



DETERMINATION OF MERGER NOTIFICATION M/16/027 - MAXOL/TOPAZ BALLINDINE

Section 21 of the Competition Act 2002

Proposed acquisition by Maxol Limited of a Topaz-branded motor fuel service station in Ballindine, Co. Mayo

Dated 8 July 2016

Introduction

1. On 3 June 2016, 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 Maxol Limited (“Maxol”), a wholly-owned subsidiary of McMullan Bros. Limited (“McMullan Bros”), would acquire a motor fuel service station currently operating under the Topaz brand, an associated convenience store and two retail units, all of which are located in Ballindine, Co Mayo (the “Target Assets”) from John W. Hennigan and Patricia Hennigan (“the Sellers”).
2. The proposed transaction is to be implemented pursuant to a contract for sale dated 25 May 2016 between Maxol and the Sellers.

The Undertakings Involved

Maxol

3. Maxol is a subsidiary of Maxol Energy Limited¹, which in turn is a wholly-owned subsidiary of McMullan Bros, a family-owned private limited company registered in the State.
4. Maxol’s main activity is the wholesale and retail distribution of oil and petroleum products in the State. Maxol currently has 135 branded retail motor fuel service stations in the State, 74 of which are owned by Maxol directly and operated by independent licensees under licence agreements with Maxol and 61 of which are owned by independent dealers who have selected Maxol as their chosen brand and fuel supplier.² Supply to these dealers occurs under solus supply agreements between Maxol and the

¹ The other main subsidiaries of Maxol Energy Limited are Maxol Lubricants Limited and Marsh Oil Products Limited, both of which are incorporated in the State, and Maxol Oil Limited which is incorporated in Northern Ireland.

² On 19 May 2016, the Commission cleared Maxol’s acquisition from Topaz Bull Fuels Limited and Topaz Bull Retail Limited of sole control over three retail motor fuel service stations and associated forecourt convenience stores, located in Dublin and Kildare. See merger determination M/16/021 – *Maxol Limited/Certain Assets of Topaz Bull Fuels Limited & Topaz Bull Retail Limited* which can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m16021-maxol-limited-certain-assets-topaz-bull-fuels-retail>



relevant dealer which are for a maximum duration of five years, at the end of which the dealer is free to switch supplier.

5. The vast majority of the Maxol-branded retail motor fuel service stations have associated forecourt convenience stores. Maxol partners with MACE in relation to convenience stores at Maxol-owned retail motor fuel service stations in the State. The MACE franchise is held by BWG Foods and the stores are supplied pursuant to a master supply agreement between Maxol and BWG Foods³ and individual supply agreements between BWG Foods and each store.
6. For the financial year ending 31 December 2015, McMullan Bros had a worldwide turnover of €569 million, of which €[...] was generated in the State.

The Target Assets

7. The Target Assets comprise a motor fuel service station and associated convenience store operating under the *Topaz* and *Centra* brands, respectively. In addition, there are two units which are currently leased to third parties: a pharmacy and a café. The Sellers currently own the land and buildings from which these businesses operate. Following Maxol's acquisition of the Target Assets, Maxol will appoint an independent licensee to operate the motor fuel service station and convenience store, with the former operating under the *Maxol* brand and the latter continuing to operate under the *Centra* brand. The existing leases for the pharmacy and café will remain in place post-transaction.
8. For the financial year ending 31 December 2015, the Target Assets's worldwide turnover was €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

9. The parties state in the notification:

“Maxol is operating in an increasingly competitive market and is firmly committed to growing through acquisition and expansion. The recent arrival of Circle K in the Irish market, through the acquisition by Alimentation Couche-Tard Inc. of the Topaz business, which is estimated to have a 35% market share, makes such a strategy imperative. Other players, such as TOP and Applegreen, are also clearly determined to grow and take advantage of the country's improving economic prospects. In the last 5 years, Maxol has withdrawn from other sectors of the Irish oil market, most notably the supply of heating oil to residential customers and fuel oils to commercial concerns. It now concentrates almost exclusively on all aspects of forecourt convenience retailing, although it also has a company that markets lubricating oil throughout Ireland.”

³ Maxol entered into a 5 year master agreement (effective from 1 January 2012) with BWG Foods in respect of the 'Mace Alliance' brand.



Third Party Submissions

10. No submission was received.

Competitive Analysis

11. There are two areas of horizontal overlap in the activities of the parties in the State:
- The retail sale of motor fuel (diesel (DERV) and petrol) and automotive lubricants; and
 - The operation of forecourt convenience stores (retail grocery stores associated with retail motor fuel service stations).
12. 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 market i.e., the retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants, with associated forecourt convenience stores.
13. 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 15-16 below) in which the motor fuel service station comprising the Target Assets is located.
14. 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 post-transaction. The Commission has therefore decided not to focus further on this particular potential market in this Determination.
15. In relation to the retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants, the Commission's predecessor, the Competition Authority,⁴ has previously

⁴ 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.



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).⁵ The former Competition Authority in subsequent decisions used isochrone analysis as a screening method to identify potential competition concerns, focusing on a radius of 5 miles/8km from any target retail fuel forecourt.⁶ 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.⁷

16. Using these isochrones (i.e., an 8km radius for the site in Ballindine, Co. Mayo, which is in a rural setting), the Commission has identified a potential local market for the motor fuel service station constituting the Target Assets. Maxol does not currently operate a motor fuel service station within an 8km radius of the Target Assets in Ballindine. Post-transaction, Maxol will have an estimated market share for the retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants within an 8km radius of Ballindine of approximately [15-20]% by volume. Post-transaction, Maxol will face competition from four competing fascias/brands (Texaco (with a market share by volume of [20-25]%), Tesco ([15-20]%), Topaz ([10-15]%) and Top ([5-10]%), each of which operate one motor fuel service station within an 8km radius of Ballindine, and from three unbranded motor fuel service stations which have a combined market share by volume of [20-25]%. Thus, there is a large and varied (in size) number of competitors in Ballindine whose presence will constrain the activities of Maxol post-transaction.
17. There is also a vertical aspect to the proposed transaction since Maxol is currently involved in the wholesale distribution of motor fuels to 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 non-retail supply of petroleum products and the downstream refined fuel products retailing market (diesel (DERV) and petrol), there is a number of large competitors, such as Topaz, Valero (Texaco) and Tedcastles Oil Products (TOP), whose presence will constrain the activities of Maxol post-transaction. Thus, Maxol does not have sufficient market power in any of these segments to allow it to engage in a foreclosure strategy post-transaction.
18. 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

19. No ancillary restraints were notified.

⁵ M/06/044 – Topaz/Statoil Ireland; Competition Authority, *Annual Report 2006*, pp. 30-31.

⁶ See, for example, M/09/008 – Chevron/Texoil and M/15/019 – TOP/The Ashbourne Oil Co.

⁷ M/09/008 – Chevron/Texoil. See also the Commission’s decision in M/16/009 – Tedcastles/Sirio Retail & Sirio Property.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Maxol Limited, a wholly-owned subsidiary of McMullan Bros. Limited, would acquire a motor fuel service station currently operating under the Topaz brand, an associated convenience store and two retail units, all of which are located in Ballindine, Co Mayo, 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