



DETERMINATION OF MERGER NOTIFICATION M/14/038 - MAXOL / TOM CHAWKE TRADING

Section 21 of the Competition Act 2002

Proposed acquisition by Maxol Limited of Tom Chawke Trading Limited

Dated 22 January 2015

Introduction

1. On 15 December 2014, in accordance with section 18(1) of the Competition Act 2002, as amended¹ ("the Act"), the Competition and Consumer Protection Commission ("the Commission") received a notification of a proposed transaction whereby Maxol Limited ("Maxol") would acquire the entire issued share capital and therefore sole control of Tom Chawke Trading Limited ("Tom Chawke Trading").

The Transaction

2. The proposed transaction consists of a conditional share purchase agreement dated 03 December 2014, between Maxol and Tom Chawke Trading, providing for the purchase by Maxol of the entire issued share capital of Tom Chawke Trading.
3. Maxol is also acquiring certain properties associated with the business of Tom Chawke Trading in accordance with the terms of an asset purchase agreement between an individual² and Maxol dated 3 December 2014. This includes the land and buildings from which the business carried on by Tom Chawke Trading operates, two leased retail units and an adjacent site.

The Undertakings Involved

The Acquirer

4. Maxol is a subsidiary of Maxol Energy Limited³, which in turn is a wholly owned subsidiary of McMullan Brothers Limited, a family-owned private company founded in 1920 with its registered office at 3 Custom House Plaza, IFSC, Dublin 1.
5. The main activity of Maxol in the State is the wholesale and retail distribution of petroleum products across the country.

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.

² Thomas A Chawke of Castletroy, County Limerick.

³ Two other subsidiaries are Maxol Lubricants Limited in the State and Maxol Oil Limited in Northern Ireland.



6. In the year ended 31 December 2013, McMullan Brothers Limited had a worldwide turnover of €660 million, of which €[...]m was generated in the State.

The Target

7. Tom Chawke Trading is a limited liability company incorporated in the State in 2011 and trades as Chawkes Service Station on the old Dublin Road in Castletroy, County Limerick.
8. Tom Chawke Trading essentially comprises two businesses, namely, (i) a fuel forecourt under the Texaco banner, and (ii) a convenience store which operates under the Centra franchise.
9. In the year ended 31 March 2014, Tom Chawke Trading had a turnover of €14.5 million, the entirety of which was generated in the State.

The Vendors

10. A specific individual⁴ is the principal shareholder (51%) in Tom Chawke Trading and is also the owner of the land and buildings and other assets being sold as part of the proposed transaction.
11. All of the other shareholders⁵ in Tom Chawke Trading are also individuals, mainly family members of the principal shareholder.

Rationale for the Proposed Acquisition

12. The notification states:

“Maxol Limited has been endeavouring to grow its business through the acquisition of new outlets since 2011. ... Recent purchases have all arisen as a result of vendors wishing to exit the business, rather than as a result of approaches made by Maxol.

Maxol expects competition in the Irish oil business to become increasingly vigorous and is keenly aware that two of its key competitors⁶ have recently engaged in apparently successful financial restructuring and are now also aggressively seeking growth opportunities, including in the Mid-West/Limerick region. Furthermore, it is evident from media reports that another proposed attempt at significant consolidation in the Irish oil distribution business is imminent.⁷

Maxol’s interest in the Target should be viewed in this context and its concern in this instance is to secure a business with sustainable long-term viability in preparation for an increase in competition in this area.”

⁴ Tom Chawke, as in footnote 1 above.

⁵ The remaining shareholders are Fergus Chawke (9%), Louise Chawke (9%), Mary Chawke (4%), Mary Chawke (9%), Paul Chawke (9%) and Karen Kemmy (9%).

⁶ Applegreen and Topaz.

⁷ Media reports in relation to Topaz’s proposed take-over of Esso.



Third Party Submissions

13. No submission was received.

Competitive Analysis

14. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant markets.
15. Tom Chawke Trading operates one motor fuel retail filling station (i.e. a fuel forecourt)⁸ located in Castletroy, County Limerick, selling approximately 6 million litres of petrol and diesel per annum under the Texaco banner⁹ and a small amount of motor lubricants¹⁰.
16. Tom Chawke Trading also operates a convenience retail outlet in the same location under the Centra brand symbol¹¹, selling fresh and refrigerated food, convenience (confectionary, drinks and news), ambient groceries, and other items (flowers, lotto and miscellaneous) and also having an off licence¹².
17. Maxol has 129 branded motor fuel retail service stations in the State, 69 of which are owned by Maxol directly and operated under licence agreements and 60 of which are owned by independent dealers who have selected Maxol as their chosen brand and fuel supplier. Supply to these dealers occurs under solus supply agreements between Maxol and the relevant dealer with a maximum term of five years, at the end of which the dealer is free to switch supplier.
18. 117 of the Maxol branded service stations have associated convenience retail outlets. Maxol partners with MACE¹³ in the State and the outlets are supplied pursuant to a master supply agreement with Maxol¹⁴, or pursuant to individual supply agreements with each outlet.
19. Post-transaction, the fuel forecourt part of the target business will be operated under the Maxol brand and the current manager of the business will become the independent licensee. The convenience retail outlet part of the target business will continue to operate under the Centra brand symbol and will be supplied by Musgraves for a minimum term of [...] years¹⁵.
20. There are two minor horizontal overlaps in the activities of the parties within the State:
- i. with regard to the retail sale of motor fuel, primarily petrol and diesel, Tom Chawke Trading operates a Texaco branded fuel forecourt on the old Dublin Road in

⁸ A forecourt consisting of six pump islands (5x4, 1x6 and 1x2 hose pumps) with six storage tanks with a total storage capacity of 86,000 litres (58,000 litres unleaded and 28,000 litres diesel).

⁹ In accordance with the terms of an exclusive supply agreement with Valero Ireland Limited.

¹⁰ Generating turnover of €23,664.63, or 0.29% of its annual motor fuel turnover of €8.3 million.

¹¹ In accordance with the terms of a supply agreement with Musgrave Retail.

¹² The approximate ratio of the five categories of listed produce sold are [...] % respectively.

¹³ The MACE franchise is held by the BWG Group.

¹⁴ Maxol entered into a 5 year master agreement (effective from 1 January 2012) with BWG Foods in respect of the 'Mace Alliance' brand.

¹⁵ Maxol has entered into a co-branding agreement with Musgrave Limited which will last for [...] years.



Castletroy, approximately 1km from the centre of Castletroy and approximately 3km from the M7 motorway, outside Limerick. Tom Chawke Trading views its fuel prices to be influenced greatly by the pump prices at the Tesco fuel outlet, situated 10km away at Coonagh Shopping Centre and the new Applegreen filling station at Birdhill, County Tipperary, a distance of some 15km away. Within a radius of 15km from Tom Chawke Trading, there are 48 competing fuel retail outlets, of which six are Maxol branded¹⁶. Nationally, in 2013, Maxol held market shares of retail motor fuel, by volume and by number of sites, of 8.59% and 9%¹⁷ respectively; and

- ii. with regard to the Centra branded convenience retail outlet operated by Tom Chawke Trading, which makes up 42% of the turnover of Tom Chawke Trading in the last financial year, most, if not all, of the retail fuel outlets mentioned above, within a 15km radius of Tom Chawke Trading, have attached convenience retail outlets. In addition, there are nine different brands operating 20 competing stores within an 8km radius of Tom Chawke Trading¹⁸. Nationally, Maxol derives a very low level of turnover ([0-10]%) from retail convenience outlets.

21. In all of the above areas of overlap, there are a large and varied (in size) number of competitors whose presence will constrain the activities of the merged entity post-transaction. In addition, one of Maxol's competitors, Inver, has announced its intention to open a large¹⁹ new filling station (The Hurlers) almost across the road from the target business by 2017²⁰.
22. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

23. The proposed transaction contains covenants restricting the vendors from carrying on any business which competes with Tom Chawke Trading in County Limerick for a period of [zero to two] years following completion of the proposed transaction.
24. The vendors are also restricted from soliciting the custom of any existing customer or supplier of Tom Chawke Trading and/or offering employment to any existing employee of Tom Chawke Trading, for a period of [zero to two] years following completion of the proposed transaction.
25. The parties state that the covenants are necessary in a transaction of the nature of the proposed transaction, i.e. transferring a business as a going concern, in order to protect the full value of the business, goodwill and trade names being transferred and the parties view them to be fair and reasonable.
26. The Commission considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

¹⁶ Others include Topaz (14), Texaco (4), Esso (2), Amber (2), Inver (2), Gala Express (2), Applegreen (4), Tesco (1), Top (2), Great Gas (3) and independents (6).

¹⁷ Experian Catalist data from 2013, produced by Ireland's Forecourt & Convenience Retailer magazine in February 2014.

¹⁸ Including SuperValu, Dunnes Stores, Aldi, Lidl, Eurospar, Tesco, Centra, Mace and Spar.

¹⁹ Based on the size of tanks to be installed (4x40,000 litre tanks).

²⁰ <http://www.limerickleader.ie/news/business/business-news/limerick-petrol-station-development-given-green-light-1-6465638>



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Maxol Limited would acquire the entire issued share capital and thus sole control of Tom Chawke Trading Limited, 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

Gerald FitzGerald
Member
Competition and Consumer Protection Commission