



DETERMINATION OF MERGER NOTIFICATION M/17/020 – MAXOL/GREAT GAS (TURVEY)

Section 21 of the Competition Act 2002

Proposed acquisition by McMullan Bros., Limited, through its wholly-owned subsidiary Maxol Limited, of certain assets constituting a motor fuel service station currently operating under the Great Gas brand, located at Turvey Business Park, Turvey, Co. Dublin

Dated 10 May 2017

Introduction

1. On 11 April 2017, 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 acquisition (“the Proposed Transaction”) whereby McMullan Bros., Limited (“McMullan Bros”), through its wholly-owned subsidiary Maxol Limited (“Maxol”), would acquire sole control of a retail motor fuel service station which currently trades under the *Great Gas* brand, an associated forecourt convenience store which currently trades under the *Centra* brand and an adjacent food service outlet, all of which are located at Turvey Business Park, Turvey, Co. Dublin (collectively “the Target Assets”).

The Proposed Transaction

2. The Proposed Transaction involves the acquisition of the Target Assets which will involve the acquisition of the relevant business operations, assets and land and buildings from which the retail motor fuel service station, associated forecourt convenience store and adjacent food service outlet operate. The sellers of the Target Assets are Austin MacHale, Aaron MacHale and Gareth MacHale trading as The MacHale Partnership.
3. The Proposed Transaction is to be implemented pursuant to three contracts for the sale of (a) land and buildings at Turvey Business Park, Turvey, Co. Dublin, (b) specified assets,



and (c) the adjacent land (collectively, the “Agreements”) which were entered into by Maxol and the sellers of the Target Assets on 7 April 2017. Pursuant to the Agreements, McMullan Bros, through Maxol, is to acquire ownership and thus sole control of the Target Assets.

4. Following implementation of the Proposed Transaction, the retail motor fuel service station will be operated under the *Maxol* brand and the forecourt convenience store will operate under the *Centra* brand. The parties have informed the Commission that it is proposed that Maxol will choose an independent licensee to run the retail motor fuel service station and the forecourt convenience store. The adjacent food service outlet is currently operated by an unrelated third party under a lease agreement. The parties propose that the existing lease in relation to the food service outlet will remain in place post-transaction.

The Undertakings Involved

Maxol

5. Maxol is a subsidiary of Maxol Energy Limited (collectively “the Maxol Group”), which in turn is a wholly-owned subsidiary of McMullan Bros. McMullan Bros was founded in 1920 and is a private limited company which is owned and controlled by the McMullan family. The other main subsidiaries of Maxol Energy Limited are Maxol Lubricants Limited, which is incorporated in the State, and Maxol Oil Limited which is incorporated in Northern Ireland.
6. Maxol was established in the State in 1920 by William McMullan, and markets a comprehensive range of oil and petroleum products to all sectors of the Irish economy, through its retail and lubricants divisions. Maxol’s primary business is in the provision of oil and petroleum products. These activities account for the vast majority [...]% of Maxol’s turnover and for [...]% of the turnover of the entire Maxol Group.
7. The Maxol Group’s network of retail motor fuel service stations consists of 237 branded motor fuel retail outlets throughout the island of Ireland. 139 of these outlets are located in the State and operated by Maxol under the following types of arrangement:



- a. 62 of the retail motor fuel service stations in the State are dealer-owned and dealer-operated (“DoDo”). The dealers in question have selected *Maxol* as their chosen brand and fuel provider under solus supply agreements¹ between Maxol and the relevant dealer; and
 - b. 77 of the retail motor fuel service stations in the State are company-owned and dealer-operated (“CoDo”). These retail motor fuel service stations are owned by Maxol and are generally operated under licence agreements by independent, locally-based business people.
8. For the financial year ended 31 December 2015, McMullan Bros’ worldwide turnover was approximately €569.8 million, of which approximately €[...] was generated in the State. For the same period, Maxol had turnover of approximately €[...], all of which was generated in the State.

The Target Assets

9. The Target Assets comprise two businesses, namely: a retail motor fuel service station currently operating under the *Great Gas* brand and a *Centra*-branded convenience retail outlet extending to approximately 170 square metres; and an additional, adjacent unit which is currently under lease to an unrelated third party. This additional unit is a food service outlet extending to approximately 70 square metres.
10. The sellers of the Target Assets currently own the land and buildings from which the retail motor fuel service station, associated forecourt convenience store and adjacent food service outlet operate. It is proposed that Maxol will acquire such land and buildings in addition to business operations of the Target Assets as part of the Proposed Transaction.
11. For the financial year ended 21 November 2015, the Target Assets’ turnover was approximately €[...], all of which was generated in the State.

¹ The solus supply agreements have a maximum term of 5 years, at the end of which the dealer is free to switch supplier.



Rationale for the Proposed Transaction

12. The notification states:

“Maxol is operating in an increasingly competitive market and is firmly committed to growing through acquisition and expansion. The arrival of Circle K in the Irish market, through the acquisition by Alimentation Couche-Tard Inc. of the Topaz business, which is estimated to have a 35% market share by volume, makes such a strategy imperative. Other players, such as TOP and Applegreen, have also demonstrated an intention to grow and take advantage of the country’s improving economic prospects.

In the last 5 years, Maxol has withdrawn from other sectors of the Irish oil market, most notably the supply of heating oil to residential customers and fuel oils to commercial concerns. It now concentrates almost exclusively on all aspects of forecourt convenience retailing, although it also has a company that markets lubricating oil throughout Ireland.”

Third Party Submissions

13. No submission was received.

Competitive Analysis

Horizontal Overlap

14. There is a horizontal overlap between the activities of the parties with respect to the retail sale of motor fuels (diesel (DERV), petrol and automotive lubricants) and the operation of forecourt convenience stores in the State. For the reasons set out below, the Commission considers that the Proposed Transaction will not substantially lessen competition for the retail sale of motor fuels and the operation of forecourt convenience stores in the State.

15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case, the Commission considers that there are no strong reasons to depart from its previous approach to market definition in relation to



the retail sale of motor fuels and the operation of forecourt convenience stores for the purpose of assessing the competitive effects of the Proposed Transaction.²

16. In previous determinations, the Commission has followed the approach to geographic market definition adopted by its predecessor, the Competition Authority, which previously found that there are local markets in relation to the retail sale of motor fuels, which vary in size depending on whether the retail motor fuels forecourt is located in an urban or a rural location (i.e., a radius of 2 miles/3.2km from a retail motor fuel forecourt in an urban location and a radius of 5 miles/8 km in a rural location).³
17. As stated above, the Target Assets are located in Turvey Business Park, Turvey, Co. Dublin, which is in a rural location. On this basis, the Commission identified a potential local market with a 5 mile/8 km radius around the Target Assets for the purpose of analysing the likely competitive impact of the Proposed Transaction. Using isochrone mapping software, 17 motor fuel service stations were identified as operating within a 5 mile/8 km radius of the Target Assets, representing 8 competing fascias/brands, as set out in Table 1 below. Post-transaction, there will be 7 fascias/brands in the potential local market where the Target Assets are located as the Great Gas brand will be replaced by Maxol.⁴

Table 1: Analysis of the retail motor fuel service stations which are located within a 5 mile/8 km radius of the Target Assets

| Operator | Service station address within a 5 mile/8 km radius | Estimated distance from Target Assets (km) |
|----------------------------|---|--|
| Target Assets Great Gas | Turvey Business Park, Turvey, Co. Dublin | - |
| Applegreen | M1 Lusk Northbound | 5 km |
| | M1 Lusk Southbound | 5 km |

² In relation to the operation of forecourt convenience stores, the Commission has on a number of occasions considered the retail grocery sector, which is comprised a wide spectrum of outlets. There is a large and varied (in size) number of competitors in the retail sector whose presence will constrain the activities of Maxol as an operator of forecourt convenience stores. The Commission therefore decided not to focus further on this potential market in this determination.

³ M/16/043 Petrogas Group Limited (Applegreen plc)/Certain Assets of M.K.M.H Limited. Please see <http://www.ccpc.ie/enforcement/mergers/merger-notices/m16043-petrogas-applegreen-certain-assets-mkmh-limited>.

⁴ The Target Assets will be operated as a CoDo instead of a DoDo, i.e., the Target Assets will be company-owned and will be operated by an independent dealer (by a licensee appointed by Maxol).



| | | |
|-------------------|----------------------------------|------|
| Topaz | Montgorry, Swords | 6 km |
| | Lusk Round Tower Service Station | 4 km |
| | Exit 5 M1 Balbriggan | 8 km |
| | 53-61 North Street, Swords | 5 km |
| | Dublin Airport | 8 km |
| | Centra River Valley | 6 km |
| | Dublin Road, Swords | 7 km |
| | Westview Filling Station | 1 km |
| Esso ⁵ | Blake's Cross | 2 km |
| | Main Street, Malahide | 8 km |
| Campus | Mace, Naul Road, Ballyboughal | 8 km |
| Texaco | Airside, Swords | 7 km |
| | Whitestown Road, Rush | 8 km |
| Maxol | Abbey Service Station, Donabate | 4 km |
| Top | Main Street, Rush | 8 km |

Source: The distances between filling stations are measured using an isochrone analysis and on information provided by the parties

18. There will remain 6 competitors in the potential local market where the Target Assets are located whose presence will constrain the activities of Maxol in the retail sale of motor fuels (diesel (DERV), petrol and automotive lubricants) post-transaction.
19. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition for the retail sale of motor fuels in the potential local area where the Target Assets are located.

Vertical Relationship

20. Maxol is involved in the wholesale distribution of motor fuels to DoDo and CoDo retail motor fuel service stations in the State. All of the Target Asset's current fuel requirements are met and supplied by Great Gas Petroleum (Ireland) Limited. Post-transaction, the Target Asset's fuel requirements will be incorporated into Maxol's fuel

⁵ In 2015, Topaz acquired the Esso network of filling stations in a merger which was cleared by the CCPC (M/15/020).



supply arrangements. Also, there are a number of significant competitors to Maxol, such as Topaz, Valero (Texaco) and Applegreen, which are currently active in supplying refined fuel products to other retailers in the local area where the Target Assets are located. Therefore, the Commission considers that Maxol would not have the ability to engage in a foreclosure strategy with respect to wholesale suppliers of refined fuel products who compete with Maxol for the wholesale distribution of motor fuels to DoDo and CoDo retail motor fuel service stations in the local area where the Target Assets are located. For this reason, the Commission considers that the Proposed Transaction will not result in any vertical foreclosure concerns in the local area where the Target Assets are located.

Conclusion

21. 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

22. No ancillary restraints were notified.



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 McMullan Bros., Limited, through its wholly-owned indirect subsidiary, Maxol Limited, would acquire sole control over certain assets, constituting a retail motor fuel service station an associated forecourt convenience store and adjacent land, situated at Turvey Business Park, Turvey, Co. Dublin, 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

Patrick Kenny
Member
Competition and Consumer Protection Commission