



## DETERMINATION OF MERGER NOTIFICATION M/17/006 – ARD SERVICES (TOPAZ)/CASEY'S OF BANTRY

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Topaz Energy Group Limited, through Ard Services Limited, of certain assets of Casey's Filling Station Limited

Dated 1 March 2017

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#### Introduction

1. On 3 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 acquisition whereby Topaz Energy Group Limited ("Topaz"), through its indirect wholly-owned subsidiary Ard Services Limited ("Ard Services"), would acquire sole control of certain assets, namely, a retail motor fuel service station and ancillary convenience store which currently trade as "Casey's Filling Station" (collectively "the Target Assets"), from Casey's Filling Station Limited ("Casey's").

#### The Proposed Transaction

2. The proposed transaction involves the acquisition by Ard Services of a long-term leasehold interest in the Target Assets,<sup>1</sup> which comprise a retail motor fuel service station and ancillary convenience store located adjacent to the N71 leading out of Newtown, Bantry, Co. Cork to Glengarriff Village, Co. Cork. Following implementation of the proposed transaction, the Target Assets will be operated under the sole control of Ard Services. At the date of notification, the parties had not executed a formal written agreement relating to the acquisition by Ard Services of a leasehold interest in the Target Assets<sup>2</sup>. Nonetheless, the Commission considers that the undertakings

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<sup>1</sup> The parties have informed the Commission that the intended duration of the lease granted to Ard Services will be [...].

<sup>2</sup> The parties submitted to the Commission, together with the notification, a copy of a non-binding heads of terms dated [...] between Topaz, Ard Service and [...], as well as a draft of the lease agreement between Casey's, Ard Services and Topaz.



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.

### **The Undertakings Involved**

#### *Ard Services*

3. Ard Services, a private limited company incorporated in the State, is an indirect wholly-owned subsidiary of Topaz. The principal business of Ard Services is the management of Topaz-branded retail motor fuel service stations and their adjacent convenience stores throughout the State.<sup>3</sup>

#### *Topaz*

4. Topaz is the ultimate parent of Ard Services. Topaz is active in the retail and non-retail sale of petroleum products in the State, which involves mainly: (i) purchasing fuel products from international and domestic refiners; (ii) leasing import and logistic assets in the State connected with the importation and marketing of refined fuel products, including sea-fed terminals located in Galway and Dublin in the State; (iii) making bulk/wholesale (non-retail) sales of fuel products both from its own import facilities and from other third party terminals in the State; (iv) selling, at retail level, petroleum products through Topaz-branded retail motor fuel service stations and adjacent convenience stores in the State; and (iv) marketing aviation fuels in the State. Topaz currently operates [or supplies] approximately 444 retail motor fuel service stations, more than 30 depots with commercial fuel operations and 2 oil terminals across the State.
5. Topaz is indirectly wholly-owned by Alimentation Couche-Tard Inc. (“Alimentation Couche-Tard”), whose shares are publicly traded on the Toronto Stock Exchange. Alimentation Couche-Tard operates a network of retail motor fuel service stations and convenience stores worldwide, under the following brands: Couche-Tard, Mac’s, the Circle K, Kangaroo, Statoil, Topaz and Ingo.

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<sup>3</sup> Ard Services is the tenant under leases for these stations. It employs staff to operate the station, including any adjacent convenience stores, and obtains all necessary licences which are required to run these businesses.



6. For the financial year ending 24 April 2016, Alimentation Couche-Tard's worldwide turnover was approximately €39,286.8 million. All of Alimentation Couche-Tard's revenues in the State derive from Topaz. For the financial year ending March 2015, Topaz's turnover in the State was approximately € [...] million.<sup>4</sup>

#### *The Target Assets*

7. The Target Assets are located at Newtown, Bantry, Co Cork, which is located adjacent to the N71 roadway. The proposed transaction involves the acquisition by Ard Services of a leasehold interest in the Target Assets, which consist of a retail motor fuel service station and ancillary convenience store. The retail motor fuel service station and ancillary convenience store currently trade independently as "Casey's Filling Station".
8. For the financial year ending December 2016, the Target Assets' worldwide turnover was approximately €[...] million, all of which was generated in the State.

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

9. The notification states:

*"Topaz wishes to grow its regional footprint and lease of certain assets of Casey's is a good strategic fit in this regard. Topaz believes the rollout of its offering to consumers in west Cork will be very beneficial to consumers."*

#### **Third Party Submissions**

10. No submission was received.

#### **Competitive Analysis**

##### Horizontal Overlap

11. There is a horizontal overlap between the activities of the parties with respect to retail sale of motor fuels and the operation of forecourt convenience stores in the State. For the reasons set out below, the Commission considers that the proposed transaction will

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<sup>4</sup> Topaz's audited accounts for the financial year 2016 were not available at the time of notification.



not substantially lessen competition for the retail sale of motor fuels and the operation of forecourt convenience stores in the State.

12. 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.<sup>5</sup>
13. 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 local markets in relation to the retail sale of motor fuels, which vary 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 fuels forecourt in an urban location and a radius of 5 miles/8km in a rural location).<sup>6</sup>
14. The parties submit that Topaz (and its subsidiaries) does not own or operate any retail motor fuel service stations and/or convenience stores within an 8km radius of the Target Assets. Furthermore, the parties submit that the nearest retail motor fuel service station operated by Topaz is located a distance of approximately 73km away from the Target Assets in Ballincollig, Co. Cork.
15. In light of the Commission's previous approach to market definition, the Commission has identified a potential local geographic market for the retail sale of motor fuels constituting a 5 mile/8km radius around the Target Assets. Within a 5 mile/8km radius of the Target Assets, there are 3 retail motor fuel service stations currently active, namely: Texaco's Cronin's Service Station, Barrys of Bantry and Maxol's Bantry Filling Station.<sup>7</sup> The Commission's analysis confirmed that Topaz does not have a presence in

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<sup>5</sup> 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 Topaz as an operator of forecourt convenience stores. The Commission therefore decided not to focus further on this potential market in this determination.

<sup>6</sup> M/16/043 Petrogas Group Limited (Applegreen plc)/Certain Assets of M.K.M.H Limited.  
Please see <http://www.cpc.ie/enforcement/mergers/merger-notices/m16043-petrogas-applegreen-certain-assets-mkmh-limited>.

<sup>7</sup> Source: Experian Catalyst Fuel Report 2016.



the potential local market for the retail sale of motor fuels constituting a 5 mile/8km radius around the Target Assets.<sup>8</sup>

16. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition for the retail sale of motor fuels in the local area where the Target Assets are located.

#### Vertical Overlap

17. There is currently no actual vertical relationship between the parties. Currently, the Target Assets are supplied, on an ad hoc basis, by non-retail suppliers and resellers of motor fuels and are not supplied with motor fuels by Topaz. Topaz will supply motor fuel products to the Target Assets following implementation of the proposed transaction. The Commission considers that the proposed transaction will not result in any vertical foreclosure concerns that are detrimental to consumers. There are a number of large competitors, such as Maxol, Valero (Texaco), Tedcastles Oil Products (TOP) and Applegreen, which are currently active in both the upstream market for the wholesale supply of refined fuels products and the downstream market for the retail sale of motor fuels products. In fact, two competitors of the Target Assets will continue to operate under different brand names, i.e., Maxol and Texaco, and their presence will constrain the activities of Topaz post-transaction.<sup>9</sup> Therefore, the Commission considers that Topaz would not have the ability to engage in a foreclosure strategy with respect to upstream wholesale suppliers of refined fuels products who compete with Topaz on the upstream market following implementation of the proposed transaction.

#### **Conclusion**

18. In light of the above, the Commission considers that the proposed transaction will not be to substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

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<sup>8</sup> Source: Experian Catalyst Fuel Report 2016.

<sup>9</sup> The Commission contacted Barrys of Bantry Filling Station who raised no competition concerns about the proposed transaction.



19. No ancillary restraints were notified.



### **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 Topaz Energy Group Limited, through its indirect wholly-owned subsidiary Ard Services Limited, would acquire sole control of certain assets, namely, a retail motor fuel service station and ancillary convenience store which currently trade as “Casey’s Filling Station”, from Casey’s Filling Station 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

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**