Decision

Proposed acquisition of Sion Garage, MBC Motors and The Fuel by Fuel Supplies (CI) Ltd (C-029)

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1. Summary

1.1 Fuel Supplies (CI) Limited (**FSCI**) proposes to acquire the businesses formerly Sion Garage (now Rubis Sion), MBC Motors (now Rubis Red Houses), and The Fuel (now Rubis First Tower). The transactions have been notified to the Jersey Competition Regulatory Authority (the **Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**).

1.2 The Authority has determined that the transactions do not lead to a substantial lessening of competition in any relevant market in Jersey and hereby approve the transactions.

2. The Notified Transaction

2.1 On 23 March 2022, the Authority received an application FSCI for approval of the acquisition of three forecourt businesses. The leases were signed and FSCI has been operating the forecourts since the dates listed.

(a) Sion Garage (now Rubis Sion) – 1 June 2021

(b) MBC Motors (now Rubis Red Houses) – 1 June 2021

(c) The Fuel (now Rubis First Tower) – 1 July 2021

2.2 The Authority registered the application on its website with a deadline for comments of 6 April. In line with its published Guidelines, the Authority also sent a questionnaire to a list of competitors and wholesale customers in the relevant market[1]. Three responses were received to the questionnaire which were considered as part of the analysis below.

3. The Parties

Purchaser

3.1 FSCI is a wholly owned subsidiary of Rubis Energie (**Rubis**), a French company number 55204881100285. Fuel Supplies (C.I.) Limited, is a Guernsey registered company number 409. FSCI are involved in the importation and distribution of fuels including: home heating, motor fuels, renewable fuels, commercial, aviation, marine and lubricants into the Channel Islands. See [Energy & Heating Suppliers | Rubis Channel Islands (rubis-ci.co.uk)].

[1] Guideline 6b provides that the Authority may approach one or more of the parties' competitors, suppliers and/or customers, or third parties who might hold information regarding the markets in which the parties are active (e.g. other regulatory agencies) - mergers-and-acquisitions-procedure.pdf (jcra.je)

3.2 It is also involved in the installation / maintenance of home and commercial heating systems, including boilers, oil tanks and cylinders. Its business has been evolving into renewables, which it is expecting to expand over coming years. Rubis also has the fuel storage business, La Collette Terminal Ltd in Jersey.

Target Forecourts

Sion Garage (now Rubis Sion)

3.3 Sion Garage Limited is a Jersey Registered Company, number 104077. In 2019, FSCI sublet the forecourt of Sion Garage from Sion Garage Ltd (**SGL**), with a management agreement for SGL to operate the site on its behalf. This agreement was to support the forecourt to continue in business, maintain employment and provide stability to Rubis Card holders, then making up [*redacted*] sales. In 2021, SGL offered FSCI the opportunity to lease the whole site. There was an alternative bid for the site, however FSCI was successful and proceeded with signing the lease.

3.4 There was a [*redacted*] remaining with the ultimate owners which FSCI bought out. FSCI then agreed to a [*redacted*] lease directly with the ultimate owners of the site, taking on the existing staff, and then sublet a portion of the site back to SGL for its vehicle repair business. FSCI also purchased the shop stock and took over existing utility and coffee machine rental agreements.

MBC Motors (now Rubis Red Houses)

3.5 MBC Motors was owned by an private individual. FSCI has agreed to a [*redacted*] year lease, and has retained employment of the forecourt staff. The existing garage workshop has been sublet back to a previous employee of MBC to start his own business. FSCI also purchased stock and took over the existing utility agreements.

The Fuel (Mansell) (now Rubis First Tower)

3.6 The Fuel (formerly Oakhurst Garage) consisted of a workshop and fuel forecourt as Beauport Holdings Limited (Company Number 109816). FSCI has leased the whole site and sublet back the workshop. FSCI has also taken on the existing staff, purchased stock and taken over existing utility agreements.

4. Requirement for Authority approval

4.1 Under Article 2(1)(b) of the 2005 Law, a merger or acquisition (**merger**) occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. A merger or acquisition also occurs if an undertaking acquires the whole or a substantial part of the assets of another undertaking; and the result of the acquisition is to place the acquiring undertaking in a position to replace or substantially replace the other undertaking in the business in which that undertaking was engaged immediately before the acquisition (Article 2(4)).

4.2 As a result of the Notified Transaction, as well as taking new leases on two of the Forecourts, taking over the existing lease on the third, FSCI also took over tangible assets including stock, existing agreements, and took on existing staff from each of the businesses. FSCI will therefore acquire control of the Target Forecourts, and the Notified Transaction therefore constitutes a merger as defined by the 2005 Law.

4.3 According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority. In particular, in relation to this transaction, Article 3 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law if (a) one or more of the undertakings involved in the proposed merger or acquisition has an existing share of 25% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey; and (b) another undertaking involved in the proposed merger or acquisition is active in the supply or goods or services of any description that are upstream or downstream of those goods or services in which that 25% share is held.

4.4 FSCI provides wholesale and retail fuel supplies (both motor fuel and road fuel). FSCI provides fuel to a number of forecourts. Previously it provided motor fuel to each of the Target Forecourts on a wholesale basis. FSCI estimates that it has a share of supply of wholesale fuel of [>25%], and each of the Target Forecourts in downstream in that supply, with supply agreements in place for each of them. Article 3 of the Order is therefore met.

4.5 The Notified Transaction therefore requires the approval of the Authority prior to its execution.

5. Market Definition

5.1 Under Article 22(4) of the 2005 Law, the Authority must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. As an initial step, the Authority will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed.

5.2 The boundaries of the market do not necessarily determine the outcome of the competitive effects of the merger as there can be constraints on the merger from outside the relevant market, segmentation within the relevant market or other ways in which certain constraints are more significant than others. The Authority will, where appropriate, take these factors into account in its assessment.

5.3 When defining a market, the Authority may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. However, these previous decisions are not precedents and are not binding, either on the merging parties or on the Authority. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts.[2]

Views of the Parties

5.4 The Parties proposed two relevant product markets:

(a) one in which "*forecourts negotiate contracts for the provision of road fuel to their premises*"; and

(b) one in which "*forecourts sell road fuels to end customers and compete with other forecourts for business*".

(a) Wholesale Market for Road Fuel

5.5 The Parties explained that the relevant wholesale market should be for the wholesale supply of road fuel on a national basis. To support this, they cited previous Authority precedent from Roberts / Esso which also considered the market on this basis.

Vertical Integration

5.6 The Parties explain that the market began to become vertically integrated 2014 when Roberts purchased the Esso wholesale fuel business. Prior to this, all fuel distributors had supply agreements with garages and did not operate the forecourt or shop. Since 2014, there have been several examples of the vertical integration of fuel distributors into the retail market:

- Channel Island Fuels (CIF) lease two Marks and Spencer sites from Sandpiper;
- Roberts have built a new forecourt near the airport (leased to them by Ports of Jersey Limited); and
- ATF have taken the leases of two forecourts at Maufant and Augres.

[2] This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the 2005 Law requires the Authority to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

5.7 The Parties anticipate that the market will continue to change over coming years, with smaller independent businesses leaving the market, with fuel distributers likely to enter into agreements to support the exit process. They maintain that the fuel market is highly competitive, with all forecourts seeing volumes and margins squeezed, and the biggest impact being felt by smaller independent sites.

5.8 The Parties explained that in recent years, the structure of the retail market for road fuel in Jersey has exhibited a trend towards vertical integration, with the introduction of more Company Leased Company Operated (**CLCO**), Dealer Owned Company Operated (**DOCO**) or Company Owned Company Operated (**COCO**) sites.

5.9 Under a CLCO structure the distributer (the Company) will lease the site and then operate the fuel forecourt business. Under a DOCO structure the owner of the site will pass on the operation of the forecourt business to a fuel distributor. This is most commonly used where the forecourt is part of a larger enterprise, and the owner does not want to manage the forecourt business (similar to CLCO). Under a DOCO structure the fuel distributer owns the site and operates the forecourt.

5.10 FSCI had previously operated within a Dealer Owned Dealer Operated (**DODO**) framework where fuel is provided under an exclusive supply agreement. These were for a maximum of five years, with variable commercial terms, including [*redacted*].

5.11 The ability of small sites to invest in competing (marketing, upskilling staff, etc), replacing old equipment, or innovating with new products and services is limited. Without the critical mass of several sites, there is not enough potential upside for a small independent to warrant this investment and they are likely to exit the market. If the business owns the property, they can look to maximise value from a rental agreement for the site or look to redevelop. Those in existing rental agreements need to come to arrangements to enable them to exit without facing lease or fuel supply penalties.

5.12 The following forecourts are not owned, but are exclusively wholesale supplied and branded Rubis:

- St Ouen's Motorworks
- Falles Airport
- Falles Longueville
- Cotillard Service Station
- Aerton Motors

- A1 Auto Repairs
- InMotion

5.13 The following forecourts are not owned or branded Rubis, but are exclusively supplied:

- Co-Op St Peter
- Co-Op St Mary
- Co-Op Trinity

Rubis Card Scheme

5.14 Forecourts part of the Rubis network can offer the Rubis card which encourages customer loyalty to that site. [*Redacted*] This scheme also includes a till system for which FSCI covers the card charges. The forecourts are able to offer commercial customers bespoke discounts on the Rubis card. End customers receive a 4p per litre saving (added to the account) on fuel purchased, and any sundry items purchased, up to 45 days credit, with a whole family or business on one account. The accumulated savings can be used either to offset the fuel bill, or for a voucher to be used in a number of other businesses, including Condor and St Peter's Garden Centre.

5.15 There are no pre-determined steps for a forecourt to become a Rubis card forecourt – if they are supplied by FSCI they can either be branded as a Rubis forecourt or chose to be a 'white pump' site and not carry the brand.

(b) Retail Market for Road Fuel

5.16 The Parties explained that the relevant retail market should be the market for the retail sale of road fuel on a national basis. To support this, they cited previous JCRA precedent from Roberts / Esso[3], which also considered the market on this basis.

5.17 The Parties noted that consumers consider a range of factors when choosing a forecourt. These includes: whether it is on a common travel route, whether it is attached to other business, whether it provides attended service, product quality, product availability, the price of fuel and loyalty schemes. The Parties also provided catchment area map, which indicated the 'local' area for each of the three sites. Each catchment proposed by the Parties was sub-national, and typically extended to an area less than 5 kilometres from each of the three sites.

[3] JCRA, 2014. M1034J Roberts Garages Ltd / Esso.

Authority Consideration

5.18 The relevant product market is defined primarily by reference to the likely response of consumers and competitors. It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.

5.19 The importation of fuel into Jersey has not been considered as part of the relevant market for the purposes of this Decision[4].

5.20 The Authority has previously considered the road fuel market in Jersey on a number of occasions.

- In Roberts / PDJ[5], it assessed the impact of the transaction on (i) the non-retail supply of refined oil products in Jersey (leaving open the precise definition based on individual types of fuel), and (ii) the retail supply of motor fuel, (encompassing all sales of motor fuels made at fuel dispensing service stations).
- In Roberts / Esso[6], it assessed the impact of the transaction on (i) the wholesale market for road fuel in Jersey, and (ii) the retail market for road fuel in Jersey.

5.21 The market for road fuel has been considered by the CMA and the European Commission in a number of cases, for instance:

- In MFG / MRH[7], the CMA assessed impact of the transaction on the market for (i) retail supply of road fuel at a national and local level (using as a proxy for the local market drive-time isochrones of 10 minutes in urban areas and 20 minutes in rural areas), (ii) retail supply of auto-LPG at a national and local level (using as a proxy for the local market drive-time isochrones of 10, 20, 30 and 40 minutes), and (iii) the wholesale supply of road fuel at a national level and a local/regional level.
- In Asda / Issa Brothers[8], the CMA assessed the impact of the transaction on the market for (i) retail supply of road fuel at a national and local level (using as a proxy for the local market drive-time isochrones of 10 minutes to non-supermarket forecourts and 20 minutes to

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[4] Previous decisions by the Authority can be found at: [M885J - Rubis SCA (Rubis) and Esso Petroleum Co Ltd (Esso) | JCRA], including the 2016 review of the Conditions attached to the approval.
[5] CICRA, 2017. M1323GJ Roberts Garages Ltd / Petroleum Distributors (Jersey).
[6] JCRA, 2014. M1034J Roberts Garages Ltd / Esso.
[7] CMA, 2018. ME/6750/18 Completed acquisition by CD&R Fund IX of MRH (GB) Limited.
[8] CMA, 2021. Me/6911/20. Completed acquisition by Bellis Acquisition Company 3 Limited of Asda Group Limited.

supermarket forecourts), and (ii) retail supply of auto-LPG at a national and local level (using as a proxy for the local market drive-time isochrones of 10, 20, 30 and 40 minutes).

- In Statoil / Dansk Fuels[9], the European Commission considered the market for the retail supply of motor fuels (including the sub-markets for B2B and B2C) in Denmark as national with local elements of competition.

5.22 In their responses to the Authority's questionnaire, two market participants indicated that they think about the market on a narrower basis than the entire island. They both also noted that the distance consumers are willing to travel to visit a forecourt can depend on factors such as whether the forecourt is attached to a convenience shop and type of fuel (e.g. whether the forecourt offers biofuels).

5.23 For the reasons outlined above, the Authority considers that competition in the market for the retail sale of road fuel may take place at a sub-national level. The Authority has considered competition at both a local and national level, however it is not necessary to reach a definitive conclusion on the precise geographic scope of the market for the retail sale of road fuel as it has not found competition concerns on any plausible geographic basis.

Conclusions on market definition

5.24 For the reasons set out above, the Authority considered the impact of the Merger in the following frames of reference:

- the wholesale supply of road fuel to forecourts in Jersey; and
- the retail sale of road fuel, both nationally and at a local level.

6. Effect on Competition

6.1 The analysis of a notifiable transaction will consider whether the merger creates or enhances the ability or incentive to exercise market power, either unilaterally or in co-ordination with competitors, and whether other market forces (such as the entry of new competitors or countervailing power of customers) will eliminate this risk. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.

6.2 When considering the effect on competition, the Authority has regard to the guidelines produced by the European Commission[10] (**European Guidelines**). It may also consider the substantive

[9] European Commission, 2016. M.7603 Decision on Statoil Fuel and Retail / Dansk fuels.
[10] https://op.europa.eu/en/publication-detail/-/publication/19597169-c020-4a72-816a-0b15416119f7

merger guidelines applied by the Competition and Markets Authority in the UK, as well as those of other competition authorities.

Views of the Parties

6.3 The Parties explained that all three sites were part of the existing Rubis network and argue that the transaction does not results in any "*change in the competitive landscape*". The Parties explained that FSCI is now vertically integrated, noting that the three rival wholesalers (ATF, Roberts and CI Fuels) in the market are all also active in the retail market (i.e. they are also vertically integrated).

6.4 The Parties explain that FSCI intends to follow the same undertaking imposed by the JCRA in Roberts / Esso [11] and that "*any movements in the schedule price is mirrored at the three forecourts*". They also note that soon after the finalising of the transaction, FSCI contacted retailers who they supply to make them aware of the transaction[12].

6.5 The Parties argue that there are no barriers to entry in the markets for importing and storing road fuels. They explain that all that is required to import road fuel is a contract with a refinery and shipping company, or potential entrants could import their own iso-containers and develop their own depot (as ATF have done at the Ports of Jersey). They explain that there are no barriers to entry in the market for storage as La Collette Terminal has an open and transparent process to accept new through putters. However they note that if entrants wish to store products outside of La Collette Terminal then the cost of investment could be a barrier to entry[13].

6.6 They explain there are some barriers to entry in the market for the wholesale supply of road fuels as entrants would need to invest in trucks, staff and IT equipment. However, they argue that ATF's entry into the market in 2014 demonstrates that these are limited. They explain that there is significant capital expense to developing a new retail forecourt and that the small margin retailers could expect to earn from retail sales of road fuel mean that forecourts need to offer other services (e.g. retail shop or car sales) to make investment worthwhile.

6.7 The Parties argue that the transactions will lead to a number of benefits to retailers and consumers. These are as follows.

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[11] In Roberts / Esso, the JCRA mandated that Roberts (who were previously active in the retail market and who was acquiring Esso's wholesale business) provide a weekly schedule price distributed to Esso branded forecourts that was directly linked to the authoritative record of wholesale prices.

[12] Letter from Bertrand Dellinger (Managing Director) to retailers dated 16 June 2021.

[13] The importation of fuel into Jersey is not considered part of the relevant market for the purposes of the assessment of this transaction

- The Parties explain that FSCI intends to use the sites to invest in new technology and develop new initiatives that they can then offer to other retailers in its wholesale network. These include [*redacted*].

- The Parties explain that FSCI [*redacted*].

Authority Consideration

6.8 The Authority has assessed two theories of harm:

- unilateral **horizontal effects** in the retail supply of road fuel at a national and local level; and

- **vertical effects** in the wholesale supply of road fuel to petrol stations at a national and local/regional level.

Horizontal Effects

6.9 Horizontal mergers are those where both parties are actual or potential competitors in the same relevant market. Following the transaction, the three sites, will cease to be independent and will no longer compete. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals. Horizontal unilateral effects are more likely when the merging parties are close competitors.

6.10 Article 60 of the Jersey Law provides that so far as possible questions arising in relation to competition must be dealt with in a manner that is consistent with the treatment of corresponding questions arising under EU competition law. European Guidelines provide that where the combined market share of the merging undertakings does not exceed 25%, the concentration may be presumed not to lead to a significant lessening of competition.

Retail Supply of Fuel (National)

6.11 Figure (i) below presents the shares of supply of the three stations in the market for the retail sale of road fuel in Jersey. As a result of the merger, FSCI's share of the national market for the retail sale of road fuel will increase from 0% to [5-10%]. However, it will remain the case that conditions for competition in Jersey are very different from those in the UK, and below the threshold at which it may be presumed to lead to a significant lessening of competition.

Figure (i): Shares of supply in the market for retail sale of road fuel to consumers in Jersey

	2020 volumes (million litres)	Market share
Rubis Sion	[Redacted]	[Redacted]
Rubis First Tower	[Redacted]	[Redacted]
Rubis Red Houses	[Redacted]	[Redacted]

Combined volumes / share	**[Redacted]**	[5 – 10%]
Total volumes in Jersey	[Redacted]	**100%**

Source: Parties' Merger Application Form, data from market participants.

Retail Supply of Fuel (Local)

6.12 On a local basis, the Authority notes that the three retail sites are geographically distant from each other as shown in Figure iii below. Any potential wider catchment containing two of the sites would also contain at least five other competitors. and therefore any potential catchment which contained two of the sites would contain at least five other competitors (see Figure iii below).

6.13 On the basis of this evidence, the Authority believes that the Transaction does not give rise to a realistic prospect of a significant lessening of competition in the market for the retail sale of road fuel in Jersey at a local and national level.

Vertical effects

6.14 Vertical mergers are mergers where one party has a 'vertical' relationship with the other (for example, as a supplier or as a customer of a party). These type of mergers can lead to a substantial lessening of competition by substantially weaking the ability of rival firms in either the upstream or downstream market to compete. The Authority's approach to assessing these type of theory of harms is to assess: (i) the ability of the merged entity to foreclose competitors, (ii) the incentive of it to do so, and (iii) the overall effect of the strategy on competition.

6.15 FSCI supplies fuel to ten other petrol stations in Jersey. The Authority has therefore considered whether it would have the ability or incentive to raise prices or degrade the quality of its product that it supplies to its forecourts with the expectation that if the retail price rises and some retail sales are lost, a proportion of those will be recaptured by one of the three sites it owns.

Ability

6.16 The Parties' ability to foreclose downstream competitors depends on:

- in the short-term, whether the contracts it has with suppliers allow it to unilaterally raise prices; and
- in the long-term, whether there are credible alternative suppliers.

6.17 The Parties submitted that "*The schedule fuel price is a price set on a weekly basis for all products. Customers then receive a discount (rebate) on this price, depending on their contracted terms*". The Authority understands that typically it would be possible for FSCI to unilaterally raise the wholesale price it charges to the forecourts it supplies. This understanding is consistent with the view expressed by the independent forecourt that responded to the Authority's market test.

6.18 Figure (ii) below presents the shares of supply in the market for the wholesale supply of road fuel in Jersey. FSCI is the largest supplier in the market, however all other suppliers have shares of over 20%.

Figure (ii): Shares of supply in the market for wholesale supply of road fuel in Jersey

	2020 volumes (million litres)	**Market share**
FSCI	[Redacted]	[Redacted]
Channel Island Fuels Limited	[Redacted]	[Redacted]
Roberts Garages	[Redacted]	[Redacted]
ATF	[Redacted]	[Redacted]
Total volumes	[Redacted]	**100%**

Source: Parties' Merger Application Form, data from market participants.

6.19 An independent forecourt that responded to Authority's questionnaire indicated that it felt it had adequate choice in suppliers of road fuel, given the size of the island. In 2020, the Co-operative, who operate three petrol stations in Jersey switched their supplier from ATF to FSCI.

6.20 In its response to the Authority's questionnaire, another wholesale provider indicated that it would have no issues increasing capacity to meet additional demand, provided it had sufficient notice.

6.21 The Authority considers that, in the short term, the merged entity may have the ability to increase wholesale prices or reduce the quality of its wholesale offering to rival forecourts during the existing term of their contracts. This ability will depend on the length of wholesale agreement in place between the wholesaler and retailer.

6.22 The Authority considers that in the longer term (as the contracts expire or are terminated) the rival forecourts would be able to avoid any price increase or degradations in quality by switching away to one of the other wholesale suppliers.

Incentive

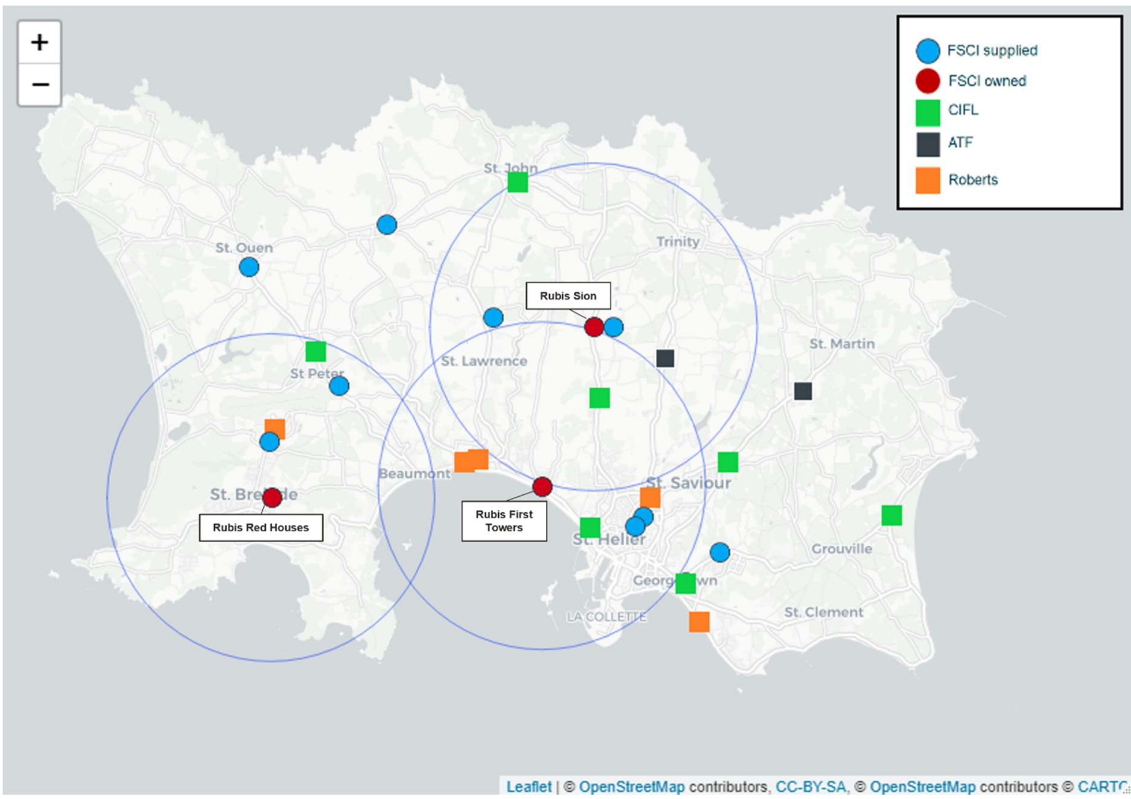
6.23 FSCI may have an incentive to increase wholesale prices to rival forecourts if:

- there are no, or few, alternative retail suppliers in the local area, such that the site owned by FSCI may be likely to capture a substantial proportion of customers switching away from the foreclosed site in response to a price rise; and

- the profits gained through the increase in retail sales at the FSCI owned site are greater than the profits lost through the reduction in the wholesaling of road fuel to the foreclosed site.

6.24 Figure (iii) presents a map of Jersey distinguishing between forecourts owned by FSCI, forecourts supplied by FSCI and forecourts supplied by competitors. It also highlights the area within a three kilometre radius of the three forecourts owned by FSCI.

Figure (iii) Retail Forecourts in Jersey



Source: Parties' Merger Application Form

6.25 Based on this Figure, the Authority noted that:

- There are two FSCI supplied sites within a three kilometre radius of **Rubis Sion**, including its closest geographic competitor. However, there are three other sites within this radius.
- There are two FSCI supplied sites within a three kilometre radius of **Rubis Red Houses**, including its closest geographic competitor. However, there are two other sites within this radius.
- There are two FSCI supplied sites within a three kilometre radius of **Rubis First Tower**. However, there are five other rival sites within this radius and neither the geographically closest or second closest competitors are supplied by FSCI.

6.26 In each case, the Authority considered that the losses and profits that FSCI would incur by pursuing a foreclosure strategy (i.e. increasing wholesale prices to rival forecourts). It considered that:

- such a strategy would lead to FSCI incurring losses due to a reduction in the wholesale volumes sold through the foreclosed forecourt as the forecourt would pass these increases on to customers who would divert to other stations; and
- while some customers would divert to an FSCI owned station (leading to increased profits to FSCI from these customer), others would divert to one of the alternative nearby stations.

The Authority considered that the number of nearby competitors in each catchment meant that the potential losses from such a strategy would outweigh any potential profits. This suggested that the merged entity would have no (or very limited) incentive to engage in such a strategy.

6.27 The Authority also noted that any limited incentive that the Parties may have to engage in such a strategy would be short-term, due to the rival sites' ability to exit their supply contracts at the end of their contract and the availability of alternative suppliers. Even if FSCI had an incentive to foreclose downstream competitors, it is important to note that the current transaction does not increase this incentive compared to the status quo. This is because FSCI has supplied fuel to the Target Forecourts for a number of years and the Authority has not received any submissions from wholesale customers that FSCI behaved in an anticompetitive manner during the period of its supply contract to the Target Forecourts (or any other forecourts).

6.28 For these reasons, the Authority believes that the Parties would not have an incentive to increase wholesale prices to rivals of the three previously independent sites.

Effect

6.29 Given the Authority's conclusion that the merged entity would not have an incentive to increase wholesale prices to rival forecourts, the Authority has not assessed the effect on competition of such a foreclosure strategy.

Authority Consideration

6.30 Mergers between parties who are active up or downstream of each other (so called 'vertical' mergers) can affect competition if that vertical merger forecloses market access to competitors of one or more of the parties.

7. Decision

7.1 Based on the previous analysis, the Authority concludes that the acquisition will not substantially lessen competition in Jersey or any part of Jersey; and the Notified Transaction is therefore approved under Article 22(1) of the 2005 Law as of 10 May 2022.

10 May 2022 **By Order of the Jersey Competition Regulatory Authority**