



DETERMINATION OF MERGER NOTIFICATION M/09/008 – CHEVRON/TEXOIL

Section 21 of the Competition Act 2002

Proposed acquisition of sole control by Chevron (Ireland) Limited of Texoil Limited

Dated 23 April 2009

Introduction

1. On 27 March 2009, in accordance with section 18 of the Competition Act 2002 (the "Act") the Competition Authority (the "Authority") received a notification of a proposed transaction whereby Chevron (Ireland) Limited¹ ("Chevron Ireland") would acquire sole control of Texoil Limited ("Texoil") through the acquisition of the 50% shareholding of a Mr. Thomas Kirrane².
2. At present, Chevron Ireland and Mr. Kirrane each own 50% of the shares in Texoil. Chevron Ireland and Mr. Kirrane exercise joint control over Texoil. Texoil is primarily involved in the inland distribution of refined oil products including motor fuels (unleaded petrol and diesel), kerosene, gas oil and lubricants.

The Undertakings Involved

The Acquirer

3. Chevron Ireland is a wholly owned subsidiary of Chevron Corporation ("Chevron"). Chevron is an international energy company headquartered in California with operations in over 180 countries. Chevron is mainly active in the oil and gas sector covering the exploration, production, refining and distribution of natural gas and refined oil products. Chevron's business also includes the production and distribution of chemicals and power generation.
4. Chevron Ireland's activities include:
 - (i) The wholesale supply of motor fuels (unleaded petrol and motor diesel), kerosene, gas oil and lubricant products to Texoil and other inland distributors;
 - (ii) The supply of motor fuels to Texaco-branded service stations which are either owned by Chevron Ireland and operated by third parties or owned and operated by third parties;
 - (iii) The retail sale of lubricating products mainly through the Texaco-branded service stations; and,

¹ As of December 2006, Texaco Ireland changed its name to Chevron Ireland Limited.

² Mr. Kirrane is a private businessman.

- (iv) The operation of three Chevron/Texaco-branded fuel cards (Texaco Fuel Card³, Texaco Diesel Card⁴ and Texaco Fast Fuel Card⁵).
5. Chevron Ireland has an equity interest in five fuel terminals in the State (i.e. Dublin, Cork, Limerick, Galway and New Ross)⁶. These terminals are used to store refined oil products which Chevron Ireland imports mainly from a Chevron refinery in Wales for sale to Texoil and other inland distributors in the State⁷.

The Target

6. Texoil is an Irish company involved in the inland distribution of refined oil products in the State. Unlike Chevron Ireland, Texoil does not have equity interests in any fuel terminal in the State. As noted above, Texoil buys unleaded petrol, diesel, kerosene and gas oil mainly from Chevron Ireland. Texoil wholesales these products via a network of depots located in Athy, Athlone, Ballinasloe, Carlow, Cork, Dublin, Galway, Gort, Kilkenny, Mayo and Sligo.
7. Texoil is involved in the retail sale of motor fuels and lubricating products through its 11 Texaco-branded service stations. Texoil participates in the Chevron/Texaco branded fuel cards listed in paragraph 4(iv) above.

The Rationale for the Proposed Transaction

8. Chevron Ireland submitted that the proposed transaction will enable it to fully vertically integrate the refined oil products distribution function performed by Texoil into its own Irish operations.

Analysis

9. The parties submitted that the proposed transaction will not have any effect on any market for goods or services in the State since:
- (i) it involves a change in control over Texoil from joint control to sole control; and,
 - (ii) Chevron already exercises joint control over Texoil.
10. The key question for the Authority is whether the proposed change in joint to sole control over Texoil is likely to raise any competition concerns and therefore result in a substantial lessening of competition in any markets for goods and services in the State. In order to address

³ In relation to the Texaco Fuel Card, customers contract with Chevron Ireland only. However, Texoil owned service stations honour the Texaco Fuel Card.

⁴ This card system is targeted at customers who own Heavy Goods Vehicles. Chevron Ireland Ltd does not contract with customers for the Texaco Diesel Card. Customers contract directly with either Texoil or a Chevron Authorised Distributor.

⁵ For the Texaco Fast Fuel Card, customers contract with any of Chevron Ireland, Texoil or Direct Card Services.

⁶ The vast majority of, if not all, refined oil products used in the State pass through a terminal before being moved down the supply chain to the end users. Terminals are used to provide temporary storage of refined oil products supplied primarily by ships. The operator of the terminal supplies refined oil products at the wholesale level to customers such as Texoil or oil companies who do not own a terminal in that area. Other oil companies may enter into a swap or throughput arrangement with the terminal owner(s).

⁷ Chevron Ireland's wholesale customers either take the products directly from the terminals or have the product delivered to them by Chevron Ireland [...].

this question, the Authority examined the degree of overlap between the activities of the parties in the State.

Vertical overlap

11. It is clear from the description of the activities of the parties in paragraphs 3 to 6 above, that there is significant vertical overlap in the activities of the parties. Chevron Ireland is primarily involved in the terminalling⁸ and wholesale supply of refined oil products to Texoil and authorised distributors in the State. Texoil currently purchases at least [...] % of its requirements of motor fuels, kerosene and gas oil and at least [...] % of its requirements for lubricating products from Chevron Ireland. The remainder of its refined products requirements are purchased mainly from ConocoPhillips Whitegate Refinery⁹ and LSS Limited.
12. In determining whether this vertical overlap is likely to give rise to competition concerns in the State, the key question is whether or not the proposed transaction will foreclose downstream or upstream rivals. Two possible forms of foreclosure are discussed below.

Input foreclosure

13. A form of foreclosure is input foreclosure where as a result of a proposed transaction competitors at the downstream level are foreclosed access to inputs. Thus, the question regarding input foreclosure is whether the proposed transaction is likely to foreclose access of competitors of Texoil to refined oil products.
14. According to the European Commission's Guidelines on non-horizontal mergers¹⁰, the assessment of the likelihood of input foreclosure requires examination of: (i) whether the merged entity would have the ability to substantially foreclose access to inputs; (ii) whether the merged entity would have the incentive to do so; and, (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.
15. The Authority considers that the proposed transaction is unlikely to give Chevron Ireland the ability to foreclose access by inland distributors to refined oil products. In other words, the proposed transaction will not result in Chevron Ireland acquiring a significant degree of market power in the wholesale supply of refined oil products in the State for the following reasons:
 - (i) The completion of the proposed transaction will have no effect on the existing supply relationship between Chevron Ireland and its authorised and independent distributors (which include independent wholesalers/retailers). Chevron Ireland will have no incentive to discontinue supply to its current customers since sales to Texoil represents only a small proportion of the volume of the various refined oil products supplied by Chevron Ireland. In particular, Texoil's purchases of refined oil products from Chevron Ireland account for:

⁸ See footnote 6 above.

⁹ ConocoPhillips operates the only oil refinery in the State and LSS Limited is a fuel terminal located in Londonderry, Northern Ireland.

¹⁰ "Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings"; OJ C 265 of 18 October 2008; paragraph 32.

- [...] % of Chevron Ireland's motor fuels business. The remainder is accounted for by Chevron Ireland ([...] %), authorised distributors ([...] %), and independent distributors ([...] %) ¹¹;
 - [...] % of Chevron Ireland's lubricants business. The remainder is accounted for by Chevron Ireland ([...] %), and independent distributors ([...] %);
 - [...] % of Chevron Ireland's kerosene business. The remainder is accounted for by authorised distributors ([...] %), independent distributors ([...] %), and Chevron Ireland ([...] %); and
 - [...] % of Chevron Ireland's gasoil business. The remainder is accounted for by independent distributors ([...] %), authorised distributors ([...] %), and Chevron Ireland ([...] %).
- (ii) There are sufficiently strong remaining alternative competitors of Chevron Ireland such as Topaz, ConocoPhillips, Esso, LSS Limited and Maxol that will continue to supply refined oil products to inland distributors.

16. In light of the above, the Authority considers that the proposed transaction will not lead to input foreclosure in the State in respect of the wholesale supply of refined oil products to inland distributors.

Customer foreclosure

17. The second form of foreclosure is customer foreclosure where as a result of a proposed transaction competitors at the upstream level are foreclosed access to customers at the downstream level. The question is whether the proposed transaction is likely to foreclose access by competitors of Chevron Ireland at the upstream level to inland distributors which are competitors of Texoil at the downstream level.
18. According to the European Commission's Guidelines on non-horizontal mergers ¹², the assessment of the likelihood of customer foreclosure requires examination of: (i) whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals; (ii) whether it would have the incentive to reduce its purchases upstream; and, (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.
19. The Authority considers that the proposed transaction is unlikely to give the merged entity the ability to foreclose access to inland distributors by Chevron Ireland's competitors in the State for the following reasons:
- (i) As noted in paragraph 11 above, Texoil already purchases most of its refined oil products requirement from Chevron Ireland.

¹¹ Approximately [...] % is sold through fuel cards.

¹² "Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings"; OJ C 265 of 18 October 2008; paragraph 59.

- (ii) According to 2007 figures, Chevron Ireland accounts for [10-20]% of all refined oil products sold in the State¹³. Even if, following completion of the proposed transaction, Texoil were to buy 100% of its products from Chevron Ireland, all the main competitors of Chevron such as Topaz, ConocoPhillips, Esso and Maxol would continue to have access to a sufficient number of authorised and independent wholesalers/distributors/retailers.
20. In light of the above, the Authority considers that the proposed transaction is unlikely to lead to customer foreclosure in the State in respect of the wholesale supply of refined oil products to inland distributors.

Horizontal Overlap

21. There is a minimal horizontal overlap in the activities of the parties in respect of the operation of retail service stations through which motor fuels and lubricants are sold.
22. As stated earlier, both parties are active in the retail distribution of motor fuels (unleaded petrol and motor diesel) and lubricants mainly through their own branded service stations. The Authority in a previous merger decision considered that competition in retail distribution of motor fuels is local in nature and it is only within a 5 mile radius that the locations of the parties' service stations could raise competition concerns¹⁴. The Authority did not however, come to any conclusion with respect to the retail sale of lubricants. Given that retail distribution of both motor fuels and lubricants occurs through the parties' service stations, it would be reasonable to suggest that competition in the retail distribution of lubricants is at least local in nature.
23. In order to assess the likely competitive effect of the proposed acquisition in local areas where the parties' service stations are close to one another, the parties provided additional information at the request of the Authority including the following:
- (i) The specific location or addresses of all 11 Texoil service stations;
 - (ii) A list of any petrol stations located within a 5 mile radius of each Texoil service station; and
 - (iii) A description of any changes to the retail market for motor fuels in the areas where the Texoil stations are located.
24. Using the information provided by the parties, the Authority identified 5 areas where there is a significant degree of proximity between a Texoil and a Texaco branded service station. These areas are presented in Table 1 below.

¹³ [...].

¹⁴ Competition Authority Report of Investigation of the Proposal whereby Maxol Energy Limited ("Maxol") would acquire the entire issued share capital of Busselle Limited ("Busselle") (<http://www.entemp.ie/publications/commerce/2003/conscarep.pdf>)

Table 1: Areas where there are Chevron and Texoil service stations in close proximity (within a 5-mile radius)

Area No.	Texoil Station (Texaco Branded)	No. of Chevron Stations (Texaco Branded)	No. of competing service stations in the area	Distance of the competing service stations in the area
1	Texoil Station [...]	1	2 stations (Topaz)	1 and 4 miles
			1 station (Esso)	5 miles
			1 station (Independent)	4 miles
2	Texoil Station [...]	2	1 station (Independent)	1 mile
			1 station (Esso)	1 mile
			1 station (Topaz)	3 miles
3	Texoil Station [...]	1	1 station (Amber)	1 mile
			2 stations (Topaz)	2 and 4 miles
			1 station (Maxol)	2 miles
4	Texoil Station [...]	2	1 station (Top)	2 miles
			2 stations (Independent)	5 and 3 miles
			2 stations (Topaz)	4 and 4.5 miles
5	Texoil Station [...]	1	1 station (Independent)	2 miles
			1 station (Emo)	1.5 miles
			1 station (Maxol)	1 mile

Source: The Competition Authority from information provided by the parties

25. Table 1 shows that there are at least three alternative competitors in each area where both parties' service stations are within a 5-mile radius of each other. Therefore, the proposed transaction is unlikely to raise competition concerns in respect of the retail sale of motor fuels and lubricants as there will remain a sufficient number of competitors to Chevron Ireland post-acquisition.

Ancillary Restraints

26. The joint venture agreement between Texaco (Ireland) Limited (now Chevron Ireland), Mr. Thomas Kirrane and Adnaan Limited (now Texoil) contains a [...].

27. The Authority considers that [...] is an ancillary restraint as it is directly related and necessary for the implementation of the proposed transaction [...].

Determination

28. The Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition of sole control of Texoil Limited by Chevron (Ireland) Limited will not be to substantially lessen competition in any markets for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Dr. Stanley Wong

Member of the Competition Authority