



DETERMINATION OF MERGER NOTIFICATION M/17/053 - TOP/H2 BLAKES

Section 21 of the Competition Act 2002

Proposed acquisition by Tedcastles Oil Products Unlimited Company of sole control of certain assets of H2 Blakes Limited

Dated 28 September 2017

Introduction

1. On 13 September 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 transaction (the “Proposed Transaction”) whereby Tedcastles Oil Products Unlimited Company (“TOP”), a wholly-owned indirect subsidiary of Hillingdon Investment Company Unlimited Company (“Hillingdon”)¹ would acquire sole control of certain assets of H2 Blakes Limited (“H2 Blakes”), constituting a retail motor fuel service station and associated forecourt convenience store with an adjacent field, located at Blakes Cross, Coldwinters, Lusk, Co. Dublin (the “Target Assets”).

The Proposed Transaction

2. The Proposed Transaction involves the acquisition by TOP, of sole control of the Target Assets pursuant to an asset purchase agreement (“the Agreement”) to be entered into between TOP and H2 Blakes². At the date of notification, the parties had not yet executed the Agreement. Nonetheless, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purpose of section 18(1A)(b)(ii) of the Act.

¹ Hillingdon is ultimately owned by the Reihill Family.

² The parties submitted to the Commission together with the notification, a copy of a heads of agreement between TOP and H2 Blakes dated 3 May 2017.



3. The Target Assets are currently owned by H2 Blakes.³ Following completion of the Proposed Transaction, the Target Assets will be solely controlled by TOP.

The Undertakings Involved

TOP

4. TOP, a private unlimited company incorporated in the State, is a wholly-owned subsidiary of Tedcastles (Group) Unlimited Company, with its ultimate parent company being Hillingdon. TOP has its registered office at Promenade Road, Dublin 3.
5. TOP is involved in the fuel industry in the State, with its main activity being the importation, distribution (to non-retail and retail customers) and retail sale of motor fuels and automotive lubricants. This includes the operation of a fuel terminal in Dublin Port and of a network of 21 company-owned and company-operated (“CoCo”) oil distribution depots.
6. At the date of notification, TOP had a network of 192 retail motor fuel service stations in the State, which can be divided into three categories:
 - a) [...] CoCo retail motor fuel service stations;
 - b) [...] company-owned and dealer-operated (“CoDo”) retail motor fuel service stations; and
 - c) [...] dealer-owned and dealer-operated (“DoDo”) retail motor fuel service stations, whereby TOP supplies motor fuel to each of these independent dealers under a solus supply agreement between TOP and the relevant dealer.
7. For the financial year ending 31 March 2016, Hillingdon had a worldwide turnover of approximately €[...], of which approximately €[...] was generated in the State.

H2 Blakes

8. H2 Blakes is a private limited company registered in the State, with its registered office at Unit 1 Celtic Business Park, Clieveragh, Listowel, Co. Kerry. H2 Blakes is involved in the retail supply of motor fuels and automotive lubricants and the

³ The issued ordinary voting share capital of H2 Blakes is held by S.O.F.A Properties Limited and the issued ordinary voting share capital of S.O.F.A. Properties Limited is held by two individuals, being Caroline Ruth Hoban and Sean Heaphy.



operation of an associated forecourt convenience store at Blakes Cross, Coldwinters, Lusk, Co. Dublin.

9. For the financial year ending 31 December 2016, H2 Blakes had a worldwide turnover of approximately €[...], all of which was generated in the State.

The Target Assets

10. The Proposed Transaction involves the acquisition by TOP of sole control of the Target Assets. The Target Assets consist of a retail motor fuel service station, comprising a motor fuel (diesel (DERV), petrol and automotive lubricants) forecourt, which is operated under the *Texaco* brand, and an associated forecourt convenience store with an adjacent field.
11. All of the turnover of H2 Blakes, referred to in paragraph 9 above, was generated by the Target Assets.
12. The parties informed the Commission that TOP proposes to operate the Target Assets on a CoCo basis following completion of the Proposed Transaction.

Rationale for the Proposed Transaction

13. The notification states:

“TOP considers that the Proposed Transaction presents it with the opportunity to enhance its presence in the Lusk area where the Target Business is active.”

Third Party Submissions

14. No submission was received.

Competitive Analysis

Horizontal Overlap

15. 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 associated 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 associated forecourt convenience stores in the State.



16. 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 associated forecourt convenience stores for the purpose of assessing the competitive effects of the Proposed Transaction.
17. In previous determinations⁴, 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/8km in a rural location).
18. As stated above, the Target Assets are located at Blakes Cross, Coldwinters, Lusk, Co. Dublin, which is in a rural location. On this basis, the Commission identified a potential local market within a 5 mile/8km radius around the Target Assets. Within a 5 mile/8km radius of the Target Assets, there are at least 15 retail motor fuel service stations, representing 7 competing fascia, as set out in Table 1 below. Following implementation of the Proposed Transaction, the number of fascia in the potential local market within a 5 mile/8km radius around the Target Assets will remain unchanged.⁵

⁴ See, for example, the Commission's determination in M/17/039 – TOP / KEC (Kinsale and Carrigaline businesses) which can be accessed at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/07/M.17.039-TOP-KEC-Kinsale-and-Carrigaline-businesses-1.pdf> and the Commission's determination in M/17/019 – Petrogas (Applegreen)/certain assets of PR Reilly Limited which can be accessed at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/Public-Determination-of-M.17.019-Petrogas-Topaz-Howth-Road-Killester.pdf>.

⁵ Following implementation of the Proposed Transaction, the Target Assets will be operated as a CoCo by TOP.

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

| Brand | Service station address within a 5 mile/8 km radius | Estimated distance from Target Assets (km) using isochrone |
|---------------------------|---|--|
| Target Assets (Texaco) | Blakes Cross, Coldwinters, Lusk | - |
| TOP | WMA Service Station ⁶ | 6.85 |
| Applegreen | M1 Lusk Motorway Service Area Northbound ⁷ | 4.34 |
| | M1 Lusk Motorway Service Area Southbound ⁸ | 4.51 |
| | Applegreen M1, Balbriggan | 7.19 |
| | North Street, Swords | 4.61 |
| Maxol | Junction 4, Turvey | 0.95 |
| | Abbey Service Station | 3.22 |
| Topaz | Westview Filling Station | 1.59 |
| | Swords Service Station | 5.65 |
| | Centra River Valley | 6.34 |
| Texaco | Weldon's Garage | 6.32 |
| | Swords Service Station | 6.76 |
| Esso | Island OTR | 6.24 |
| Unbranded | Round Tower Service Station | 2.67 |
| Campus | Ballyboughal | 5.15 |

Source: The Commission, based on own estimation and information provided by the parties

⁶ This retail motor fuel service station and associated convenience store is neither owned nor operated by TOP. It is a dealer owned, dealer operated site which operates under the TOP brand. TOP supplies motor fuel to the dealer under a solus supply agreement between TOP and the dealer.

⁷ In email correspondence with the Commission dated 20 September 2017, TOP noted that they have an equity interest in Superstop Limited and that it is equally owned by TOP and Applegreen plc. Superstop Limited was granted a licence from Transport Infrastructure Ireland to design, build, finance, operate and maintain the first six motorway service areas in Ireland. Two of these motorway service areas are located on the M1 in Lusk, Co. Dublin. Applegreen operates both of these motorway sites in Lusk and they are both Applegreen branded. TOP operates the Heavy Goods Vehicle Fuelcard areas at these motorway service areas in Lusk and also supplies fuel to the sites.

⁸ See footnote 7.



19. Following implementation of the Proposed Transaction, a large number of competitors, varied in size, will remain in the potential local market within a 5 mile/8km radius around the Target Assets. At least 7 competing brands will constrain the activities of TOP in the retail sale of motor fuels (diesel (DERV) and petrol and automotive lubricants) and the operation of associated forecourt convenience stores following completion of the Proposed Transaction.
20. In light of the above, the Commission considers that the Proposed Transaction will not lead to a substantial lessening of competition in the potential market for the retail sale of motor fuels and the operation of associated forecourt convenience stores within a 5 mile/8 km radius of the Target Assets.

Vertical Relationship

21. TOP is involved in the wholesale distribution of motor fuels to DoDo, CoCo and CoDo retail motor fuel service stations in the State. TOP supplies motor fuels to the following three retail motor fuel service stations operating within an 8 km radius of the Target Assets: the WMA service station located in Rush, Co. Dublin; the M1 Lusk Motorway Service Area Northbound; and the M1 Lusk Motorway Service Area Southbound.
22. Currently, TOP does not supply motor fuels to the Target Assets⁹. TOP has informed the Commission that it will supply the Target Assets with motor fuels following completion of the Proposed Transaction.¹⁰ However, the Commission considers that this will not raise vertical competition concerns because there are a number of competitors of TOP, such as Topaz Energy Group Limited, Applegreen Public Limited Company and Maxol Limited, which are currently active in the supply of motor fuels to retailers competing with the Target Assets and located within a radius of 8 km of the Target Assets.

⁹ Valero Energy (Ireland) Limited currently supplies the Target Assets with motor fuels under the *Texaco* brand.

¹⁰ TOP informed the Commission of this in email correspondence dated 20 September 2017.



23. For the above reasons, the Commission considers that the Proposed Transaction will not result in any vertical foreclosure concerns.

Conclusion

24. 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

25. The parties provided the Commission with a copy of the draft Agreement to be entered into between H2 Blakes and TOP, which contains a number of restrictive obligations on H2 Blakes¹¹. These include non-compete and non-solicitation obligations restricting H2 Blakes, for a period of two years commencing on completion of the Proposed Transaction, from competing with the Target Assets within a specified geographic area in which the Target Assets currently carry on business and from soliciting existing customers and employees of the Target Assets. The duration of the restrictions does not exceed the maximum duration acceptable to the Commission¹². The Commission considers the restrictions, in the form contained in the draft Agreement reviewed by the Commission, to be directly related to and necessary for the implementation of the Proposed Transaction.

¹¹ The parties provided the Commission with a draft of the Agreement on 20 September 2017.

¹² In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



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 Tedcastles Oil Products Unlimited Company, a wholly-owned indirect subsidiary of Hillingdon Investment Company Unlimited Company, would acquire sole control of certain assets of H2 Blakes Limited, constituting a retail motor fuel service station and associated forecourt convenience store with an adjacent field, which are situated at Blakes Cross, Coldwinters, Lusk 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