



DETERMINATION OF MERGER NOTIFICATION M/17/011 – MAXOL/MELIA'S HAROLD'S CROSS

Section 21 of the Competition Act 2002

Proposed acquisition by McMullan Bros., Limited, through Maxol Limited, of Certain Assets of the estate of Noel Melia (deceased)

Dated 27 March 2017

Introduction

1. On 23 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 (“the Proposed Transaction”) whereby McMullan Bros., Limited (“McMullan Bros”), through its wholly-owned subsidiary Maxol Limited (“Maxol”), would acquire sole control of a retail motor fuel service station and associated forecourt convenience store, located at 231-235 Harold’s Cross Road, which currently trades as “Melia’s Harold’s Cross” under the *Maxol* brand (collectively “the Target Assets”).

The Proposed Transaction

2. The sellers of the Target Assets represent the estate of Noel Melia (deceased) in the Proposed Transaction.¹
3. On 23 August 2016, Maxol and the sellers of the Target Assets entered into an agreement for sale of the Target Assets by private treaty (“the Agreement”). Pursuant to the Agreement, McMullan Bros, through Maxol, is to acquire ownership and thus sole control of the Target Assets.

¹ At the time of the notification, the sellers of the Target Assets were Paul Melia and Dympna Melia, acting as the legal personal representatives to the estate of Noel Melia (deceased). The Commission was informed by the parties that Paul Melia and Dympna Melia are the sole beneficiaries of the estate of Noel Melia (deceased).



4. Following implementation of the Proposed Transaction², the Target Assets will be operated by an independent licensee which shall be appointed by Maxol.

The Undertakings Involved

Maxol

5. Maxol is a subsidiary of Maxol Energy Limited (collectively “the Maxol Group”), which in turn is a wholly owned subsidiary of McMullan Bros. McMullan Bros was founded in 1920 and is a private limited company which is owned and controlled by the McMullan family. The other main subsidiaries of Maxol Energy Limited are Maxol Lubricants Limited, which is incorporated in the State, and Maxol Oil Limited which is incorporated in Northern Ireland.
6. Maxol was established in the State in 1920 by William McMullan, and markets a comprehensive range of oil and petroleum products to all sectors of the Irish economy, through its retail and lubricants divisions. Maxol’s primary business is in the provision of oil and petroleum products. These activities account for the vast majority ([...])% of Maxol’s turnover and for [...]% of the turnover of the entire Maxol Group.
7. The Maxol Group’s network of retail motor fuel service stations consists of 236 branded motor fuel retail outlets throughout the island of Ireland. 138 of these outlets are located in the State and operated by Maxol under the following types of arrangement:
 - a. 62 of the retail motor fuel service stations in the State are dealer-owned and dealer-operated (“DoDo”). The dealers in question have selected *Maxol* as their chosen brand and fuel provider under solus supply agreements³ between Maxol and the relevant dealer; and
 - b. 76 of the retail motor fuel service stations in the State are company-owned and dealer-operated (“CoDo”). These retail motor fuel service stations are owned by Maxol and are generally operated under license agreements by independent, locally-based business people.

² Under the Agreement, the Proposed Transaction has a planned completion date [...].

³ The solus supply agreements have a maximum term of 5 years, at the end of which the dealer is free to switch supplier.



8. For the financial year ended 31 December 2015, McMullan Bros' worldwide turnover was approximately €569.8 million, of which approximately €[...] was generated in the State. For the same period, Maxol had turnover of approximately €[...], all of which was generated in the State.

The Target Assets

9. The Target Assets consist of a retail motor fuel service station comprising a motor fuel (road diesel (DERV) and petrol) forecourt (which also sells automotive motor lubricants) and an associated forecourt convenience store extending to approximately 18 square metres, located at 231-235 Harold's Cross Road, Harold's Cross, Dublin 6. The Target Assets currently trade independently as "Melia's Harold's Cross" under the *Maxol* brand.
10. For the financial year ended December 2016, the Target Assets' turnover was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

11. The notification states:

"Maxol is operating in an increasingly competitive market and is firmly committed to growing through acquisition and expansion. The 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 by volume, makes such a strategy imperative. Other players, such as TOP and Applegreen, have also demonstrated an intention 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."

Third Party Submissions

12. No submission was received.



Competitive Analysis

Horizontal Overlap

13. 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 in 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 in the State.
14. 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.⁴
15. 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 fuel forecourt in an urban location and a radius of 5 miles/8km in a rural location).⁵
16. As stated above, the Target Assets are located in Harold's Cross, Dublin 6, which is in an urban location. On this basis, the Commission identified a potential local market with a 2 mile/3.2km radius around the Target Assets. Within a 2 mile/3.2km radius of the Target Assets, there are at least 20 retail motor fuel service stations, representing 7 competing fascias/brands, as set out in Table 1 below. Post-transaction, the number of

⁴ 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 Maxol as an operator of forecourt convenience stores. The Commission therefore decided not to focus further on this potential market in this determination.

⁵ M/16/043 Petrogas Group Limited (Applegreen plc)/Certain Assets of M.K.M.H Limited. Please see <http://www.cccpc.ie/enforcement/mergers/merger-notices/m16043-petrogas-applegreen-certain-assets-mkmh-limited>.



facias/brands in the potential local market where the Target Assets are located will remain unchanged because the Target Assets already operate under the *Maxol* brand.⁶

Table 1: Analysis of the retail motor fuel service stations which are located within a 2 mile/3.2 km radius of the Target Assets

Operator	Service station address within a 2 mile/3.2 km radius	Estimated distance from Target Assets (km) using isochrone
Target Assets	231-235 Harold's Cross Road	-
Maxol	Crumlin Road/Dolphin Road	1.7
	Mespil Road	2.6
	Cromwellsfort Road	2.7
	Tempogue Road	2.9
Topaz	Rathgar Road/Grosvenor Road	0.7
	Lower Kimmage Road	1.0
	Fortfield Road	1.9
	Sandford Road	2.3
	Usher Quay	2.8
	Templeville Road	2.9
	Donnybrook Road/Brookvale Road	2.9
Applegreen	Parnell Road	1.1
	St. Agnes Road	2.6
	Clonskeagh Road	2.7
Texaco	Crumlin Road/Old Country Road	2.2
	Rathfarnham Road	2.2
Discount Fuels	Lower Kimmage Road	1.1
Tedcastles Oil Products ("TOP")	Terenure Road West/Fortfield Road	1.7
Emo Oil Limited ("EMO")	Mount Brown	2.7

Source: The Commission based on own estimation and information provided by the parties

⁶ The only aspect that will change is that the Target Assets will be operated as a CoDo instead of a DoDo, i.e., the Target Assets will be company owned and independently dealer operated (by a licensee appointed by Maxol).



17. Similarly, post-transaction, there will remain a large and varied (in size) number of competitors in the potential local market where the Target Assets are located whose presence will constrain the activities of Maxol in the retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants post-transaction.
18. 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 potential local area where the Target Assets are located.

Vertical Relationship

19. Maxol is involved in the wholesale distribution of motor fuels to DoDo and CoDo retail motor fuel service stations in the State and currently supplies the Target Assets with motor fuel products. Post-transaction, Maxol will continue to supply the Target Assets with motor fuel products. Also, there are a number of significant competitors, such as Topaz, Valero (Texaco), TOP and Applegreen, which are currently active in supplying refined fuel products to other retailers in the local area where the Target Assets are located. Therefore, the Commission considers that Maxol would not have the ability to engage in a foreclosure strategy with respect to wholesale suppliers of refined fuel products who compete with Maxol on the upstream market following implementation of the Proposed Transaction. For this reason, the Commission considers that the Proposed Transaction will not result in any vertical foreclosure concerns in the local area where the Target Assets are located.

Conclusion

20. 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

21. 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 McMullan Bros., Limited, through its wholly-owned indirect subsidiary Maxol Limited, would acquire sole control over certain assets, constituting a retail motor fuel service station and associated forecourt convenience store, situated at 231-235 Harold's Cross Road, Harold's Cross, Dublin 6, 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