

DETERMINATION OF MERGER NOTIFICATION M/19/047 - DCC (CERTAS ENERGY)/MOTOR FUEL SERVICE STATIONS OF TESCO

Section 21 of the Competition Act 2002

Proposed acquisition by DCC plc, through Certas Energy Ireland Limited, of control and operation of the 22 motor fuel service stations in the State owned by Tesco Ireland Limited for a period of up to [...] years.

Dated 03 February 2020

Introduction

1. On 20 December 2019, 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 whereby DCC plc (“DCC”), through Certas Energy Ireland Limited (“Certas”), will control and operate the 22 motor fuel service stations in the State which are currently owned and operated by Tesco Ireland Limited (“Tesco”) (the “Target Assets”) for a period of up to [...] years (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to an operating agreement dated 13 December 2019 between Tesco, Certas [...] ¹ (the “Agreement”).
3. Pursuant to the Agreement, Certas would take over the day-to-day operation of the Target Assets (i.e., pricing, fuel supply, and a limited range of ancillary services) [...]. Tesco branding at the Target Assets will be replaced by the branding of a DCC marque. The Agreement does not provide that Certas would take over the operation of any convenience store associated with or adjacent to the Target Assets. [...].

¹ [...].



4. Following completion of the Proposed Transaction, DCC, through Certas, will control and operate the Target Assets for a period of up to [...] years. The parties informed the Commission that, [...].

The Undertakings Involved

The Acquirer – DCC/Certas

5. DCC is a public limited company registered in the State and is listed on the London Stock Exchange. DCC is the parent company of an international sales, marketing and support services group which is organised and managed in four separate business divisions: LPG, Retail & Oil, Healthcare and Technology, each of which is focused on its specific market sectors.²
6. Certas is a private company limited by shares registered in the State. It is a wholly-owned indirect subsidiary of DCC and forms part of DCC's Retail & Oil business division.
7. DCC, through its wholly-owned subsidiary, Emo Oil Limited, operates 21 unmanned³ company-owned, company-operated ("CoCo") motor fuel service stations in the State. DCC also operates 5 dealer-owned, company-operated ("DoCo") motor fuel service stations in the State, and supplies a further 54 dealer-owned, dealer-operated ("DoDo") motor fuel service stations in the State. DCC operates its motor fuel service stations under the "Emo" and "Great Gas" brands. In addition, DCC is involved in the retail sale of home heating oil as well as the sale of commercial fuels (e.g., for the farming, haulage, education, healthcare, construction, office and manufacturing sectors) through its "Emo" brand in the State.
8. For the financial year ended 31 March 2019, DCC's worldwide turnover was approximately €15.23 billion, of which approximately €849.8 million was generated in the State.

² See <https://www.dcc.ie/about-us>.

³ This refers to motor fuel service stations where the customer, rather than a station attendant, operates the fuel pump and pays at the pump.

The Target Assets

9. The Target Assets consist of 22 motor fuel service stations in the State, the locations of which are set out in Table 1 below. The Target Assets are currently owned (in freehold and leasehold) and operated by Tesco. The Target Assets are located, for the most part, near *Tesco*-branded supermarkets in the State. Tesco will retain legal ownership of the Target Assets following completion of the Proposed Transaction.

Table 1: Target Assets – List of Motor Fuel Service Stations

	Location of Tesco's Motor Fuel Service Stations
1	Bailieborough Superstore at Bailieborough, Co. Cavan.
2	Finglas Clearwater Extra at Clearwater Shopping Centre, Finglas, Dublin 11.
3	Dundrum Superstore at Dundrum Town Centre, Dundrum, Dublin 16.
4	Clarehall Extra at Malahide Road, Clarehall, Dublin 17.
5	Ballinasloe Superstore at Harbour Road, Ballinasloe, Co. Galway.
6	Killarney Park Superstore at Deerpark Retail Park, Killarney, Co. Kerry.
7	Maynooth Extra at Carton Retail Park, Maynooth, Co. Kildare.
8	Coonagh Superstore at Coonagh Cross, Limerick.
9	Dundalk Extra at Dublin Road, Dundalk, Co. Louth.
10	Drogheda Extra at Drogheda Retail Park, Donore Road, Rathmullen, Co. Meath.
11	Claremorris Superstore at Old Knock Road, Claremorris, Co. Mayo.
12	Edenderry Superstore at Dublin Road, Edenderry, Co. Offaly.
13	Tullamore Square Extra at Portarlinton Road, Tullamore, Co. Offaly.
14	Cashel Superstore at Cahir Road, Cashel, Co. Tipperary.
15	Clonmel Extra at Powerstown Centre, Clonmel, Co. Tipperary.
16	Ardkeen Superstore at Ardkeen Retail Park, Farronshoneen, Waterford.
17	Ballybeg Superstore at Ballybeg Link Road, Ballybeg, Waterford.
18	Tramore Superstore at Summerhill, Tramore, Co. Waterford.
19	Mullingar Superstore at Ashe Road, Mullingar, Co. Westmeath.
20	New Ross Superstore at Bosheen Road, New Ross, Co. Wexford.
21	Wexford Extra at Distillery Road, Wexford.



22	Arklow Extra at Arklow Square, Wexford Road, Arklow, Co. Wicklow.
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10. For the financial year ended 23 February 2019, the Target Assets' turnover was approximately €[...] million,⁴ all of which was generated in the State.

The Vendor - Tesco

11. Tesco is a major grocery retailer in the State which is ultimately owned and controlled by Tesco plc, a British multinational groceries and general merchandise retailer with operations in Britain, the State and across Europe and Asia. Tesco also provides retail motor fuel services and retail mobile telecommunications services in the State.
12. For the financial year ended 23 February 2019, Tesco's worldwide turnover was approximately €[...], of which €[...] was generated in the State.

Rationale for the Proposed Transaction

13. The parties state the following in the notification:

"The Proposed Transaction aligns with DCC's strategy to expand its retail motor fuel service station business.

From Tesco's perspective,[...]"

Third Party Submissions

14. No submission was received.

Competitive Analysis

Horizontal Overlap

⁴ Note this amount relates to motor fuel sales only and does not include retail sales from convenience stores on the basis that such stores do not form part of the Proposed Transaction.



15. There is a horizontal overlap between the activities of the parties with respect to the retail sale of motor fuels (diesel (DERV),⁵ petrol and automotive lubricants) in the State.

Market definition

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 for the purpose of assessing the competitive effects of the Proposed Transaction.
17. In previous determinations, the Commission has followed the approach to geographic market definition adopted by its predecessor, the Competition Authority (the “Authority”), which found that there were potential local markets in relation to the retail sale of motor fuels. The Authority and the Commission analysed local markets, which vary in size depending on whether the retail motor fuel service station is located in an urban or a rural location (i.e., a radius of 3.2km from a retail motor fuel service station in an urban location and a radius of 8km in a rural location). For purposes of assessing the Proposed Transaction, the Commission has followed the same approach and used isochrone analysis as a screening method to identify both the local geographic markets and potential competition concerns.⁶

Competitive Assessment

18. 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 in the State both at the national level and in local areas.
19. At the national level, the Target Assets consist of 22 motor fuel service stations as detailed in Table 1 above. There are currently an estimated 1,787 service stations in

⁵ “Diesel Engine Road Vehicle” – this refers to road diesel fuel intended for use in transport and passenger vehicles.

⁶ See, for example, M/17/011 – Maxol/Melia’s Harold’s Cross, available at <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m17011-maxolmelias-harolds-cross/>



total operating in the State.⁷ DCC has an estimated share of approximately [0-5]% by volume of fuel sold and [0-5]% by number of sites in the supply of retail motor fuel in the State. The corresponding figures for Tesco are [0-5]% and [0-5]%, respectively.⁸ Therefore, considering the relative low market shares of the Parties, the Commission considers that the Proposed Transaction will not substantially lessen competition for the retail sale of motor fuels at the national level.

Isochrone Analysis for Local Markets

20. Using isochrone analysis for each of the Target Assets and applying the 8km radius, as appropriate in a rural setting, 15 of the 22 motor fuel service stations, which are located in rural settings, which comprise the Target Assets give rise to no local overlap between the parties. In relation to each of those 15 motor fuel service stations, the closest DCC CoCo or DoCo site is outside the rural radii for local market overlap analysis.
21. The Commission next applies a narrower 3.2km radius, as appropriate in an urban setting, to the 7 motor fuel service stations which are located in an urban setting. 4 of these motor fuel service stations give rise to no local overlap between the Parties whereas 3 of these motor fuel service stations are situated in locations within a 3.2km radius of a DCC CoCo or DoCo site. These 3 motor fuel service stations are located at:
 - i. Ardkeen Superstore, Ardkeen Retail Park, Farronshoneen, Waterford (the “Ardkeen Site”),
 - ii. Ballybeg Superstore, Ballybeg, Ballybeg Link Road, Waterford (the “Ballybeg Site”), and
 - iii. Mullingar Superstore, Ashe Road, Mullingar, Co. Westmeath (the “Mullingar Site”).

⁷ Source: Provided by the parties based on Experian Catalist February 2019 IFCR Magazine.

⁸ Source: Provided by the parties based on Experian Catalist February 2019 IFCR Magazine.



22. Therefore, using isochrone analysis and applying the 3.2km radius, as appropriate in an urban setting, the Commission considers that these 3 sites each have an overlap with a DCC retail motor fuel site, as shown in Table 2 below.
23. In particular, DCC has one CoCo site in Waterford city which is located approximately 1.5 km away from the Ardkeen Site and 2.5 km away from the Ballybeg Site. DCC also has one DoCo site in Mullingar which is located approximately 1.3km from the Mullingar Site.
24. The Commission has carried out individual competitive analyses for each of the Ardkeen Site, the Ballybeg Site and the Mullingar Site and has identified the following third party competitors in respect of each:
- In relation to the Ardkeen Site, there are also 2 Circle K stations, 2 Maxol stations, 2 Texaco stations and 1 Applegreen station within the 3.2km radius.
 - In relation to the Ballybeg Site, there are also 2 Circle K stations, one Maxol station and 1 Texaco station within the 3.2km radius.
 - In relation to the Mullingar Site, there are also 2 Circle K stations, 2 TOP stations, 1 Maxol station, 1 Texaco station and 1 Applegreen station within the 3.2km radius.
25. Following implementation of the Proposed Transaction, the number of brands of retail motor fuel service stations within a 3.2km radius of each of these three Target Asset sites will change:
- from 6 to 5 for the Ardkeen Site,
 - from 5 to 4 for the Ballybeg Site, and
 - from 7 to 6 for the Mullingar Site.

In light of this, the Commission considers that there will remain sufficient competing brands that will continue to exert a competitive constraint on DCC following

implementation of the Proposed Transaction in respect of each of these three Target Asset sites. A summary of this analysis is given at Table 2 below.

Table 2: Analysis of the retail motor fuel service stations which are located within a radius of 3.2km of the Target Asset sites where there is competitive overlap between DCC and the Target Assets.

Target Asset site	DCC site (distance from Target Asset site)	Other Brands within radius (number of stations)
Ardkeen Site	Great Gas, Killure Road, Waterford (1.5km)	Circle K (2), Maxol (2), Texaco (2) Applegreen (1),
Ballybeg Site	Great Gas, Killure Road, Waterford (2.5km)	Circle K (2), Maxol (1), Texaco (1)
Mullingar Site	Great Gas, Lynn Road Mullingar (1.3km)	Circle K (2), TOP (2), Maxol (1), Applegreen (1) Texaco (1)

Source: The Commission based on information provided by the parties in the notification.

26. 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 areas where the parties overlap.

Vertical Relationship

27. Tesco currently purchases motor fuels for the Target Assets through a wholesale agreement with [...]. Following implementation of the Proposed Transaction, DCC will supply the Target Assets with motor fuel products. Given that both Tesco and DCC have relatively small market shares nationally in the retail motor fuels market, the Commission does not consider that the Proposed Transaction will result in foreclosure of DCC's competitors in either the upstream wholesale market or the downstream retail market.
28. Furthermore, there are currently a number of significant competitors of DCC at both the wholesale and retail level, such as Circle K, TOP, Maxol, Applegreen and Texaco. These competitors are expected to continue to exert a competitive constraint on DCC following the completion of the Proposed Transaction.



29. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

30. 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

31. The Agreement contains a number of restrictive obligations on the Parties, including a noncompete obligation. [...] the parties subsequently decided to withdraw their request that the non-compete obligation in the Agreement be considered by the Commission [...]. Such obligation is therefore not addressed further in this Determination and will not benefit from the protection offered by sections 4(8) and 5(3) of the Act.



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 DCC plc, through Certas Energy Ireland Limited, will control and operate the 22 motor fuel service stations in the State which are currently owned and operated by Tesco Ireland Limited for a period of up to [...] years 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