



# DETERMINATION OF MERGER NOTIFICATION M/16/021 - MAXOL LIMITED / CERTAIN ASSETS OF TOPAZ BULL FUELS LIMITED & TOPAZ BULL RETAIL LIMITED

---

## Section 21 of the Competition Act 2002

### Proposed acquisition by Maxol Limited of Certain Assets of Topaz Bull Fuels Limited & Topaz Bull Retail Limited

Dated 19 May 2016

---

#### Introduction

1. On 13 April 2016, in accordance with section 18(1) 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 (“McMullen Bros”), would acquire from Topaz Bull Fuels Limited<sup>1</sup> and Topaz Bull Retail Limited<sup>2</sup> (collectively “Topaz Bull”) sole control over certain assets, constituting three retail fuel service stations and associated forecourt convenience stores, situated in Dublin and Kildare (“the Target Assets”).

#### *The Proposed Transaction*

2. The Target Assets are to be acquired by Maxol from Topaz Bull on foot of (i) the Phase 2 determination made by the Commission in M/15/020 - Topaz/Esso Ireland<sup>3</sup> (“the Determination”) and the commitments provided by Topaz Investments Limited to the Commission to, inter alia, divest the Target Assets to a purchaser approved by the Commission (“the Commitments”) in order to ameliorate certain effects of the proposed acquisition on competition that had been identified by the Commission; and (ii) the Commission’s subsequent approval of Maxol as a suitable prospective purchaser of the Target Assets in accordance with the terms of the Determination and the Commitments.
3. On 18 March 2016, Maxol and Topaz Bull entered into an asset purchase agreement (“APA”) for the acquisition of the Target Assets.

#### The Undertakings Involved

##### *Maxol*

---

<sup>1</sup> Formerly Esso Ireland Limited.

<sup>2</sup> Formerly Ireland ROC Limited, a subsidiary of Esso Ireland Limited.

<sup>3</sup> See: <http://www.cccp.ie/enforcement/mergers/merger-notices/m15020-topaz-esso>.



4. Maxol is a subsidiary of Maxol Energy Limited<sup>4</sup>, which in turn is a wholly-owned subsidiary of McMullan Bros, a family-owned private limited company founded in 1920 with its registered office at 3 Custom House Plaza, IFSC, Dublin 1.
5. The main activity of Maxol in the State is the wholesale and retail distribution of oil and petroleum products across the country.
6. In the financial year ended 31 December 2014, McMullan Bros had a worldwide turnover of €641 million, of which €[...] was generated in the State.

#### **The Vendors**

7. The vendors are Topaz Bull, both of which are wholly-owned subsidiaries of Circle K Ireland Holdings Limited, which in turn is a wholly-owned subsidiary of Alimentation Couche-Tard Inc., a large multinational company with shares listed on the Toronto Stock Exchange.<sup>5</sup> Alimentation Couche-Tard Inc. also owns Topaz Investments Limited.
8. Topaz Bull are active in the sale (retail and non-retail) of petroleum products and groceries in the State.

#### **The Target Assets**

9. The Target Assets are three retail fuel service stations (each comprising a motor fuel forecourt and associated convenience store) listed in Table 1 below. The proposed transaction involves the acquisition of sole control by Maxol, from Topaz Bull, of the Target Assets as going concerns, which includes the acquisition by Maxol of the business assets, goodwill and employees, as well as the property (land and buildings) from which the businesses currently operate. Although the Target Assets are currently wholly-owned by Topaz Bull, they are subject to hold separate obligations pursuant to the terms of the Commitments and are being operated under the supervision of an independent trustee approved by the Commission.

**Table 1: Target Assets**

<b>Site &amp; Brands (fuel &amp; convenience store)</b>	<b>Site Location</b>
Esso Huntsman & On the Run	Naas Road/Long Mile Road junction, Walkinstown, Dublin 12
Esso Kill & On the Run	Naas Road, Kill, Co. Kildare
Esso Tymon Castle & On the Run	Greenhills Road, Greenhills, Dublin 12

10. For the 2015 calendar year, the turnover attributable to the Target Assets was approximately €[...], the entirety of which was generated in the State.<sup>6</sup>

<sup>4</sup> 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.

<sup>5</sup> Alimentation Couche-Tard Inc. acquired Topaz Energy Group Limited and Esso Ireland Limited in a transaction approved by the European Commission on 25 January 2016: [http://ec.europa.eu/competition/mergers/cases/decisions/m7899\\_71\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m7899_71_3.pdf).

<sup>6</sup> The turnover attributable to each of the Target Assets is as follows: Huntsman – approximately €[...], Kill – approximately €[...] and Tymon Castle – approximately €[...].



## Rationale for the Proposed Acquisition

11. The notification states:

*“Maxol is operating in an increasingly competitive market and is firmly committed to growing through acquisition and expansion. The recent arrival of the Circle K brand in the Irish market, through the acquisition by Alimentation Couche-Tard Inc. of the Topaz business, 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.”*

## Third Party Submissions

12. No submission was received.

## Competitive Analysis

13. The Target Assets (see Table 1) are three fuel retail service stations, each comprising a motor fuel forecourt, currently operating under the Esso brand, and associated forecourt convenience store, operating under the “On the Run” brand.
14. Maxol currently has 132 branded motor fuel retail service stations in the State, 71 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. Supply to these dealers occurs under solus supply agreements between Maxol and the relevant dealer which are for a maximum duration of five years, at the end of which the dealer is free to switch supplier.
15. The vast majority of the Maxol-branded fuel retail service stations have associated forecourt convenience stores. Maxol partners with MACE in relation to convenience stores at Maxol-owned 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 Foods<sup>7</sup> and individual supply agreements between BWG Foods and each store.
16. Post-transaction, the fuel forecourts to be acquired by Maxol pursuant to the proposed transaction will be operated under the Maxol brand and the forecourt convenience stores to be acquired by Maxol pursuant to the proposed transaction will operate under the MACE symbol. Maxol will appoint independent licensees to operate each of the Target Assets.
17. There are two minor horizontal overlaps in the activities of the parties within the State:
- The retail sale of motor fuel (diesel (DERV) and petrol) and automotive lubricants.* The Target Assets consist of three Esso-branded motor fuel

---

<sup>7</sup> Maxol entered into a 5 year master agreement (effective from 1 January 2012) with BWG Foods in respect of the ‘Mace Alliance’ brand.



forecourts, two of which are located in Dublin 12 (Walkinstown and Greenhills) and one of which is located in Kill, Co. Kildare. Nationally, Maxol is the third largest supplier of motor fuel, with estimated shares of supply of retail motor fuel, by volume and by number of sites, of 10% and 9% respectively; and

- b. *The operation of forecourt convenience stores (retail grocery stores associated with retail service stations).* The Target Assets consist of three 'On the Run' branded convenience retail stores operated as part of the fuel forecourts. Nationally, Maxol derives a relatively low level of turnover ([0-10]%) from forecourt convenience stores.
18. 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 (e.g., the retail sale of motor fuels and automotive lubricants, with associated forecourt convenience stores) or more broadly to encompass retail grocery stores in general. For the purposes of the competitive analysis, the Commission considered the narrowest possible relevant product markets i.e., the retail sale of motor fuels (diesel (DERV) and petrol) and automotive lubricants, with associated forecourt convenience stores.
19. 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 markets, i.e. the local areas (within a defined radius – see paragraphs 21-23 below) in which each of the three retail service stations comprising the Target Assets are located.
20. In relation to **forecourt convenience stores**, Maxol and the Target Assets are involved in retail sales through convenience stores which, while forming part of their motor fuel retail service stations (forecourts), are not considered to be part of the same product market. The Commission has on a number of occasions considered the retail sector, which encompasses a wide spectrum of 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'), medium-sized shops which are usually part of a "symbol" group (such as Centra, Londis and Spar) and 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 latter category. There is clearly 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.
21. In relation to **retail sales of motor fuels (diesel (DERV) and petrol) and automotive lubricants**, the Commission's predecessor, the Competition Authority<sup>8</sup>, has previously

---

<sup>8</sup> 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 fuels retail market, using different isochrones for local markets and differentiating 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/8 km in a rural setting)<sup>9</sup>. The Competition Authority in subsequent decisions used isochrone analysis as a screening method to identify potential competition concerns, focusing on a radius of 5 miles/8 km from any target retail fuel forecourt.<sup>10</sup> 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 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 at least local in nature.<sup>11</sup>

22. Using these isochrones ( i.e. an 8km radius for the Kill site, which is in a rural setting, and a 3 km radius for each of the two urban sites, Huntsman and Tymon Castle), the Commission has identified potential local markets for each of the service stations constituting the Target Assets, as set out in Table 2 below. From Table 2, it can be seen that: (i) in each of the identified potential local markets, the estimated market shares by volume of each of the service stations constituting the Target Assets are well below 20%; and, (ii) there is a number of competing service stations and at least five competing facias/brands within each of the relevant radii.
23. The estimated market shares by volume of Maxol, post-transaction, in the three local markets (Huntsman, Kill and Tymon Castle) will be approximately [...], [...] and [...] respectively. Specifically in relation to the Kill site, where Maxol will have the highest estimated market share of the three local markets, three existing Maxol service stations, within the 8 km radius, are all situated in nearby Naas and do not directly compete with the Kill site, as that particular site is actually situated on the N7 motorway heading towards Limerick and is only accessible from the N7. Thus, the Kill site, because of the particular route effect and commuting element specific to that site, primarily competes with other service stations located on the N7, such as Esso, Applegreen and Topaz.

**Table 2: Analysis of the service stations constituting the Target Assets and their respective local markets (within a specific radius) for the retail sale of motor fuels and automotive lubricants++**

Target service station	Number of competing service stations	Number of competing facias (including Maxol)	Estimated market share <sup>12</sup>
Esso Huntsman, Walkinstown, Dublin 12	18 within a 3km radius (urban)	4 + 1 unbranded	17%
Esso Kill	13 within a 8km radius (rural)	5 + 1 unbranded	13%

<sup>9</sup> M/06/044 Topaz/Statoil Ireland; Competition Authority, *Annual Report 2006*, pp. 30-31.

<sup>10</sup> See, for example, M/09/008 – Chevron/Exxon and M/15/019 – TOP/The Ashbourne Oil Co.

<sup>11</sup> M/09/008 – Chevron/Exxon. See also the Commission’s decision in M/16/009 – Tedcastles/Sirio Retail & Sirio Property.

<sup>12</sup> Market shares are based on the total volume of fuel sales by a particular retail service station in the relevant local area in 2015.



Esso Tymon Castle, Greenhills, Dublin 12	20 within a 3km radius (urban)	4 + 1 unbranded	5%
---	--------------------------------------	-----------------	----

Source: The parties using data from [a Kalibrate market survey conducted for Maxol on 16 February 2015.]

24. In all of the above areas of overlap, there is a large and varied (in size) number of competitors whose presence will constrain the activities of the merged entity post-transaction.
25. With regard to the **vertical aspect** of the proposed transaction (i.e., Maxol is a supplier of motor fuels to retail service stations in the State), the proposed transaction is not likely, in the Commission's view, to result in any foreclosure concerns. In both the upstream non-retail supply of petroleum products and the downstream refined fuel products retailing market, especially motor fuel (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 the merged entity 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-merger.
26. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

27. 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 Maxol Limited, a wholly-owned subsidiary of McMullan Bros. Limited, would acquire from Topaz Bull Fuels Limited and Topaz Bull Retail Limited sole control over certain assets, constituting three retail fuel service stations and associated forecourt convenience stores, situated in Dublin and Kildare, 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**