (Antwerp) and Germany (Brunsbüttel). Several relevant inland terminals are located also in various locations in Germany.[17]

16 Form CO, paragraph 142.
17 *Ibid.*

(17) At the refineries and terminals, LPG is collected by truck, freight train or by barge and is transported to the distributors' depots. Such transport may be organised by the refinery, a transport organisation or by the LPG distributor.[18]

(18) All major LPG distributors in Germany own depots, through which they supply their customers. However, certain LPG distributors compete without having their own depots, by supplying their customers directly from refineries and terminals.[19]

(19) The transport of LPG by distributors to end customers takes place by truck. TEGA and Progas, as well as six other major LPG distributors, are served by two specialised carriers, namely fht and Transgas[20], which both provide a nationwide distribution network and access to a nation-wide network of depots. Other LPG distributors are either served by their own fleet of trucks or use external logistics companies other than fht or Transgas.[21]

(20) Overall, LPG distributors in Germany seem to operate based on different cost structures and rely to different degrees on the various infrastructure (refineries, terminals, depots, logistics companies) involved in the supply of LPG.[22]

4.2. Product market definition

(21) In past cases, the Commission has distinguished three levels of distribution as regards refined fuel products, namely (i) wholesale supplies, referring to ex-refinery sales including supplies to wholesalers, traders or the internal wholesale arms of refiners; (ii) non-retail supplies, encompassing the supply to independent resellers or retailers not integrated upstream, and to large industrial and commercial consumers; and (iii) retail sales of refined fuels to end customers.[23] While at the retail level, the Commission did not further divide the market for the distribution of refined fuel products according to fuel types, at the wholesale and non-retail levels, it held that the supply of LPG could be distinguished from the supply of other refined fuels.[24]

(22) Within the supply of LPG, the Commission has considered separate segments for (i) LPG in bulk, (ii) LPG in cylinders, and (iii) LPG sold as car fuel (i.e. automotive LPG), but has ultimately left the exact market definition open.[25]

(23) In previous decisions, the Commission has considered the market for the non-retail supply of LPG in bulk,[26] not distinguishing further e.g. by type of customer or by

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18 Form CO, paragraph 143.

19 Form CO, paragraph 144.

20 [details on control structure]

21 LPG distributors WESTFA and Westfalen supply LPG with their own fleet of trucks; see response to question 3, RFI 3. External carrier companies that offer services for the distribution of LPG in Germany include Schenk Tanktransport GmbH, TSL GmbH and IGT Gastransporte Internationale Spedition GmbH; see Form CO, footnote 127.

22 Form CO, paragraph 145 *et seq.*

23 M.10372 – *SHV Energy / UGI International Holding / JV*, paragraphs 16-17.

24 *Ibid.*

25 M.7680 – *DCC Group* / *Butagaz*, paragraphs 11 *et seqq*.; M.4028 – *Flaga* / *Progas* / *JV*, paragraph 12.

26 M.7680 – *DCC Group* / *Butagaz*, paragraphs 11 *et seqq*.; M.7311 – *MOL* / *ENI Ceska* / *ENI Romania* / *ENI Slovensko*, paragraphs 26 *et seqq.* By contrast, when referring to *retail sales* of refined fuels (including LPG), the Commission referred to the sale of such fuels as *motor fuels,* i.e. sold by retail stations for automotive use. See M.7680 – *DCC Group* / *Butagaz*, paragraphs 16 *et seqq.;* M.7311 – *MOL* / *ENI Ceska* / *ENI Romania* / *ENI Slovensko*, paragraphs 26 *et seqq*.

the size of the customer's LPG tank. The Commission has previously explained that 'non-retail' in this regard should be understood as encompassing both wholesale sales made to independent resellers that are not integrated upstream as well as retail sales made to large industrial and commercial customers.[27] In older cases,[28] the Commission considered a possible distinction between LPG sold in bulk mainly for domestic purposes (small bulk segment) and LPG sold in bulk for industrial use (medium and large bulk segment) but has ultimately left the exact market definition open.

(24) The Parties agree with the distinction between the supply of LPG in bulk, cylinders and as automotive fuel.[29] As regards the distinction between a small bulk LPG segment and a medium/large bulk LPG segment, the Parties consider that such distinction is not required as non-wholesale customers in Germany typically have tanks of a size of up to 2.9 tonnes, while customers with larger tanks are typically large industrial customers that are supplied by LPG wholesalers. The Parties however submit that the exact delineation of the market for the distribution of bulk LPG can be left open as it does not have a material impact on the competitive assessment.[30]

(25) The results of the market investigation in the present case support the Commission's findings in previous cases. The large majority of competitors consider it appropriate to regard the market for the non-retail supply of LPG in bulk form as separate from the non-retail supply of LPG in other forms (e.g. LPG in cylinders or as automotive fuel).[31] Several respondents noted that the different types of LPG serve different purposes and different customers, while there are also differences in price and distribution logistics.[32] This position is confirmed by the responses of the Parties' customers for LPG in bulk,[33] the majority of which replied that they do not source LPG in other forms.[34]

(26) The market investigation gave indications that a distinction of the non-retail supply of LPG in bulk depending on the size of the customers' tank might be appropriate with regard to the distribution structures in Germany. A majority of competitors in the non-retail supply of LPG in bulk responded that a distinction between customers with small tanks on the one hand, and customers with medium or large tanks on the other hand, is warranted.[35] Of those respondents, a majority explained that tanks of up to 2.9 tonnes are considered small, corresponding to household and small businesses, while tanks of 3 tonnes or above are considered as medium or large, corresponding to larger commercial and industrial customers. According to several respondents, a distinction according to tank size is relevant not least

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27 M.7680 – *DCC ENERGY / QSTAR FÖRSÄLJNING / QSTAR / CARD NETWORK SOLUTIONS*, paragraph 11.

28 M.4028 – *FLAGA* / *PROGAS* / *JV*, paragraph 14; M.1628 – *TotalFina* / *Elf*, paragraphs 243 - 245.

29 Form CO, para. 58.

30 Form CO, para. 59.

31 Responses to question C.A.A.3, eRFI to competitors.

32 Responses to question C.A.A.4, eRFI to competitors.

33 As is further explained below, the Parties overlap mainly in the non-retail supply of LPG in the small bulk segment, which is the only (potential) market that is affected. Therefore, when reference is made to the Parties' customers in this Decision, it refers to non-retail LPG customers in the small bulk segment.

34 Responses to question 3, questionnaire to customers.

35 Responses to question C.A.A.7, eRFI to competitors.

because tanks of above 2.9 tonnes capacity require a special permit according to German law.[36]

(27) A clear majority of competitors further submitted that they apply different prices and depend on different distribution logistics, depending on whether the customer has a small, or a medium to large tank.[37] As one competitor explained, "*[i]t depends on the customer's accessibility. Small tanks to private households with partially difficult logistic situations are normally delivered in small trucks. Large tanks are mainly served with big trucks directly from the refinery or port without using depots*".[38]

(28) Nonetheless, a sizeable minority of competitors expressed the view that a distinction on the basis of the customers' size of tank is not warranted.[39] As one competitor explained, "*[i]t's not the bulk size that matters, but rather the drop quantity per delivery point*".[40]

(29) In any event, for the assessment of the Proposed Transaction it can be left open whether it is appropriate to consider a separate market for the non-retail supply of LPG in the small bulk segment as the Proposed Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement even under the narrowest possible product market delineation (i.e. the non-retail supply of LPG in bulk to customers with tanks of a capacity of up to 2.9 tonnes).[41]

4.3. Geographic market definition

(30) The Commission has previously considered the market for the non-retail supply of LPG in bulk to be at least national in scope.[42] Exceptionally, and depending on the Member State concerned, the Commission has also considered sub-national markets.[43] The Commission has not yet considered this question specifically in relation to Germany.

(31) In a decision dating back to 1999, the *Bundeskartellamt*, the German Federal Competition Authority, defined a market for the distribution of LPG in bulk on a regional basis.[44] In contrast, the Higher Regional Court of Düsseldorf considered in 2009 a national market for the distribution of LPG.[45]

(32) The Parties submit that the distribution structures existing in Germany support a national delineation of the market for the supply of LPG in bulk.[46]

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36 Responses to question C.A.A.9, eRFI to competitors.
37 Responses to questions C.A.A.10 and C.A.A.12, eRFI to competitors.
38 Responses to question C.A.A.13, eRFI to competitors.
39 Responses to question C.A.A.7, eRFI to competitors.
40 Responses to question C.A.A.8, eRFI to competitors.
41 The Proposed Transaction does not give rise to an affected potential market for the supply of LPG in bulk to customers with tanks of a capacity of 3 tonnes and above. See Form CO, Table 14.
42 M.10372 – SHV Energy / UGI International Holding / JV, paragraph 26; M.7680 – *DCC Group / Butagaz*, paragraph 14; M.7311 – *MOL / ENI Česká / ENI Romania / ENI Slovensko*, paragraph 27.
43 See COMP/M.3516 *Repsol YPF / Shell Portugal*, para. 12 (ultimately left open).
44 Federal Cartel Office (FCO), B8-220/99 *Progas / Deutsche Shell / Caratgas / Westfalen AG*, paragraphs 16-17 (ultimately left open).
45 Higher Regional Court (OLG) Düsseldorf, Judgement of July 15, 2009 - VI-2 U (Kart) 6/07, paragraph 51.
46 Form CO, paragraph 64.

(33) The results of the market investigation indicate that a geographic delineation of the non-retail market for LPG in bulk based on sub-national regions, e.g. Federal States, is not warranted. The market investigation showed that all five major bulk LPG distributors, accounting together with the Parties for ~80% of overall non-retail bulk LPG sales in Germany[47], are active nation-wide or even beyond.[48] In addition, there are numerous players of smaller size active at a local level.[49] As shown in the market investigation, these smaller competitors are willing to cover different distances from their bases in order to supply customers, with several competitors stating distances of 150-200 km or more.[50]

(34) The majority of customers[51] who replied to the market investigation indicated that their LPG in bulk suppliers were not located in the same Federal State as themselves.[52]

(35) However, the exact geographic market definition can be left open, as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement, even when considering markets that are regional in scope (i.e. on a Federal State basis).

4.4. Competitive assessment

(36) The Proposed Transaction only gives rise to a horizontally affected market for the non-retail supply of LPG in bulk to customers with tanks of a capacity of up to 2.9 tonnes in the region of the Federal State of Thuringia, if the small bulk segment and sub-national markets are considered.

(37) The Proposed Transaction also results in overlaps for a number of other markets. However, none of these overlaps gives rise to affected markets within the meaning of point 25(g) of the introduction of Annex I to Commission Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings[53] even under the narrowest plausible market definition. In the absence of any indication that these markets might give rise to serious doubts as to the compatibility of the Proposed transaction with the internal market or the functioning of the EEA Agreement, these overlaps will not be discussed in this Decision.

(38) Thus, the Commission will assess below the effects of the Proposed Transaction with regard to the potential market for the non-retail supply of LPG in the small bulk segment (i.e. customers with tanks of up to 2.9 tonnes) in Thuringia.

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47 See Form CO, Table 5.

48 Responses to question C.B.A.1, eRFI to competitors.

49 *Ibid.*

50 Responses to question C.B.A.7, eRFI to competitors.

51 As the Proposed Transaction only gives rise to an affected market in case a local market for the supply of LPG in bulk in Thuringia were considered, the market investigation focused on customers located in that Federal State.

52 Responses to question 6, questionnaire to customers.

53 OJ L 119, 5.5.2023, p. 22.

Table 1: Parties' combined market shares in the non-retail supply of LPG in the small bulk segment, 2022

Supplier	Germany		Thuringia	
	Volume (kt)	Market share	Volume (kt)	Market share
TEGA (DCC)	[…]	[0-5]%	[…]	[5-10]%
Progas	[…]	[10-20]%	[…]	[10-20]%
Combined	**[…]**	**[10-20]%**	[…]	**[20-30]%**
Primagas	[N/A]	[10-20]%;	[N/A]	[10-20]%;
Scharr	[N/A]	[5-10]%	[N/A]	[10-20]%;
Tyczka	[N/A]	[5-20]%	[N/A]	[10-20]%;
Westfa	[N/A]	[5-20]%	[N/A]	[0-10]%
Westfalen	[N/A]	[10-20]%;	[N/A]	[0-10]%
Others	[N/A]	[20-30]% - [30-40]%	[N/A]	[0-5]% - [20-30]%
Total market size	[…]	100%	[…]	100%

Source: Form CO.

The Notifying Party's views

(39) The Notifying Party submits that the Proposed Transaction will not significantly impede effective competition in either Germany or Thuringia, because:

(a) the Parties' combined market shares will in any case remain moderate, while the increment resulting from the Proposed Transaction will be limited;[54]

(b) the Parties will continue to face constraints from strong competitors, including *e.g.* Primagas, Westfalen, Tyczka, Westfa and Scharr;[55]

(c) there is sufficient distribution capacity for LPG in bulk in Germany, and all competitors have access to sufficient logistical infrastructure to support any increased demand.[56]

The Commission's assessment

(40) The Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

(41) *First*, the Commission notes that the Parties' combined market shares in Thuringia will remain moderate at [20-30]% after the Proposed Transaction. The market in Thuringia is affected primarily due to DCC's share in that region, which exceeds

54 Form CO, paragraph 96.
55 Form CO, paragraph 101, *et seq.*
56 Form CO, paragraph 130.

DCC's national share, most likely due to its acquisition of Flaga, an LPG supplier based in Thuringia, in 1998. Progas has no particular focus on Thuringia.[57]

(42) The level of concentration in the market for the supply of LPG in the small bulk segment in Thuringia will remain equally moderate. As per the Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Guidelines"), competition concerns are unlikely in a market with a post-merger HHI below 2000 and an HHI delta below 250.[58] The post-merger HHI in Thuringia will be between [1000-2000], and the HHI delta of [250-350][59] only moderately exceeds the threshold of a non-problematic merger as per the Horizontal Guidelines.

(43) *Second*, the market investigation confirmed that DCC is one of the smaller LPG bulk suppliers in Thuringia and that other credible competitors will remain active in the market for the non-retail supply of LPG in the small bulk segment in Thuringia.[60] The market is rather fragmented, and all five of the Parties' main competitors at national level are also active in the non-retail supply of LPG in the small bulk segment in Thuringia.[61] In addition, there is also a number of smaller competitors that are active at a sub-national level and have a presence in Thuringia.[62] The market investigation further confirmed that neither DCC nor Progas have any characteristics which provide them with a competitive advantage, and that all competitors offer overall equivalent products and services, given that LPG is a commodity with no material differentiations amongst different suppliers.[63] Moreover, the majority of customers located in Thuringia, who responded to the market investigation, indicated that they would have sufficient alternative options for suppliers of LPG in the small bulk segment, should they be faced with unfavourable conditions by the merged entity.[64]

(44) *Third*, even considering a regional market that is limited to the Federal State of Thuringia, competition constraints will continue to be exercised from LPG suppliers that are based in other regions of Germany. As a matter of fact, DCC does not have a depot in Thuringia, as shown in Figure 1 above. Moreover, as described at recital (33) above, smaller competitors with no nation-wide distribution network will typically cover distances of 150-200 km or more from their base, which suffices to supply Thuringia from neighbouring Federal States. As regards the five major competitors of the Parties, the market investigation confirmed that they are present nation-wide, or are being served by logistics and transport companies with access to a nation-wide network of depots, that enable them to supply LPG in all parts of Germany.[65] There are no constraints in LPG distribution capacity in Germany[66], and Thuringia is a Federal State located centrally in Germany, which is feasible to supply from neighbouring Federal States. The vast majority of competitors replied that they could increase their supplies to Thuringia in case of

57 Form CO, paragraph 96.
58 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5), paragraph 20.
59 Form CO, Table 15.
60 Responses to question D.A.2, eRFI to competitors.
61 See Table 1 above.
62 Responses to question B.1, eRFI to competitors.
63 Responses to question D.A.3, eRFI to competitors.
64 Responses to question 7, questionnaire to customers.
65 Responses to question C.B.A.1, eRFI to competitors.
66 Form CO, paragraph 130.

increased demand, thus offsetting any potential price increase that could result from the Proposed Transaction.[67]

(45) Finally, no substantial concerns in relation to the impact of the Proposed Transaction on the market for the non-retail supply of LPG in the small bulk segment were raised during the market investigation. The large majority of competitors (including all Germany-wide suppliers) expect a neutral impact of the Proposed Transaction[68] with all replying customers expecting either a neutral or positive impact of the Proposed Transaction on their business.[69]

(46) In light of the above, the Commission concludes that the Proposed Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

5. CONCLUSION

(47) For the above reasons, the European Commission has decided not to oppose the notified concentration and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

67 Responses to question D.A.11, eRFI to competitors.
68 Responses to questions E.1, E.2, E.3 and E.4, eRFI to competitors.
69 Responses to question 8, questionnaire to customers.