



DETERMINATION OF MERGER NOTIFICATION M/15/020 - TOPAZ/ESSO IRELAND

Section 22 of the Competition Act 2002

Proposed acquisition by Topaz Investments Limited of sole control of Esso Ireland Limited

Dated 15 October 2015

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“Act”), Topaz Investments Limited (“Topaz”) has submitted to the Competition and Consumer Protection Commission (“Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services, with a view to the said proposals becoming binding on Topaz.

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined in accordance with section 22(3)(a) of the Act that the result of the proposed acquisition, whereby Topaz will acquire the entire issued share capital and thus sole control of Esso Ireland 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

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission

Proposals submitted by Topaz to the Competition and Consumer Protection Commission

PART I – PROPOSALS RELATING TO THE JOINT FUELS TERMINAL (“Terminal Proposals”)

A. Definitions

1. For the purpose of the Terminal Proposals, the following terms shall have the following meaning:

“Act” means the Competition Act 2002, as amended;



“**Business**” means all of Esso’s interest, rights and obligations in respect of the JFT, as governed by the JOA. [...];

“**CCPC**” means the Competition and Consumer Protection Commission and its successors;

“**Determination**” means the Determination of the CCPC pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

“**Divestment Package**” means the Business to be sold by Topaz under the terms of these Terminal Proposals;

“**Esso**” means Esso Ireland Limited;

“**EU Merger Regulation**” means Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings;

“**Joint Fuels Terminal**” (“**JFT**”) means the terminal for the storage and handling of petroleum products at Alexandra Road, Dublin, which at the date of the Determination is (i) jointly owned by Esso and Valero pursuant to the Lease, and (ii) operated by Esso pursuant to the JOA;

“**Joint Operating Agreement**” (“**JOA**”) means the Joint Operating Agreement governing the ownership and operation of the JFT, which agreement was originally entered into between Texaco and Esso on 24 December 1992 (the parties to the said agreement at the date of the Determination being Esso and Valero);

“**Lease**” means the lease in respect of the JFT granted originally to Esso by the Dublin Port and Docks Board, which said lease is, at the date of the Determination, jointly held by Esso and Valero;

“**Proposed Transaction**” means the proposed acquisition by Topaz of sole control of Esso as notified to the CCPC on 14 April 2015 pursuant to the European Commission’s referral decision of 27 March 2015 under Article 4(4) of the EU Merger Regulation;

“**Texaco**” means Texaco (Ireland) Limited;

“**Topaz**” means Topaz Investments Limited; and

“**Valero**” means Valero Energy (Ireland) Limited.

B. The Proposal to Divest

2. Topaz undertakes, subject to the provisions set out herein, to effect the sale of the Divestment Package within [...] of the Determination to an independent third party purchaser or purchasers approved by the CCPC (whose approval shall not be unreasonably withheld).
3. Topaz recognises that the sale of the Divestment Package shall be upon such conditions as the CCPC may consider proper and that the acquisition of the Divestment Package by



- a prospective purchaser must not be likely to create, in light of information available to the CCPC, prima facie competition concerns.
4. Topaz recognises that for a prospective purchaser to meet with the CCPC's approval, such purchaser shall be unconnected to and independent of Topaz and Esso and shall be able to maintain and develop the Business as an active competitive force.
 5. Topaz further recognises that for a prospective purchaser to meet with the CCPC's approval, that purchaser must be deemed reasonably likely to obtain all authorisations and consents required to effect a transfer of the Business.
 6. Topaz shall be deemed to have complied with paragraph 2 above if, within a [...] period from the Determination (or such longer period as may be allowed by the CCPC or as may result from the delays referred to in paragraph 9 below), it has entered into a binding letter of intent or a binding contract for the sale of all elements of the Divestment Package (subject to due diligence, regulatory consents and any other conditions not within the control of Topaz or the purchaser) provided that such sale is completed within a [...] period from the date of the relevant letter of intent or contract (or such longer period as may be allowed by the CCPC).
 7. Topaz shall:
 - (i) promptly inform the CCPC in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase the Business and to whom Topaz is seriously considering the sale of the Business, enabling the CCPC to verify the suitability of the prospective purchaser; and
 - (ii) when the parties have entered into a binding letter of intent or a binding contract for the sale of the Business, submit a fully documented and reasoned proposal enabling the CCPC to verify that the conditions laid down in these Terminal Proposals are fulfilled and that there has been no material change in the status of the purchaser not reasonably foreseeable at the time the CCPC assessed that purchaser's suitability under paragraph 7(i) subject to the CCPC agreeing to keep confidential all such information received.
 8. The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser within two weeks of receipt of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 7(i). Separately, within [...] of receipt of a binding agreement and accompanying fully documented and reasoned proposal in accordance with paragraph 7(ii), the CCPC shall communicate in writing its view as to whether the conditions laid down in these Terminal Proposals have been fulfilled and as to whether there has been any material change in the status of the purchaser as provided for in paragraph 7(ii).
 9. Failure of the CCPC to communicate its approval or non-approval of a prospective purchaser within two weeks of receipt of a fully documented and reasoned proposal identifying such a purchaser in accordance with paragraph 7(i) shall delay the running



of the [...] period established above until the CCPC communicates its approval or non-approval. However, if the CCPC does not communicate its approval or non-approval within thirty days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally. In the case of a plurality of offers from prospective purchasers to whom the CCPC does not object, Topaz shall be free to accept any offer or to select the offer it considers best.

C. The Business to be Divested

The Business

10. Topaz undertakes to dispose of the entirety of the Business.
11. Topaz undertakes not to purchase the Business (or otherwise to acquire any interest in the JFT) for a period of [...] following the sale of the said Business pursuant to these Terminal Proposals. Topaz further undertakes not to seek or accept a licence or agreement to use the JFT during the said [...] period.
12. Topaz undertakes that if it attempts, following the expiry of the said [...], to buy the Business (or otherwise to acquire any interest in the JFT), it will inform the CCPC prior to doing so and will notify any such proposed acquisition in accordance with Section 18(3) of the Act (or its successor provision, if applicable) if required to do so by the CCPC.
13. Topaz confirms that it will not impose, as a condition of sale of the Business, an obligation on the purchaser to acquire any associated assets or staff from Topaz that do not currently form part of the Business.

D. Common Provisions

Appointment of a Trustee

14. Within [...] after the Determination, Topaz will propose to the CCPC a trustee, who is independent of Topaz and Esso (the “**Proposed Trustee**”). The appointment of the Proposed Trustee is subject to the approval of the CCPC. If the CCPC does not reject the Proposed Trustee by notice in writing within [...] of the proposal, the Proposed Trustee shall be deemed to have been approved.
15. If the Proposed Trustee is rejected, Topaz will propose the name of a new trustee (the “**New Trustee**”) within [...] of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to Topaz within [...] of the new proposal, the New Trustee shall be deemed to have been approved.
16. If the New Trustee is rejected by the CCPC, the CCPC shall nominate a suitable trustee (the “**CCPC Trustee**”) which Topaz will appoint or cause to be appointed.

Trustee’s Mandate

17. Within [...] of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustee, the New Trustee or the CCPC Trustee, Topaz shall enter into a mandate agreement (“**Mandate**”) with the approved trustee (the “**Trustee**”), the



terms of which shall have previously been agreed with the CCPC, which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor Topaz's compliance with the terms of these Terminal Proposals and in a manner consistent with the purpose of these Terminal Proposals.

18. The Trustee shall be independent of Topaz and Esso, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
19. Throughout the duration of the Trustee's appointment, the Trustee shall:
 - (i) provide written reports ("**Trustee Reports**") to the CCPC on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the CCPC may specify and are notified in writing to Topaz. Topaz shall receive a non-confidential copy of such Trustee Reports;
 - (ii) monitor and advise the CCPC as to the development of the procedure for selecting a purchaser and as to the conduct of the negotiations;
 - (iii) monitor and advise the CCPC as to whether the prospective purchaser(s) with whom Topaz intends to negotiate are likely to satisfy the CCPC's requirements as to suitability;
 - (iv) monitor the maintenance of the viability and marketability of the Business and ensure that it is managed in the ordinary course of business, pursuant to good business practice.
20. The Trustee's duties and functions as set out above shall not be extended or varied in any way by Topaz, save with the express consent of the CCPC. Any instruction or request to the Trustee from Topaz which conflicts with the terms of the Mandate, and the duties and functions as set out above, will be considered null and void.
21. The CCPC may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination so long as Topaz is first given an opportunity to comment on any such orders or instructions in advance.
22. After [...] (or such longer period as may be agreed by the CCPC or as may result from the delays referred to in section B above) have lapsed from the Determination without Topaz having entered into a binding agreement for the disposal of all elements of the Divestment Package, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Business in relation to which a binding agreement remains to be concluded within [...] and upon such terms and conditions as it considers appropriate for an expedient sale, to a viable and independent third party (subject to the CCPC having approved both the purchaser and the binding letter of



intent or binding contract for the sale of the Business in accordance with paragraphs 7 and 8 above). The Trustee shall, however, have regard to the legitimate financial interests of Topaz in respect of such sale, [...].

Miscellaneous

23. Topaz will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with these Terminal Proposals. Topaz will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Topaz as the Trustee may require in carrying out its Mandate, and will pay reasonable remuneration for the Trustee's services.
24. In addition, at the expense of Topaz, the Trustee may (during the trustee divestiture period referred to in paragraph 22 above) appoint advisors (in particular for corporate finance or legal advice), subject to Topaz's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Topaz refuse to approve the advisors proposed by the Trustee the CCPC may approve the appointment of such advisors instead, after first having heard Topaz. Only the Trustee shall be entitled to issue instructions to the advisors.
25. The Trustee shall have full and complete access to the manager of the Business, and any other employees of Esso working at the location of the Business, in order to ensure compliance by Topaz with its obligation to maintain the financial and competitive viability of the Business.
26. Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible, given the nature of its tasks, due regard to the commercial interests of Topaz.
27. Topaz shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Topaz for, any liabilities arising out of the performance of the Trustee's duties under the Terminal Proposals and the Mandate, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
28. The Mandate and these Terminal Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Topaz announces that the Proposed Transaction has been irrevocably abandoned.
29. The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.



Interim Position of the Business

30. Following the Determination and pending the sale of the Business, Topaz undertakes to hold separate the Business and to preserve the economic viability, marketability, and competitiveness of the Business until the date of disposal in accordance with good commercial practice. Topaz further undertakes to appoint the existing JFT manager (the “**JFT Manager**”) as the person with responsibility for the continued day-to-day management of all operations relating to the Business, under the supervision of the Trustee. The JFT Manager shall continue to manage all operations relating to the Business in the best interest of the Business with a view to ensuring its continued economic viability, marketability, and competitiveness. Further, the JFT Manager shall be responsible for ensuring that no competitively sensitive information relating to the Business and its operation is provided to Topaz during the period from the date of the Determination until the date of the sale of the Business (save, with the agreement of the Trustee, where such information is required for the operation of the Business in accordance with good commercial practice or for the purpose of assisting the divestiture by Topaz of the Business to a prospective purchaser).

31. Topaz undertakes to meet all of its commitments under the JOA during the period from the date of the Determination until the date of disposal of the Business and, more specifically: [...].

For the avoidance of doubt, the foregoing obligations shall cease immediately on divestiture of the Business or (where relevant and appropriate) at such later time as may be agreed between Topaz and the purchaser of the Business.

32. Topaz undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the Business until the date of its disposal. Further, Topaz undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of the Business.

33. Topaz also undertakes to take all reasonable steps to encourage the JFT Manager to remain with the Business pending the disposal of the Business. Topaz undertakes not to solicit the JFT Manager or any other key personnel transferred with the Business for a period of [...] after the disposal of the Business pursuant to these Terminal Proposals.

Review clause

34. The CCPC may at its sole discretion extend any of the time periods provided for in these Terminal Proposals in response to a reasoned request from Topaz or the Trustee or, in appropriate cases, on its own initiative. The CCPC may further, at its sole discretion, in response to a reasoned request from Topaz or the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in these Terminal Proposals.



PART II – PROPOSALS RELATING TO CERTAIN MOTOR FUEL RETAIL SITES (“Retail Proposals”)

A. Definitions

1. For the purpose of the Retail Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**Business**” and “**Businesses**” shall be construed in accordance with the Schedule hereto;

“**CCPC**” means the Competition and Consumer Protection Commission and its successors;

“**Determination**” means the Determination of the CCPC pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

“**Esso**” means Esso Ireland Limited;

“**EU Merger Regulation**” means Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings;

“**Key Personnel**” means any applicable personnel necessary to maintain the viability and competitiveness of each of the Businesses;

“**Proposed Transaction**” means the proposed acquisition by Topaz of sole control of Esso as notified to the CCPC on 14 April 2015 pursuant to the European Commission’s referral decision of 27 March 2015 under Article 4(4) of the EU Merger Regulation; and

“**Topaz**” means Topaz Investments Limited.

B. The Proposal to Divest

2. Topaz undertakes, subject to the provisions set out herein, to effect the sale of each of the Businesses within [...] of the Determination to an independent third party purchaser or purchasers approved by the CCPC (whose approval shall not be unreasonably withheld). (For the avoidance of doubt, each of the Businesses may be sold to different independent third party purchasers.)
3. Topaz recognises that the sale of each of the Businesses shall be upon such conditions as the CCPC may consider proper and that the acquisition of a Business by a prospective purchaser must not be likely to create, in light of information available to the CCPC, prima facie competition concerns.
4. Topaz recognises that for a prospective purchaser to meet with the CCPC’s approval, such purchaser shall be unconnected to and independent of Topaz and Esso and shall be able to maintain and develop the relevant Business as an active competitive force.



5. Topaz further recognises that for a prospective purchaser to meet with the CCPC's approval, that purchaser must be deemed reasonably likely to obtain all authorisations and consents required to effect a transfer of the relevant Business.
6. Topaz shall be deemed to have complied with paragraph 2 above if, within a [...] period from the Determination (or such longer period as may be allowed by the CCPC or as may result from the delays referred to in paragraph 9 below), it has entered into a binding letter of intent or a binding contract for the sale of each of the Businesses (subject to due diligence, regulatory consents and any other conditions not within the control of Topaz or the purchaser) provided that each such sale is completed within a [...] period from the date of the relevant letter of intent or contract (or such longer period as may be allowed by the CCPC).
7. Topaz shall:
 - (i) promptly inform the CCPC in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase any of the relevant Businesses and to whom Topaz is seriously considering the sale of any of the relevant Businesses, enabling the CCPC to verify the suitability of the prospective purchaser; and
 - (ii) when the parties have entered into a binding letter of intent or a binding contract for the sale of a relevant Business, submit a fully documented and reasoned proposal enabling the CCPC to verify that the conditions laid down in these Retail Proposals are fulfilled and that there has been no material change in the status of the purchaser not reasonably foreseeable at the time the CCPC assessed that purchaser's suitability under paragraph 7(i) subject to the CCPC agreeing to keep confidential all such information received.
8. The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser within two weeks of receipt of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 7(i). Separately, within [...] of receipt of a binding agreement and accompanying fully documented and reasoned proposal in accordance with paragraph 7(ii), the CCPC shall communicate in writing its view as to whether the conditions laid down in these Retail Proposals have been fulfilled and as to whether there has been any material change in the status of the purchaser as provided for in paragraph 7(ii).
9. Failure of the CCPC to communicate its approval or non-approval of a prospective purchaser within two weeks of receipt of a fully documented and reasoned proposal identifying such a purchaser in accordance with paragraph 7(i) shall delay the running of the [...] period established above (in respect of the relevant Business to which the delay relates) until the CCPC communicates its approval or non-approval. However, if the CCPC does not communicate its approval or non-approval within thirty days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally. In the case of a plurality of offers from prospective purchasers to whom the CCPC does not object, Topaz shall be free to accept any offer or to select the offer it considers best.



C. The Businesses to be Divested

The Businesses

10. Topaz undertakes to dispose of the entirety of the Businesses.
11. Topaz undertakes not to purchase any of the Businesses (or otherwise to acquire an interest in any of the Businesses) for a period of [...] following their sale pursuant to these Retail Proposals.
12. Topaz undertakes that if it attempts to buy the purchaser(s) of any of the Businesses (or otherwise to acquire an interest in any of the Businesses), following the expiry of a period of [...], it will inform the CCPC prior to doing so and will notify any such proposed acquisition in accordance with Section 18(3) of the Act (or its successor provision, if applicable) if required to do so by the CCPC.
13. Topaz undertakes to sell each of the Businesses as a going concern including all relevant staff.
14. Topaz confirms that it will not impose, as a condition of sale for any of the Businesses, an obligation on a purchaser to acquire any associated assets or staff from Topaz that do not currently form part of the relevant Business.

D. Common Provisions

Appointment of a Trustee

15. Within [...] after the Determination, Topaz will propose to the CCPC a trustee, who is independent of Topaz and Esso (the “**Proposed Trustee**”). The appointment of the Proposed Trustee is subject to the approval of the CCPC. If the CCPC does not reject the Proposed Trustee by notice in writing within [...] of the proposal, the Proposed Trustee shall be deemed to have been approved.
16. If the Proposed Trustee is rejected, Topaz will propose the name of a new trustee (the “**New Trustee**”) within [...] of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to Topaz within [...] of the new proposal, the New Trustee shall be deemed to have been approved.
17. If the New Trustee is rejected by the CCPC, the CCPC shall nominate a suitable trustee (the “**CCPC Trustee**”) which Topaz will appoint or cause to be appointed.

Trustee’s Mandate

18. Within [...] of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustee, the New Trustee or the CCPC Trustee, Topaz shall enter into a mandate agreement (“**Mandate**”) with the approved trustee (the “**Trustee**”), the terms of which shall have previously been agreed with the CCPC, which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor Topaz’s



compliance with the terms of these Retail Proposals and in a manner consistent with the purpose of these Retail Proposals.

19. The Trustee shall be independent of Topaz and Esso, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
20. Throughout the duration of the Trustee's appointment, the Trustee shall:
 - (i) provide written reports ("**Trustee Reports**") to the CCPC on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the CCPC may specify and are notified in writing to Topaz. Topaz shall receive a non-confidential copy of such Trustee Reports;
 - (ii) monitor and advise the CCPC as to the development of the procedure for selecting a purchaser for each of the Businesses and as to the conduct of the negotiations;
 - (iii) monitor and advise the CCPC as to whether the prospective purchaser(s) with whom Topaz intends to negotiate are likely to satisfy the CCPC's requirements as to suitability;
 - (iv) monitor the maintenance of the viability and marketability of each of the Businesses and ensure that each is managed in the ordinary course of business, pursuant to good business practice.
21. The Trustee's duties and functions as set out above shall not be extended or varied in any way by Topaz, save with the express consent of the CCPC. Any instruction or request to the Trustee from Topaz which conflicts with the terms of the Mandate, and the duties and functions as set out above, will be considered null and void.
22. The CCPC may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination so long as Topaz is first given an opportunity to comment on any such orders or instructions in advance.
23. After [...] (or such longer period as may be agreed by the CCPC or as may result from the delays referred to in section B above) have lapsed from the Determination without Topaz having entered into a binding agreement for the disposal of each of the Businesses, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Businesses in relation to which a binding agreement remains to be concluded within [...] and upon such terms and conditions as it considers appropriate for an expedient sale, to a viable and independent third party (subject to the CCPC having approved both the purchaser(s) and the binding letter(s) of intent or binding contract(s) for the sale of the Businesses in accordance with



paragraphs 7 and 8 above). The Trustee shall, however, have regard to the legitimate financial interests of Topaz in respect of any such sale, [...].

Miscellaneous

24. Topaz will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with these Retail Proposals. Topaz will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Topaz as the Trustee may require in carrying out its Mandate, and will pay reasonable remuneration for the Trustee's services.
25. In addition, at the expense of Topaz, the Trustee may (during the trustee divestiture period referred to in paragraph 23 above) appoint advisors (in particular for corporate finance or legal advice), subject to Topaz's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Topaz refuse to approve the advisors proposed by the Trustee the CCPC may approve the appointment of such advisors instead, after first having heard Topaz. Only the Trustee shall be entitled to issue instructions to the advisors.
26. The Trustee shall have full and complete access to the manager of each of the Businesses, and any other employees of Esso working at the location of the Businesses, in order to ensure compliance by Topaz with its obligation to maintain the financial and competitive viability of the Businesses.
27. Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible given the nature of its tasks due regard to the commercial interests of Topaz.
28. Topaz shall indemnify the Trustee and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Topaz for, any liabilities arising out of the performance of the Trustee's duties under the Retail Proposals and the Mandate, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
29. The Mandate and these Retail Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Topaz announces that the Proposed Transaction has been irrevocably abandoned.
30. The Trustee and all other relevant third parties' powers of attorney and appointment shall be irrevocable.



Interim Position of the Businesses

31. Following the Determination and pending the sale of the Businesses, Topaz undertakes to hold separate each of the Businesses and to preserve the economic viability, marketability, and competitiveness of each of the Businesses until the date of disposal in accordance with good commercial practice, and to manage each of the Businesses in the best interests of that Business. Topaz further undertakes to appoint a manager for each of the Businesses who shall be responsible for the day-to-day management of all operations in relation to the Business to which that manager is assigned, under the supervision of the Trustee. Each manager shall manage the Business independently and in the best interest of the relevant Business with a view to ensuring its continued economic viability, marketability, and competitiveness. Further, each manager shall be responsible for ensuring that no competitively sensitive information relating to the Business and its operation is provided to Topaz during the period from the date of the Determination until the date of the sale of the relevant Business (save, with the agreement of the Trustee, where such information is required for the operation of the relevant Business in accordance with good commercial practice or for the purpose of assisting the divestiture by Topaz of the Business to a prospective purchaser).
32. Topaz undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of any of the Businesses until the date of their disposal. Further, Topaz undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of any of the Businesses.
33. Topaz also undertakes to take all reasonable steps to encourage all Key Personnel to remain with each of the Businesses pending the disposal of the Businesses. Topaz undertakes not to solicit any Key Personnel transferred with the Businesses for a period of [...] after the disposal of the Businesses pursuant to these Retail Proposals.

Review clause

34. The CCPC may at its sole discretion extend any of the time periods provided for in these Retail Proposals in response to a reasoned request from Topaz or the Trustee or, in appropriate cases, on its own initiative. The CCPC may further, at its sole discretion, in response to a reasoned request from Topaz or the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in these Retail Proposals.

SCHEDULE TO THE RETAIL PROPOSALS

The Businesses to be divested by Topaz pursuant to the Retail Proposals consist of the businesses currently conducted by Esso from each of the following three motor fuel retail sites: [...].