



DETERMINATION OF MERGER NOTIFICATION M/17/007 - PETROGAS GROUP LIMITED (APPLEGREEN PLC) / CERTAIN ASSETS OF EXCOL LIMITED AND MR J. MCCORMACK

Section 21 of the Competition Act 2002

Proposed acquisition by Applegreen plc, through Petrogas Group Limited, of Certain Assets of Excol Limited and Mr John McCormack

Dated 16 March 2017

Introduction

1. On 8 February 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 Applegreen plc (“Applegreen”), through its wholly-owned indirect subsidiary, Petrogas Group Limited (“Petrogas”), would acquire certain assets of Excol Limited and of Mr John McCormack, constituting three retail motor fuel service stations and associated forecourt convenience stores, two of which are located in County Sligo and one of which is located in County Leitrim (“the Target Assets”).

The Proposed Transaction

2. The sellers of the Target Assets are Receivers appointed in respect of certain assets owned and controlled by Mr John McCormack, either in his own private capacity or as the ultimate owner and controller of McCormack Garages (Drumshanbo) Limited and McCormack Garages (Sligo) Limited.¹ Each of McCormack Garages (Drumshanbo) Limited and McCormack Garages (Sligo) Limited are wholly-owned subsidiaries of Excol Oil Limited (collectively “the Excol Group”), which in turn is 100% owned by Mr John McCormack.

¹ Aengus Burns has been appointed as Receiver for the retail motor fuel service stations situated at Carraroe, Sligo, which was previously owned and controlled by John McCormack in his private capacity, and at Mail Coach Road, Sligo, which was previously owned and controlled by McCormack Garages (Sligo) Limited. Aengus Burns and Michael McAteer have been appointed as joint Receivers for the retail motor fuel service station situated at Drumshanbo, Co. Leitrim which was previously owned and controlled by McCormack Garages (Drumshanbo) Limited.



3. On 6 February 2017, Petrogas and the Receivers entered into agreements for sale of the Target Assets by private treaty. Pursuant to the Proposed Transaction, Applegreen, through Petrogas, is to acquire ownership and thus, sole control of the Target Assets.

The Undertakings Involved

Petrogas

4. Petrogas is a private limited company registered in the State, with its registered office located at Block 17, Joyce Way, Parkwest, Dublin 12. Petrogas is a wholly-owned indirect subsidiary of Applegreen and its main activity in the State is the operation of a network of retail motor fuel service stations and associated forecourt convenience stores across the country, mainly under the Applegreen brand.
5. It is proposed that Applegreen will acquire sole control over the Target Assets through Petrogas.

Applegreen

6. 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 USA².
7. As of 31 December 2015³, Applegreen had a network of 133 retail motor fuel service stations operated and/or supplied in the State, which can be divided into three groupings:
 - a. 77 company-owned and company-operated (“CoCo”) sites, which generally sell retail motor fuel along with a forecourt convenience store and one or more food offerings;
 - b. 23 service area sites, which are larger than normal retail motor 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 forecourt 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.⁴

² As of 31 December 2015, Applegreen operated 62 service stations in the UK and 5 in the USA.

³ Applegreen Annual Report 2015 (<http://investors.applegreenstores.com/results-and-presentations.aspx>).

⁴ 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 shareholding in Superstop.



- c. 33 dealer-owned and dealer-operated (“DoDo”) retail motor fuel service stations, whereby Applegreen supplies 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 forecourt convenience store offering and revenue remain under the control of the dealer.
8. All of Applegreen’s CoCo retail motor fuel service stations within the State have forecourt convenience stores offering grocery goods, coffee and hot food. These include franchises operated by Applegreen under the following brands: *Burger King*, *Costa Coffee*, *Greggs*, *Chopstix* and *Subway*.
9. For the financial year ended 31 December 2015, Applegreen’s worldwide turnover was approximately €1 billion, of which approximately €623 million was generated in the State.

The Target Assets

10. The Target Assets consist of three retail motor fuel service stations, each comprising a motor fuel (road diesel (DERV) and petrol) forecourt (which also sells automotive motor lubricants) and an associated forecourt convenience store, as set out in Table 1 below. The Target Assets ceased trading on 13 June 2016 when Receivers were appointed in respect of the Target Assets.

Table 1 – Description of the Target Assets

Name	Location	Owner	Receiver	Turnover in most recent financial year, 2015 ⁵
Excol Carraroe Filling Station	Dublin Road, Carraroe, Sligo	Mr John McCormack	Mr Aengus Burns	Approximately €[...]
Excol Filling Station	Mail Coach Road, Sligo	McCormack Garages (Sligo) Limited	Mr Aengus Burns	Approximately €[...]
Excol McCormacks Filling Station	Church Street, Drumshanbo, Co. Leitrim	McCormack Garages (Drumshanbo) Limited	Mr Aengus Burns and Mr Michael McAteer	Approximately €[...]

Source: The Commission, based on information provided by the notifying parties

11. Following completion of the Proposed Transaction, the Target Assets will be owned and controlled by Applegreen through Petrogas.

⁵ In the financial year ending 31 December 2015.



Rationale for the Proposed Transaction

12. 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 stations under the Applegreen brand.”

Third Party Submissions

13. The Commission received a number of third party submissions which argued that Applegreen will, post-transaction, control three retail motor fuel service stations, with associated forecourt convenience stores, in the Sligo area. A number of the submissions alleged that the Proposed Transaction will enable Applegreen, post-transaction, to engage aggressive pricing and foreclosure practices within the local areas where the Target Assets are located. The Commission has taken these submissions into account in its competitive analysis of the Proposed Transaction below.

Competitive Analysis

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 within 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 within the State.

15. The Target Assets consist of three Excol-branded retail motor fuel service stations with associated forecourt convenience stores, two of which are located in Sligo and one of which is located in Drumshanbo, Co. Leitrim. As mentioned above, all three retail motor fuel service stations ceased trading on 13 June 2016, when receivers were appointed in respect of the Target Assets. Nationally, Applegreen is the fifth-largest supplier of motor fuel, with an estimated share of supply of retail motor fuel in the State in 2015, by volume and by number of sites, of 8% and 5%, respectively⁶. Applegreen also has a network of retail convenience stores associated with its network of fuel forecourts nationally, with an

⁶ Source: Experian Catalyst Fuel Report 2016.



estimated share of forecourt convenience stores in the State in 2015, by number of sites and by shop sales, of 4% and 8%, respectively⁷.

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 forecourt convenience stores for the purpose of assessing the competitive effects of the Proposed Transaction.⁸
17. 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 potential local markets in relation to the retail sale of motor fuels. The Competition Authority analysed local markets, varying 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). The Commission has followed the same approach in subsequent decisions and used isochrones analysis as a screening method to identify potential competition concerns, focusing on a radius of 5 miles/8 km from any target retail motor fuel forecourt.⁹

Drumshanbo area

18. The retail motor fuel service station located in Drumshanbo is in a rural setting. On this basis, the Commission has identified a potential local market with a 5 mile/8km radius around the retail motor fuel service station located in Drumshanbo which is to be acquired pursuant to the Proposed Transaction.
19. Neither Applegreen, nor any of its subsidiaries, owns or operates any retail motor fuel service station and/or forecourt convenience store within said radius of 5 mile/8km of the motor fuel service station in Drumshanbo which is to be acquired pursuant to the Proposed Transaction. Therefore, there is no competitive horizontal overlap between Applegreen and any of the Target Assets within a radius of 5 miles/8km from the relevant service station and associated forecourt convenience store in Drumshanbo. In addition, there is one other retail motor fuel service station, an independent (i.e., unbranded) retail motor fuel service station, which is approximately 3.8km away in Mountallen, Drumshanbo. Therefore, the Proposed Transaction is unlikely to result in a substantial lessening of

⁷ Source: Experian Catalyst Fuel Report 2016.

⁸ 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 of 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 Applegreen as an operator of forecourt convenience stores. The Commission therefore decided not to focus further on this potential market in this determination.

⁹ See, for example, M/15/019 – TOP/The Ashbourne Oil Co.



competition within a distance of 5 mile/8km of the retail motor fuel service station and associated forecourt convenience store in Drumshanbo.

Sligo area

20. One of the third party submissions, mentioned in paragraph 13 above, confirmed that a review of the functioning and rural catchment of Sligo makes the use of the 5 mile/8km isochrome appropriate when analysing the impact on competition of the proposed acquisition of the two retail motor fuel service stations located in Sligo. On this basis, the Commission has also identified a potential local market with a 5 mile/8km radius around the retail motor fuel service stations located in Sligo which are to be acquired pursuant to the Proposed Transaction.
21. There is currently one Applegreen retail motor fuel service station within said radius of 5 mile/8km of the two retail motor fuel service stations and associated forecourt convenience stores in Sligo which are to be acquired pursuant to the Proposed Transaction. As set out in Table 2 below, there are at least nine other retail motor fuel service stations, consisting of six competing facias/brands, within a distance of 5 miles/8km from the Sligo motor fuel service stations.

Table 2: Analysis of the service stations which are located within 5 mile/8km of the retail motor fuel service station situated on Mail Coach Road, Sligo

Brands	Service station	Distance from Excol Mail Coach Road
Excol Group	(Mail Coach Road, Sligo)	--
	Carraroe, Sligo	3.3km
Applegreen	Pearce Road, Sligo	0.5km
Texaco	Bundoran Road, Sligo	2.0km
	Upper Pearce Road, Sligo	1.3km
	Hazel Road, Hazelwood	4.6km
Topaz	Bundoran Road, Sligo	1.9km
	Sligo Road, Larass, Strandhill	8.1km
TOP	Bundoran Road, Sligo	2.4km
Jones Oil (diesel only)	Finisklin Road, Sligo	2.0km
Sligo Fuels	Deep Water Quay, Finisklin, Sligo	2.3km
Great Gas	Pearse Road, Sligo	0.4km

Source: The Commission, based on information provided by the notifying parties

22. From Table 2, it can be seen that prior to the Proposed Transaction, there were potentially eight brands of retail motor fuel service stations located within a 5mile/8km radius of the two retail motor fuel service stations to be acquired by Applegreen. However, as at the date of notification of the Proposed Transaction, there were only seven brands of retail motor fuel services stations actually operating within that area due to the fact that the Excol Group ceased trading in June 2016.



23. The Proposed Transaction in respect of the Sligo area has been assessed under two scenarios:
- (i) Scenario one: it could be argued that the number of brands of retail motor fuel service stations, within a 5mile/8km radius of two the retail motor fuel service stations and associated forecourt convenience stores to be acquired, will reduce from eight to seven. A reduction of the number of brands of service stations and associated forecourt convenience stores from eight to seven is unlikely to give rise to a concern of a substantial lessening of competition because there will remain six competing brands within a 5mile/8km radius of the two retail motor fuel service stations and associated forecourt convenience stores to be acquired by Applegreen. It is expected that these other brands will exert a competitive constraint on Applegreen following implementation of the Proposed Transaction.
 - (ii) Scenario two: given that the Target Assets ceased trading on 13 June 2016 (when Receivers were appointed in respect of the Target Assets), the Proposed Transaction does not result in any change in the number of brands within the potential relevant areas. Therefore, the Proposed Transaction does not appear to change the competitive landscape of retail motor fuel service stations within a 5mile/8km radius of the two retail motor fuel service stations to be acquired by Applegreen.
24. According to Applegreen's Annual Report for 2015, Applegreen '*operates a distinctive retail led business model focused on offering "low fuel prices always" to drive footfall and aims to provide a premium food and hot beverage offering in all its sites*'¹⁰. The Commission has no reason to believe that Applegreen will change its business model as a result of the Proposed Transaction.
25. The analysis above shows that there is a large and varied (in size) number of competitors in the areas surrounding the Target Assets whose presence will constrain the activities of Applegreen in the retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants post-transaction in the potential local markets in Sligo and Drumshanbo.
26. Also, the Proposed Transaction will ensure that customers in the potential relevant areas in Sligo and in Drumshanbo, will have access to the same number of retail motor fuel service stations and associated forecourt convenience stores as at 13 June 2016. This is unlikely to be the case in the absence of the Proposed Transaction, if the Target Assets were to remain closed.
27. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition for the retail sale of motor fuels and associated forecourt convenience stores in the potential local areas where the Target Assets are located.

¹⁰ See footnote 3 above.



28. There is no vertical relationship between the parties and the Proposed Transaction does not raise vertical competition concerns.
29. 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

30. 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 of Excol Limited and of Mr John McCormack, constituting three retail motor fuel service stations and associated forecourt convenience stores, two of which are situated in County Sligo and one of which is situated in County Leitrim, 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

Fergal O'Leary
Member
Competition and Consumer Protection Commission