

## **DETERMINATION OF MERGER NOTIFICATION M/17/039 - TOP/KEC (KINSALE AND CARRIGALINE BUSINESSES)**

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### **Section 21 of the Competition Act 2002**

### **Proposed acquisition by Tedcastles Oil Products Unlimited Company of sole control of certain assets of KEC Retailing Limited**

**Dated 24 July 2017**

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#### **Introduction**

1. On 5 July 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 whereby Tedcastles Oil Products Unlimited Company (“Tedcastles”), through its wholly-owned direct subsidiary, Sirio Retail Operations Limited (“Sirio”), would acquire sole control of certain assets of KEC Retailing Limited (“KEC”), constituting two retail motor fuel service stations and associated forecourt convenience stores, which are located at Eastern Road, Kinsale, Co. Cork and at Kilmoney Road, Carrigaline, Co. Cork, respectively (the “Target Assets”) (the “Proposed Transaction”).

#### **The Proposed Transaction**

2. The Proposed Transaction involves the acquisition by Sirio of sole control of the Target Assets pursuant to an asset purchase agreement (“the Agreement”) to be entered into between the parties by 31 August 2017. At the date of notification, the parties had not yet executed the Agreement. However, heads of terms between Tedcastles and KEC dated 3 July 2017 were submitted to the Commission as part of the notification. 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.
3. The Target Assets are currently owned by KEC which is jointly owned by Kieran Cotter and Emma Cotter. Following completion of the Proposed Transaction, the Target Assets will be solely controlled by Tedcastles.



## The Undertakings Involved

### *Tedcastles*

4. Tedcastles, a private unlimited company incorporated in the State, is a subsidiary of Tedcastle Holdings Unlimited Company, a private unlimited company, with its ultimate parent company being Hillingdon Investment Company Unlimited Company (“Hillingdon”).<sup>1</sup> Tedcastles has its registered office at Promenade Road, Dublin 3.
5. Tedcastles is involved in the fuel industry in the State, with its main activity being the importation and distribution (to non-retail and retail customers) of motor fuels. This includes the operation of a fuel terminal in Dublin Port and of a network of 21 company-owned and company-operated (“CoCo”) distribution depots.
6. At the date of notification, Tedcastles 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 Tedcastles supplies motor fuel to each of these independent dealers under a solus supply agreement between Tedcastles 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.

### *KEC*

8. KEC, a private limited company registered in the State, is jointly owned by Kieran Cotter and Emma Cotter. KEC is only involved in the retail supply of motor fuels and operation of associated forecourt convenience stores in the State.

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<sup>1</sup> Hillingdon is ultimately owned by the Reihill Family.



9. For the financial year ending 31 December 2015, KEC had a worldwide turnover of approximately €9.87 million, all of which was generated in the State.<sup>2</sup>

#### *The Target Assets*

10. The Proposed Transaction involves the acquisition by Sirio of sole control of the Target Assets, which consist of two retail motor fuel service stations, each comprising a motor fuel (road diesel (DERV) and petrol) forecourt, both of which are operated under the *Topaz* brand, and an associated forecourt convenience store as set out in Table 1 below.
11. The parties informed the Commission that Tedcastles proposes to operate the Target Assets on a CoCo basis following completion of the Proposed Transaction.

**Table 1 – Description of the Target Assets**

Name	Location	Owner	Annual turnover for the financial year ending 31 December 2016
KEC Retailing, Kinsale ( <i>Topaz</i> )	Eastern Road, Kinsale, Co. Cork	Jointly owned and controlled by Kieran Cotter and Emma Cotter	Approximately €[...].
KEC Retailing, Carrigaline ( <i>Topaz</i> )	Kilmoney Road, Carrigaline, Co. Cork	Owned and controlled by KEC	Approximately €[...].

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

#### **Rationale for the Proposed Transaction**

12. The notification states:

*“TOP considers that the Proposed Transaction presents it with the opportunity to enhance its presence in the areas where the Target Businesses are active.”*

#### **Third Party Submissions**

13. No submission was received.

#### **Competitive Analysis**

##### Horizontal Overlap

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<sup>2</sup> On 11 July 2017, in correspondence with the Commission, the parties informed the Commission that KEC's accounts for 2016 had not yet been finalised and that the accounts for 2015 are the most up-to-date set of accounts for KEC.



14. Both parties are active in the retail sale of motor fuels (diesel (DERV), petrol and automotive lubricants) and the operation of associated forecourt convenience stores in the State. The Target Assets consist of two retail motor fuel service stations and associated forecourt convenience stores, which are located on Eastern Road, Kinsale, Co. Cork and Kilmoney Road, Carrigaline, Co. Cork, respectively. However, Tedcastles neither owns nor operates any retail motor fuel service stations and associated forecourt convenience stores within an 8 km radius of any of the Target Assets.
15. For sake of completeness, the Commission's analysis in the following paragraphs clearly shows 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 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.<sup>3</sup>
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 and the operation of associated forecourt convenience stores. The Competition Authority 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 3.2 km from a retail motor fuel service station in an urban location and a radius of 8 km in a rural location). For the purposes of assessing the competitive effects of the Proposed Transaction, the Commission has followed the same approach in subsequent determinations and used isochrones analysis as a screening method to identify potential competition concerns.<sup>4</sup>

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<sup>3</sup> In relation to the operation of forecourt convenience stores, the Commission has on a number of occasions considered the retail grocery sector in the State. There is a large and varied (in size) number of competitors currently active in the retail sector in the State whose presence will constrain the activities of Tedcastles as an operator of forecourt convenience stores. (See, for example, the Commission's merger determination in *M/17/011 – Maxol/Melia's Harold's Cross* which can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m17011-maxolmelias-harolds-cross>) The Commission has therefore decided not to focus further on this potential market in this determination.

<sup>4</sup> See, for example, the Commission's determination in *M/15/019 – TOP/The Ashbourne Oil Co* which can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m15019-tedcastles-oil-products-top-ashbourne-oil-company>



### Isochrones Analysis

#### KEC Retailing, Kinsale

18. The retail motor fuel service station and associated forecourt convenience store which is currently owned by Kieran Cotter and Emma Cotter and operated by KEC and is located on Eastern Road, Kinsale, Co. Cork (“Kinsale Target Assets”) is located in a rural setting. On this basis, the Commission has identified a potential local geographic market comprising an 8 km radius around the Kinsale Target Assets for the purpose of analysing the likely competitive impact of the Proposed Transaction.
19. Tedcastles does not currently own or operate a retail motor fuel service station and associated forecourt convenience store within an 8 km radius of the Kinsale Target Assets. The nearest retail motor fuel service station and associated forecourt convenience store owned or operated by Tedcastles is located in Mayfield, Co. Cork, which is approximately 23 km from the Kinsale Target Assets. Therefore, there is no horizontal overlap between Tedcastles and the Kinsale Target Assets within a radius of 8 km from the Kinsale Target Assets. Post-transaction, Tedcastles will face a competitive constraint from a number of retail motor fuel service stations and associated forecourt convenience stores currently active within an 8 km radius of the Kinsale Target Assets. These include: a *Campus* retail motor fuel service station and associated forecourt convenience store located at Belgooley, Co. Cork; a *Topaz* retail motor fuel service station and associated forecourt convenience store located at Cork Road, Riverstick, Co. Cork; and an independent retail motor fuel service station and associated forecourt convenience store located at Ballinspittle, Co. Cork.
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 an 8 km radius of the Kinsale Target Assets.

#### KEC Retailing, Carrigaline

21. The retail motor fuel service station and associated forecourt convenience store which is currently owned by KEC and is located on Kilmoney Road, Carrigaline, Co. Cork (“Carrigaline Target Assets”) is located in a rural setting. On this basis, the Commission has identified a potential local geographic market comprising an 8 km radius around the Carrigaline Target Assets for the purpose of analysing the likely competitive impact of the Proposed Transaction.



22. Tedcastles does not currently own or operate a retail motor fuel service station and associated forecourt convenience store within an 8 km radius of the Carrigaline Target Assets. The nearest retail motor fuel service station and associated forecourt convenience store owned or operated by Tedcastles is located in Mayfield, Co. Cork, which is approximately 11.6 km from the Carrigaline Target Assets. Therefore, there is no horizontal overlap between Tedcastles and the Carrigaline Target Assets within an 8 km radius of the Carrigaline Target Assets. Post-transaction, Tedcastles will face a competitive constraint from a number of retail motor fuel service stations and associated forecourt convenience stores currently active within an 8 km radius of the Carrigaline Target Assets. These include: a *Topaz* retail motor fuel service station and associated forecourt convenience store located at Cork Road, Carrigaline, Co. Cork; a *Maxol* retail motor fuel service station and associated forecourt convenience store located at Cork Road, Carrigaline, Co. Cork; and an independent retail motor fuel service station and associated forecourt convenience store located at Crosshaven Road, Carrigaline, Co. Cork.
23. 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 operation of associated forecourt convenience stores within an 8 km radius of the Carrigaline Target Assets.

#### Vertical Relationship

24. Tedcastles is involved in the wholesale distribution of motor fuels to DoDo, CoCo and CoDo retail motor fuel service stations in the State. Currently, Tedcastles does not supply motor fuels to the Target Assets or to any retail motor fuel service station operating within an 8 km radius of the Target Assets. The parties informed the Commission that Tedcastles will supply the Target Assets with motor fuels post-transaction.<sup>5</sup> However, the Commission considers that this will not raise vertical competition concerns because there are a number of competitors of Tedcastles, such as *Topaz* and *Maxol*, which are currently active in the supply of motor fuels to retailers competing with the Target Assets who are located within a radius of 8 km of the Target Assets.
25. The Commission therefore considers that, following implementation of the Proposed Transaction, Tedcastles will not have the ability to foreclose wholesale suppliers of motor fuels who compete with Tedcastles for the wholesale distribution of motor fuels to DoDo and CoDo retail motor fuel service stations

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<sup>5</sup> This arrangement will not come into effect until March 2018 when the current supply agreement between the Target Assets and Topaz terminates.



operating within an 8 km radius of the Target Assets. For this reason, the Commission considers that the Proposed Transaction will not result in any vertical foreclosure concerns.

### Conclusion

26. 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**

27. At the request of the Commission, the parties provided the Commission with a draft of the Agreement to be entered into between KEC, its shareholders and Sirio, which contains a number of restrictive obligations on KEC and its shareholders<sup>6</sup>. These include non-compete and non-solicitation clauses restricting KEC and its shareholders, 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 Commission<sup>7</sup>. The Commission considers the restrictions, in the form contained in the draft Agreement reviewed by the Commission, to be directly related and necessary to the implementation of the Proposed Transaction.

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<sup>6</sup> The parties provided the Commission with a draft of the Agreement on 21 July 2017.

<sup>7</sup> 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 would acquire sole control of certain assets of KEC Retailing Limited, constituting two retail motor fuel service stations and associated forecourt convenience stores, which are situated on Kilmoney Road, Carrigaline, Co. Cork and on Eastern Road, Kinsale, Co. Cork, respectively, 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**