



DETERMINATION OF MERGER NOTIFICATION M/16/043 - PETROGAS GROUP LIMITED (APPLEGREEN PLC) / CERTAIN ASSETS OF M.K.M.H. LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by Applegreen plc, through Petrogas Group Limited, of Certain Assets of M.K.M.H. Limited

Dated 4 October 2016

Introduction

1. On 2 September 2016, in accordance with section 18(1) 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 Applegreen plc (“Applegreen”), through its wholly-owned indirect subsidiary, Petrogas Group Limited (“Petrogas”), would acquire sole control over certain assets - namely, a retail fuel service station (i.e. motor fuel forecourt) and associated convenience store - which currently trade as ‘Spar Sallins Road’ (collectively “the Target Assets”) from M.K.M.H. Limited (“the Vendor”).

The Proposed Transaction

2. On 10 August 2016, Petrogas and the Vendor entered into an agreement for lease (“the Agreement”) in relation to the Target Assets. Pursuant to the Agreement, it is intended that Petrogas will acquire a long-term leasehold interest in the Target Assets, which comprise a motor fuel forecourt and associated retail convenience store located on Sallins Road in Naas, Co. Kildare, and which currently trade as ‘Spar Sallins Road’. Following implementation of the proposed transaction, the Target Assets will be under the sole control of Petrogas.

The Undertakings Involved

Petrogas

3. Petrogas is a private limited company registered in the State, with its registered office located at Block 17, Joyce Way, Parkwest, Dublin 12. The main activity of Petrogas in the State is the retail sale of motor fuels through a network of retail fuel service stations across the country, mainly under the *Applegreen* brand.



Applegreen

4. Applegreen is the ultimate parent of Petrogas. Applegreen is a public limited company registered in the State. Applegreen and its subsidiaries also operate motor fuel forecourts outside of the State, trading predominantly under the *Applegreen* brand, in the UK and in the USA¹.
5. As at 31 December 2015², the network of 133 motor fuel forecourts operated and/or supplied by Applegreen in the State can be divided into three groupings:
 - a. 77 company-owned and company-operated (“CoCo”) sites, which generally sell retail motor fuel along with a convenience store and one or two food offerings;
 - b. 23 service area sites, which are larger than normal retail fuel service stations, located in areas where there is heavy traffic or in urban areas. They include a large area with ample parking and generally sell fuel (i.e. truck filling stations in addition to retail fuel for cars) along with a convenience store and three or four food offerings. Eight of these service area sites are motorway service areas, which are located either on or adjacent to a motorway.³
 - c. 33 dealer-owned and dealer-operated (“DoDo”) retail service stations, whereby Applegreen provides motor fuel to the independent dealers under solus supply agreements between Applegreen and the relevant dealer. At these stations, the *Applegreen* brand is used on the pumps and forecourt canopy, whilst the convenience store offering and revenue remain under the control of the dealer.
6. All of Applegreen’s CoCo service stations have retail convenience stores offering grocery goods, coffee and hot food. These include franchises operated by Applegreen in respect of the following brands: *Burger King*, *Costa Coffee*, *Greggs*, *Chopstix* and *Subway*.
7. In the financial year ended 31 December 2015, Applegreen had a worldwide turnover of approximately €1 billion, of which approximately €623 million was generated in the State.

The Vendor

8. The Vendor is a private limited company registered in the State and has two individual directors and shareholders⁴. Its registered office is located at Spar, Sallins Road, Naas, Co. Kildare.
9. The Vendor is a property holding company that owns the freehold interest in the Target Assets.

¹ As at 31 December 2015, Applegreen operated 62 service stations in the UK and 5 in the USA.

² Applegreen Annual Report 2015 (<http://www.portalchemistry.com/Report.asp?arYear=2015&sharecode=APGN.L>).

³ Six of these sites, such as for example on the M1 at Lusk, on the M1 at Castlebellingham and on the M4 at Enfield, are operated by Superstop Limited (“Superstop”) pursuant to a 25-year concession from the National Roads Authority. Superstop is indirectly owned by Petrogas, Tedcastle Oil Products and Pierse Contracting, each of which has a 33.3% indirect stake in Superstop.

⁴ Mark Carroll and John McCann jointly own and control the Vendor.



The Target Assets

10. It is proposed that Applegreen, through Petrogas, will acquire sole control over the Target Assets which are located at Sallins Road, Naas, Co. Kildare. The Target Assets consist of the leasehold interest in the retail fuel service station, comprising the motor fuel (road diesel (DERV) and petrol) forecourt, the sale of automotive motor lubricants, as well as the operation of a car wash and a convenience store.
11. The motor fuel forecourt currently trades as 'Spar Sallins Road' and operates as a Topaz-branded forecourt, with an associated Spar-branded convenience store.
12. In the year ended 31 December 2015, turnover attributable to the Target Assets was approximately €[...], the entirety of which was generated in the State.

Rationale for the Proposed Acquisition

13. The notification states:

"The commercial rationale for the Proposed Transaction is to extend Applegreen's network of retail service stations in line with Applegreen's growth strategy, while continuing to implement Applegreen's strategy of offering customers a clear value proposition in three key areas: 'Low Fuel Prices Always' in fuel, 'Better Value Always' in shop and 'Quality Food and Beverages'.

Following completion of the Proposed Transaction, Applegreen intends to bring the Target retail service station under the Applegreen brand."

Third Party Submissions

14. No submission was received.

Competitive Analysis

15. There are two horizontal overlaps in the activities of the parties in the State:
 - a. The retail sale of motor fuel (diesel (DERV) and petrol) and automotive lubricants. The Target Assets consist of a Topaz branded motor fuel forecourt, which is located on Sallins Road in Naas, Co. Kildare. Nationally, Applegreen is the fifth largest supplier of motor fuel, with an estimated share of supply of retail motor fuel in the State, by volume and by number of sites, of 8% and 5% respectively, in 2015⁵; and
 - b. The operation of forecourt convenience stores (retail grocery stores associated with retail service stations). The Target Assets consist of a Spar-branded retail convenience store operated as part of the fuel forecourt. Nationally, Applegreen has a network of retail convenience stores associated with its network of fuel forecourts, with an estimated share of forecourt convenience

⁵ Source: Experian Catalyst Fuel Report 2016.



stores in the State, by number of sites and by shop sales, of 4% and 8% respectively, in 2015⁶.

16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is defined narrowly or more broadly. For the purpose of the competitive analysis, the Commission considered the narrowest possible relevant product markets, i.e., the retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants, with associated forecourt convenience stores.
17. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant geographic market is defined as local, regional or national. However, in order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the narrowest possible geographic market, i.e., the local area (within a defined radius – see paragraphs 19-21 below) in which the motor fuel service station comprising the Target Assets is located.
18. In relation to **forecourt convenience stores**, Applegreen and the Target Assets are involved in retail sales through convenience stores which, while forming part of their motor fuel retail service stations, are not considered to be part of the same product market. The Commission has on a number of occasions considered the retail grocery sector, which is comprised of a wide spectrum of outlets, being: (i) large supermarkets known as "multiples" (such as Dunnes Stores, SuperValu and Tesco, as well as Aldi and Lidl, who are sometimes referred to as 'discounters'), (ii) medium-sized shops which are usually part of a "symbol" group (such as Centra, Londis and Spar) and (iii) smaller stores, categorised as "convenience" stores (such as Daybreak, MACE and smaller Londis and Spar stores and independent retailers). Forecourt convenience stores fall within the third category. There is a large and varied (in size) number of competitors in the retail sector whose presence will constrain the activities of the merged entity as an owner and operator of forecourt convenience stores post-transaction. The Commission has therefore decided not to focus further on this potential market in this Determination.
19. In relation to the **retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants**, the Commission's predecessor, the Competition Authority,⁷ has previously found that there is a localised motor fuel retail market, delineated by isochrones for local markets which differentiate between urban and rural settings (i.e., 2 miles/3.2 kilometres ("km") radius from a retail forecourt in an urban setting and 5 miles/8km in a rural setting).⁸ The former Competition Authority in subsequent decisions used isochrone analysis as a screening method to identify potential competition concerns,

⁶ Source: Experian Catalyst Fuel Report 2016.

⁷ On 31 October 2014, in accordance with sections 38 and 39 of the Competition and Consumer Protection Act 2014, the Competition Authority was dissolved and all of the functions vested in the Competition Authority immediately before that date became vested in the Commission.

⁸ M/06/044 – Topaz/Statoil Ireland; Competition Authority, *Annual Report 2006*, pp. 30-31.



focusing on a radius of 5 miles/8km from any target retail fuel forecourt.⁹ Although the former Competition Authority did not come to any definitive conclusion in respect of the relevant geographic market for retail sales of automotive lubricants, it commented that given that the retail distribution of both motor fuels and automotive lubricants occur through retail service stations, it would be reasonable to suggest that competition in the retail distribution of automotive lubricants is local in nature.¹⁰

20. Using these isochrones (i.e., a 5 mile/8km radius for the site on Sallins Road, Naas, Co. Kildare, which is in a rural setting), the Commission identified a potential local market for the motor fuel service station constituting the Target Assets. Within a 5 mile/8km radius of the Target Assets, there are at least five competing facias, as set out in Table 1 below.

Table 1: Analysis of the service stations which are located within a 5 mile/8 kilometre radius of the Target Assets and which are engaged in retail sales of motor fuels and automotive lubricants

Operator	Service station address within a 5 mile/8 km radius	Estimated market share by volume ¹¹
Target Assets	Sallins Road, Naas	[6-10]%
Applegreen	Caragh, Naas	[1-5]%
	Newbridge Road, Naas	[6-10]%
Maxol	Naas Dual Carriageway Westbound, Kill	[6-10]%
	Sallins Road, Naas	[6-10]%
	The Crossings, Railway Terrace, Naas	[6-10]%
	Kilcullen Road, Naas	[1-5]%
	Celbridge Road, Clane	[1-5]%
Topaz	Naas Dual Carriageway Eastbound, Kill	[1-5]%
	Naas Road, Kill	[11-15]%
	The Woods, Clane	[6-10]%
Tedcastles Oil Products ("TOP")	Newhall, Naas	[26-30]%
Independent	Sallins Road	[1-5]%
Naas Oil	Monread Commercial Park, Naas	[1-5]%

⁹ See, for example, M/09/008 – Chevron/Texoil and M/15/019 – TOP/The Ashbourne Oil Co.

¹⁰ M/09/008 – Chevron/Texoil. See also the Commission's decision in M/16/009 – Tedcastles/Sirio Retail & Sirio Property.

¹¹ Source: The Commission, based on motor fuel volumes in 2014 from Experian Catalist data. Percentage figures are rounded to the nearest whole number.



21. Post-transaction, Applegreen will have an estimated market share for the retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants within a 5 mile/8km radius of the Target Assets on Sallins Road in Naas, Co. Kildare of approximately [11-15]% by volume. Post-transaction, Applegreen will face competition from four competing fascias/brands, being Maxol (with a market share by volume of approximately [31-35]%), TOP ([26-30]%), Topaz ([21-25]%) and Naas Oil ([1-5]%), each of which operates one or more motor fuel service stations within a 5 mile/8km radius of the Target Assets on Sallins Road. There is also an unbranded motor fuel service station which has an estimated market share by volume of [1-5]% within that local area. Thus, there is a large and varied (in size) number of competitors in Naas and the surrounding area whose presence will constrain the activities of Applegreen in the retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants post-transaction.
22. There is also a potential vertical relationship between the parties since Applegreen is currently involved in the wholesale distribution of motor fuels to DoDo service stations in the State. The Commission considers that the proposed transaction is not likely to result in any vertical foreclosure concerns. In both the upstream market for the non-retail supply of petroleum products and the downstream market for the retail sale of refined fuel products (diesel (DERV) and petrol), there is a number of large competitors, such as Topaz, Valero (Texaco), Maxol and TOP, whose presence will constrain the activities of Applegreen post-transaction. Thus, Applegreen does not have sufficient market power in any of these segments to allow it to engage in a foreclosure strategy post-transaction.
23. 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

24. 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 Applegreen plc, through its wholly-owned indirect subsidiary Petrogas Group Limited, would acquire sole control over certain assets, constituting a retail fuel service station and associated convenience store, which currently trade as 'Spar Sallins Road', from M.K.M.H. 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