



DETERMINATION OF MERGER NOTIFICATION M/17/021 - APPLEGREEN / 50% SHARE OF THE JOINT FUELS TERMINAL, DUBLIN

Section 21 of the Competition Act 2002

Proposed acquisition by Applegreen Public Limited Company of certain assets, constituting a 50% share in the Joint Fuels Terminal in Dublin

Dated 30 June 2017

Introduction

1. On 20 April 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 transaction (“the Proposed Transaction”) whereby Applegreen Public Limited Company (“Applegreen”) would acquire certain assets, constituting a 50% interest in a sea-fed terminal for the storage and handling of refined fuel products located in Dublin Port, Alexandra Road, Dublin, known as the Joint Fuels Terminal (“JFT”) (“the Target Assets”) from Topaz Investments Limited (“Topaz”).

The Proposed Transaction

2. The Target Assets are being divested by Topaz in accordance with commitments which are binding upon Topaz as a result of the determination of the Commission issued following its Phase 2 investigation of the acquisition by Topaz of the entire issued share capital and thus sole control of Esso Ireland Limited (“Esso Ireland”)¹. During the Commission’s review of that particular transaction, Topaz offered certain proposals to the Commission pursuant to section 20(3) of the Act, including a proposal to divest the 50% interest held by Esso Ireland in the JFT. The proposals offered by Topaz were aimed at ameliorating the effects on competition of the acquisition by Topaz of Esso Ireland which had been identified by the Commission during the course of its investigation. Taking into account the proposals submitted by Topaz, the Commission subsequently issued a determination approving the acquisition by Topaz of Esso Ireland and, in accordance with section 20(3) of the Act, the proposals made by Topaz became commitments binding upon Topaz (“the Commitments”).
3. As part of the Commitments, Topaz agreed, *inter alia*, to divest all of the interests, rights and obligations of Esso Ireland (comprising a 50% interest) in respect of the JFT.

¹ Commission Determination, 15 October 2015, M/15/020 – Topaz/Esso Ireland
(<https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m15020-topaz-esso/>)



Applegreen was selected as the preferred bidder for Esso Ireland's 50% interest in the JFT following a sales process run by Topaz. In accordance with the terms of the Commitments, Topaz subsequently sought the Commission's confirmation that Applegreen could be considered a suitable "prospective purchaser"² of Esso Ireland's 50% interest in the JFT. On 27 January 2017, the Commission confirmed that Applegreen was a suitable prospective purchaser of Esso Ireland's 50% interest in the JFT.

4. On 3 January 2017, Topaz, through its wholly-owned subsidiary Topaz Bull Fuels Limited³ ("the Vendor"), and Applegreen entered into a business purchase agreement ("BPA") for the sale to Applegreen of the Target Assets. Following implementation of the Proposed Transaction, Applegreen would hold a 50% interest in the JFT and, thus, exercise joint control over the JFT with Valero (which currently holds the remaining 50% interest in the JFT).

The Undertakings Involved

Applegreen

5. Applegreen is a public limited company registered in the State. In addition to operating retail motor fuel service stations in the State, Applegreen and its subsidiaries also operate retail motor fuel service stations in the United Kingdom and in the United States, which trade predominantly under the *Applegreen* brand.⁴
6. As at 31 December 2016⁵, Applegreen had a network of 155 retail motor fuel service stations in the State, which can be divided into three categories:
 - a. 80 company-owned and company-operated ("CoCo") sites, which sell retail motor fuel along with a forecourt convenience store and one or more food offerings;
 - b. 27 service area sites, which are larger than normal retail motor fuel service stations and located in areas where there is heavy traffic or in urban areas. They include a large area with ample parking and sell fuel (i.e., having a filling area for trucks etc., in addition to retail fuel for cars) along with a forecourt convenience store and three or four food offerings. Eight of these service area

² In terms of the determination in M/15/020: "*Topaz recognises that the sale of the Divestment Business will be upon such conditions as the CCPC may consider proper and must not be likely to create, in light of information available to the CCPC, a prima facie competition concern. 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. 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.*"

³ Formerly known as Esso Ireland.

⁴ As at 31 December 2016, Applegreen operated 71 retail motor fuel service stations in the United Kingdom and 11 in the United States.

⁵ Applegreen Annual Report 2016 (<http://investors.applegreenstores.com/~media/Files/A/Applegreen-IR/documents/annual-reports/annual-report-2016.pdf>).



sites are motorway service areas, which are located either on or adjacent to a motorway; and

- c. 48 dealer-owned and dealer-operated (“DoDo”) retail motor fuel service stations, whereby Applegreen supplies motor fuel to the independent dealers under solus supply agreements between Applegreen and the relevant dealer. At these stations, the *Applegreen* brand is used on the pumps and forecourt canopy, whilst the forecourt convenience store offering and revenue remain under the control of the dealer.
7. All of Applegreen’s CoCo retail motor fuel service stations within the State have forecourt convenience stores offering grocery goods, coffee and hot food. These include franchises operated by Applegreen under the following brands: *Burger King*, *Costa Coffee*, *Greggs*, *Chopstix* and *Subway*.
8. Applegreen is also involved in the issuing of own-brand fuel cards, which provide fuel purchasers with an alternative payment mechanism to cash, debit cards or credit cards.
9. For the financial year ended 31 December 2016, Applegreen’s worldwide turnover was approximately €1.18 billion, of which approximately €693.4 million was generated in the State.

Valero

10. Valero is a wholly-owned, indirect subsidiary of Valero Energy Corporation (“VEC”). VEC is a Fortune 50 company incorporated under the laws of Delaware, United States, which has its global headquarters in San Antonio, Texas, United States and is listed on the New York Stock Exchange.
11. VEC, through its various subsidiaries, is an international manufacturer and marketer of transportation fuels, petrochemical products and power. Within the State, VEC, through Valero, is involved in the distribution and marketing of *Texaco*-branded fuels, e.g., petrol, diesel and heating oil (marked gasoil (green diesel) and kerosene). Valero is also active in the marketing of aviation fuel (otherwise known as Jet A1)⁶ in Dublin Airport. Valero also issues three branded fuel cards, namely: the *Fastfuel Ireland* card, the *Texaco Diesel* card and the *Texaco Fuel* card.
12. As Valero currently owns 50% of the JFT, it is considered by the Commission to be an undertaking involved in the Proposed Transaction for the purposes of section 18(1)(a) of the Act and as such Valero made a joint notification, with Applegreen, of the Proposed Transaction to the Commission.

⁶ Jet A1 is essentially kerosene but it is subject to much stricter control and storage measures to ensure that no water is contained in the final product.



13. For the financial year ended 31 December 2016, VEC's worldwide turnover was approximately US\$75.66 billion. For the financial year ended 31 December 2015, VEC generated turnover of €[...] in the State.

The Vendor

14. The Vendor is a private company limited by shares, which is incorporated in the State (registered number 7131). It is currently a wholly-owned subsidiary of Topaz, with its registered office located at Topaz House, Beech Hill, Clonskeagh, Dublin 4. Topaz is currently owned and controlled by Alimentation Couche-Tard Inc., a large multinational company which is listed on the Toronto Stock Exchange.⁷
15. Topaz is active in the importation, distribution and sale (both to retail and non-retail customers) of refined fuel products in the State, including heating oil (marked gasoil (green diesel) and kerosene) and transport fuel (road diesel (DERV) and petrol). Topaz is also active in the marketing of aviation fuel (Jet A1) in the State, where it is involved in a joint venture - Shell and Topaz Aviation Ireland Limited - with Royal Dutch Shell plc.⁸
16. Topaz leases import and logistics assets in the State connected with the importation and marketing of refined fuel products, including sea-fed terminals such as the Topaz Terminal in Dublin Port and the Enwest Terminal in Galway. In 2015, Topaz acquired Esso Ireland, which held a 50% interest in the JFT.

The Target Assets

17. The Proposed Transaction involves the sale of the Target Assets, which consist of Esso Ireland's 50% share in the JFT, together with [...] (as defined in the BPA). Although the Target Assets are currently wholly-owned by Topaz following Topaz's acquisition of Esso Ireland in 2015, 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 ("Monitoring Trustee") approved by the Commission.
18. The JFT is an unincorporated joint venture, managed under a contractual Joint Operating Agreement ("the JOA")⁹ (historically jointly controlled by Esso Ireland and Valero), which operates as a sea-fed terminal for the storage and handling of refined fuel products located in Dublin Port, Alexandra Road, Dublin. Under the terms of the JOA, Topaz, through the Vendor and Valero each own 50% of the JFT, which includes all infrastructure (except sole-use facilities), and they are co-tenants of the JFT under leases from the Dublin Port Authority. Esso Ireland was historically the operator of the JFT but, on 30 November 2015,

⁷ The acquisition of, *inter alia*, Topaz Energy Group Limited and Esso Ireland by Alimentation Couche-Tard Inc. was approved by the European Commission on 25 January 2016. For details, see Case M.7899 - Alimentation Couche Tard / Topaz Energy Group / Resource Property Investment Fund / Esso Ireland.

⁸ The joint venture was approved by the European Commission in 2010. For details, see Case M.5880 - Shell/Topaz/JV, 4 November 2010.

⁹ The JOA was originally entered into between Texaco (now controlled by Valero) and Esso Ireland on 24 December 1992.



the Commission approved a partial divestment by Topaz pursuant to which the role of operator of the JFT was transferred to Valero.

19. With respect to the operation of the JFT, in broad terms, Topaz and Valero deliver refined fuel products into the JFT by ship. Refined fuel products stored at and provided from the JFT include transport fuels (road diesel (DERV) and petrol), dual purpose kerosene (DPK) (kerosene and aviation fuel (Jet A1)) and gasoil (green diesel). Upon receipt of the various fuel products the operator (which is currently Valero) holds the fuel in tanks dedicated to specific fuel product types/grades. The JFT operates 24 hours per day, 7 days per week and refined fuel products are made available at a number of truck loading racks for collection¹⁰ by (and delivery to) customers of both Topaz and Valero.
20. The JFT is one of five fuel import terminals in the State (and one of three in Dublin Port)¹¹. The other four fuel import terminals in the State are:
 - Tedcastles Oil Products (TOP) Terminal (Dublin);
 - Topaz Terminal (Dublin);
 - Atlantic Fuel Supply Company (AFSC) Terminal (Foynes); and
 - Enwest Terminal (Galway) (owned by Topaz).
21. In addition, some refined fuel products are imported into the State by road from the LSS Oil Terminal in Derry, Northern Ireland.
22. The parties submit that, technically, the JFT does not have any actual turnover, as all products are sold by Topaz and Valero, rather than the JFT itself. However, the parties submit that the best approximation to turnover of the JFT for the purpose of the Commission's merger analysis is likely to be the level of costs (operating expenditure and capital expenditure) paid by each of Topaz and Valero. Taking into account confidential figures supplied to the Commission by the Monitoring Trustee on behalf of Topaz, the operating expense of the JFT in 2016 amounted to just over €[...]. Another possible approach to calculating the turnover attributable to the JFT would be to base it on the estimated price of terminalling services per litre of fuel, which was considered in M/15/020 to yield a price of 0.24 cpl (i.e., about one fifth of a cent per litre).¹² Taking into account confidential volumes at the JFT for 2016, as supplied to the Commission by the Monitoring Trustee on behalf of Topaz, this approach would provide for an estimated turnover of the JFT in 2016 of approximately €[...].

¹⁰ Supply to customers for collection at the truck loading racks is referred to as 'ex rack' supply.

¹¹ The JFT is one of two fuel import terminals in Dublin which has the capability to import, store and sell aviation fuel (Jet A1) (the other such terminal is the Topaz terminal in Dublin).

¹² This figure was consistent with two estimates provided to the Commission independently by terminalling service operators.



Rationale for the Proposed Transaction

23. The parties state in the notification:

“Applegreen believes that securing access to the JFT will enable Applegreen's business to grow and become more competitive in the retail sale of motor fuels in Ireland while further developing and growing other lines of related business. Applegreen wishes to ensure it has supply on terms that maintains its ability to offer the most competitive retail price. As its business has grown, it has increased its business including its fuel volumes. Helping to secure supply via a 50% interest in the JFT would assist in preserving and enhancing that business model.

The Proposed Transaction represents a tangible and substantial incentive for Applegreen not only to generate material efficiencies but also to identify areas of growth for Applegreen in its current markets as well as new market opportunities.

Applegreen has fuel supply arrangements with both company-owned sites and also dealer sites. The Proposed Transaction would enable Applegreen to explore how to augment supply to such dealer sites and therefore grow this segment of the market.

[...].”

Third Party Submissions

24. The Commission received two third party submissions in relation to the Proposed Transaction, which raised concerns that Applegreen might end up using the Target Assets to serve and supply only the needs of its own retail fuel network and that Applegreen will therefore not really be replacing Esso Ireland as a fourth supplier of fuel terminalling services in Dublin Port. The Commission has taken the concerns raised in these third party submissions into account in its competitive analysis of the Proposed Transaction below.

Competitive Analysis

Background

25. At the time of the acquisition by Topaz of Esso Ireland, there were three fuel terminals in Dublin Port; the JFT (Esso Ireland and Valero), the Topaz terminal and the TOP terminal. Only two of such terminals, the JFT and the Topaz terminal, had aviation fuel (Jet A1) terminalling facilities, with three competitors in Dublin having access to such facilities, being Esso Ireland, Valero and Topaz.
26. In relation to ownership of fuel terminal facilities in Dublin, the acquisition by Topaz of Esso Ireland could have been considered as a ‘four to three merger’, with Esso Ireland exiting and Topaz, TOP and Valero remaining as owners. The ‘four to three merger’ scenario could however have understated the likely competitive impact of the transaction, since Topaz was meant to replace Esso Ireland as operator of the JFT and as part-owner of the aviation



fuel facility within the JFT. Therefore, in terms of terminal operation and aviation fuel facilities in Dublin Port, the merger could more accurately have been described as a ‘three to two merger’, with Topaz and TOP the only two remaining operators of fuel terminals, while Topaz and Valero would have become the only two competitors with aviation fuel (Jet A1) terminalling facilities in Dublin Port.

Analysis

27. As mentioned in paragraphs 2 and 3 above, Esso Ireland’s 50% interest in the JFT is to be acquired by Applegreen from Topaz in accordance with the Commitments given by Topaz to the Commission which are binding upon Topaz as a result of the Phase 2 determination made by the Commission in M/15/020 - Topaz/Esso Ireland.¹³
28. The Commission’s review of the acquisition by Topaz of Esso Ireland identified competition concerns in the potential market for fuel terminalling services (i.e., importation, storage and sale (non-retail) of refined fuel products ex-terminal), where both Topaz and Esso Ireland operated fuel terminals in this potential market in Dublin. Looking specifically at the JFT, the Commission formed the view that:
 - a. there were three potential relevant product markets for fuel terminalling services according to product type and characteristics, namely: (i) aviation fuel (Jet A1); (ii) petrol; and (iii) (probably) a single market for diesel (DERV), kerosene and gasoil; and
 - b. there was a potential Dublin regional market and, while not concluding on an exact radius from Dublin Port to demarcate the geographical market, the Commission formed the view that inter-port competition in fuel terminalling services is unlikely within a radius of 100 kilometres and perhaps less.
29. In its determination in M/15/020 - Topaz/Esso Ireland, the Commission concluded that the acquisition by Topaz of Esso Ireland would be likely to lead to competition concerns in the potential fuel terminalling service market in the Dublin region. The reasons for this conclusion are set out in the Commission’s determination but, in summary, in addition to what is mentioned in paragraph 26 above, the Commission found that post-transaction Topaz would account for two-thirds of fuel terminalling capacity and half of throughput at Dublin Port and that Topaz’s rivals in fuel terminalling services (namely, Valero and TOP) would be unlikely to constrain a post-transaction price rise. The Commission did not, however, have to come to a final determination on whether or not the acquisition by Topaz of Esso Ireland would result in a substantial lessening of competition as Topaz offered proposals to address the Commission’s concerns which, pursuant to section 20(3) of the Act, have become Commitments (see paragraphs 2 and 3 above).

¹³ See footnote 1 above.



30. The divestment by Topaz of Esso Ireland's 50% interest in the JFT pursuant to the Commitments is aimed at maintaining competition in the potential market for fuel terminalling services in the Dublin region which would otherwise have been lost as a result of Esso Ireland exiting the market. The Commitments provide, *inter alia*, that the prospective purchaser of Esso Ireland's 50% interest in the JFT shall be approved by the CCPC and that the sale of Esso Ireland's 50% interest by such prospective purchaser must not be likely to create prima facie competition concerns.
31. In its assessment of the Proposed Transaction, the Commission was concerned that, without binding commitments from Applegreen, the objective of the Commitments to maintain competition in the potential market for fuel terminalling services in the Dublin region would not be effectively secured. In particular, the Commission was concerned that the purchaser of the Target Assets should be committed to making a significant investment in the business and growth of the JFT and to develop and maintaining an aviation fuel (Jet A1) supply business in competition with Topaz and Valero in Dublin. In order to address these concerns, and subsequent to discussions between the Commission and the parties involved in the Proposed Transaction, pursuant to section 20(3) of the Act, Applegreen submitted proposals to the Commission on 29 June 2017
32. The proposals submitted by Applegreen are aimed at ensuring that Applegreen replaces Esso Ireland in the JFT and, as such, becomes an effective competitor in relation to fuel terminalling services in the Dublin region, including the supply of aviation fuel (Jet A1). As a result of the proposals submitted by Applegreen, following implementation of the Proposed Transaction there will remain, in the Dublin region, four independent owners of fuel terminal facilities (i.e., Topaz, TOP, Valero and Applegreen), three operators of fuel terminals (i.e., Valero, TOP and Topaz) and three potential suppliers of aviation fuel (Jet A1) (i.e., Topaz, Valero and Applegreen). For these reasons, the Commission is of the view that the proposals submitted by Applegreen are sufficient to meet the objectives behind the divestment by Topaz of Esso Ireland's 50% interest in the JFT pursuant to the Commitments.
33. The Commission considers that the proposals submitted by Applegreen also address the competition concerns raised in the two third party submissions received by the Commission, as mentioned in paragraph 24 above.
34. The Commission, having taking into account the proposals submitted by Applegreen, has formed the view that the Proposed Transaction will not substantially lessen competition in the potential market for fuel terminalling services in the Dublin region.

Vertical Relationship

35. Applegreen currently sources refined fuel products [...].¹⁴ Following implementation of the Proposed Transaction, Applegreen will source refined fuel products through the JFT under

¹⁴ I.e., Applegreen currently sources fuel products [...].



the terms of the JOA, i.e., Applegreen will become vertically integrated and use its 50% share of the JFT to supply its own network of retail motor fuel service stations in the State. The Commission notes that there are currently a number of wholesale suppliers (fuel terminal operators) active in the supply of refined fuel products within the Dublin region, such as Valero, TOP and Topaz. All of these competitors are vertically integrated and, as well as currently supplying their own networks of retail motor fuel service stations in the State, they also supply refined fuel products to other fuel companies (non-terminal operators) such as Maxol, Campus and Emo and will continue to do so following implementation of the Proposed Transaction.

36. Given the above, the Commission is of the view that the Proposed Transaction will not give rise to any vertical competition concerns, such as input or customer foreclosure. The proposals submitted by Applegreen are aimed at addressing the Commission's concerns about the supply of refined fuel products in the State and the Commission considers that, following implementation of the Proposed Transaction, there will remain a sufficient number of competitors and customers in both the upstream and downstream markets in which Applegreen competes in the State.
37. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

38. In light of the above, the Commission, having taken into account the proposals submitted by Applegreen, considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State. In accordance with section 20(3), read with section 26(1) and section 26(4), of the Act, the proposals have become commitments binding upon Applegreen. The proposals are set out in full at the end of this determination.

Ancillary Restraints

39. No ancillary restraints were notified.



Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), Applegreen Public Limited Company (“Applegreen”) has submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below relating to the proposed acquisition by Applegreen of 50% interest in the Joint Fuels Terminal (“JFT”) in Dublin, which was previously owned by Esso Ireland Limited and divested by Topaz Investments Limited (“Topaz”) pursuant to the Commission’s determination in M/15/020, for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on Applegreen.

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 21(2)(a) of the Act, that the result of the proposed acquisition whereby Applegreen would acquire 50% interest in the JFT in Dublin divested by Topaz 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 BY APPLGREEN TO THE COMMISSION RELATING TO THE PROPOSED ACQUISITION OF A 50% SHARE IN THE JOINT FUELS TERMINAL IN DUBLIN TO BE DIVESTED BY TOPAZ PURSUANT TO THE COMMISSION'S DETERMINATION IN M/15/020 ("Proposals")

RECITALS

- a) On 15 October 2015, the Commission cleared the acquisition by Topaz of sole control of Esso Ireland subject to binding divestment commitments¹⁵. The commitments required Topaz to divest *inter alia* all of Esso Ireland's interest, rights and obligations in respect of the JFT, comprising a 50% interest in the JFT, as governed by the JOA.
- b) Following a sales process run by Topaz, Applegreen was selected as the preferred bidder for Esso Ireland's 50% interest in the JFT. In accordance with the terms of the commitments given by Topaz to the Commission and at the request of Topaz, following detailed assessment of potential buyers of Esso Ireland's 50% interest in the JFT, the Commission confirmed Applegreen's suitability as a prospective purchaser of Esso Ireland's 50% interest in the JFT on 27 January 2017.
- c) On 20 April 2017, the proposed acquisition by Applegreen of Esso Ireland's 50% interest in the JFT to be divested by Topaz was notified to the Commission as M/17/021.
- d) Pursuant to section 20(3) of the Competition Act 2002, as amended, Applegreen has submitted to the Commission the following Proposals relating to the proposed acquisition by Applegreen from Topaz of Esso Ireland's 50% interest in the JFT for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the Proposals becoming binding on Applegreen.
- e) Applegreen is replacing Esso Ireland in the JFT and is committed to making a significant investment in the business and growth of the JFT. In the context of its commercial rationale for the Proposed Transaction and the communications that Applegreen has had with the Commission in relation to the Proposed Transaction, Applegreen firmly intends to:
 - (i) import and/or supply Refined Fuel Products; and
 - (ii) further develop its third party supply business (both to non-retail and retail customers), which includes its fuel card business and the supply of petroleum products to dealer-owned and dealer-operated sites, to branded fuel companies which do not have direct access to fuel importation facilities and to independent third parties.
- f) Furthermore, Applegreen has agreed with the Commission, until expiry or termination of the Proposals, to use its share of the JFT facilities to develop and maintain an aviation fuel (Jet A1) supply business as set out in the Proposals.

¹⁵ Pursuant to the Commission's determination in M/15/020 – Topaz / Esso Ireland.



A. Definitions

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

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

“**Applegreen**” means Applegreen Public Limited Company, a public limited company, incorporated under the laws of Ireland (Registration No. 491702), with its registered address at Block 17, Joyce Way, Park West, Dublin 12;

“**Aviation Supply Agreement**” means a supply agreement entered into between and by Applegreen and a Purchaser for the supply by Applegreen to the Purchaser of aviation fuel (Jet A1) from the JFT;

“**Aviation Throughput Agreement**” means a throughput agreement entered into between and by Applegreen and a third party for the throughput by such third party, subject to the terms and conditions of the JOA, of aviation fuel (Jet A1) at the JFT and which third party is not likely to raise prima facie competition concerns;

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

“**Determination**” means the Determination of the Commission pursuant to Section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

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

“**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 Topaz and Valero pursuant to the Lease, and (ii) operated by Valero 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 Ireland on 24 December 1992 (the parties to the said agreement at the date of the Determination being Topaz and Valero);

“**Leases**” means the various leases in respect of the JFT granted originally to Esso Ireland by the Dublin Port and Docks Board, which said leases are, at the date of the Determination, jointly held by Topaz and Valero;

“**Proposed Transaction**” means the proposed acquisition by Applegreen from Topaz of Esso Ireland’s 50% interest in the JFT, as notified to the Commission on 20 April 2017;

“**Purchaser**” means a third party purchaser of aviation fuel (Jet A1) at the JFT, who is not likely to raise prima facie competition concerns;

“**Refined Fuel Products**” means various different refined fuel products imported and sold (to non-retail and retail customers) in the State, including heating oil (marked gasoil (green diesel)), transport fuel (road diesel (DERV) and petrol) and dual purpose kerosene (DPK)(including kerosene and aviation fuel (Jet A1));



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

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

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

B. Undertakings by Applegreen

2. Applegreen undertakes to use the share of the facilities at the JFT to be acquired by Applegreen pursuant to the Proposed Transaction to develop an aviation fuel (Jet A1) supply business, which shall include Applegreen committing to seek to enter into an Aviation Supply Agreement with a Purchaser for the supply by Applegreen to such Purchaser of aviation fuel (Jet A1) through the share of the facilities at the JFT to be acquired by Applegreen pursuant to the Proposed Transaction. Specifically, Applegreen commits that any such Aviation Supply Agreement shall:
 - (a) be entered into for a minimum term of [...] and a maximum term of [...];
 - (b) be agreed on [...] basis, subject to the provisions of the JOA, and be on commercial terms as agreed between Applegreen and the Purchaser;
 - (c) provide for the supply by Applegreen to the Purchaser of up to [...] aviation fuel (Jet A1) per day subject to JFT capacity, operational and other constraints under the JOA; and
 - (d) be notified to the Commission by Applegreen in writing within thirty (30) days of the Aviation Supply Agreement being signed by Applegreen and the Purchaser.
3. If Applegreen has been unable to conclude and enter into an Aviation Supply Agreement within [...] of completion of the Proposed Transaction in accordance with paragraph 2 of these Proposals, Applegreen undertakes to seek to negotiate with a third party throughput rights for aviation fuel (Jet A1) through the share of the facilities at the JFT to be acquired by Applegreen pursuant to the Proposed Transaction and then to conclude an Aviation Throughput Agreement with such third party, in compliance with provisions of the JOA. In this regard, Applegreen undertakes to inform the Commission in writing of the entry into any such Aviation Throughput Agreement by Applegreen and a third party within thirty (30) days of the Aviation Throughput Agreement being signed by Applegreen and such third party.
4. To the extent that Applegreen has a right pursuant to the JOA [...] (including the facilities for aviation fuel (Jet A1) at the JFT), [...].
5. The undertakings given in paragraphs 2, 3 and 4 of these Proposals shall come into effect on the date of the Determination and shall continue to apply for a period of [...] after the date of the Determination or until such time as the Commission determines that the undertakings are no longer required (whichever is the earlier).
6. Applegreen shall submit to the Commission within six (6) months after the date of the Determination, and at intervals of twelve (12) months thereafter, a written certificate



in the form set out in the Schedule hereto (each, a “**Compliance Certificate**”), signed by the CEO of Applegreen, confirming Applegreen’s continued compliance with the undertakings given in these Proposals.

7. The Commission reserves the right to require Applegreen to provide to the Commission, at any time, such additional information as the Commission may require in order for the Commission to verify Applegreen’s compliance with the undertakings given in these Proposals.
8. The Commission may at its sole discretion vary any of the time periods provided for in these Proposals in response to a reasoned request from Applegreen. The Commission may further, at its sole discretion, in response to a reasoned request from Applegreen showing good cause waive, modify or substitute, any provision in these Proposals.



SCHEDULE TO THE PROPOSALS

[Applegreen Headed Paper]

[date]¹⁶

Ibrahim Bah
Competition Enforcement & Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Merger Notification M/17/021 Applegreen Public Limited Company (“Applegreen”) / 50% interest in the Joint Fuels Terminal (“JFT”)

Dear Mr. Bah,

I refer to Merger Notification M/17/021 in relation to the acquisition by Applegreen of a 50% share in the JFT, which was approved by the Competition and Consumer Protection Commission (“Commission”) on [] June 2017 (“the Transaction”).

The Commission issued its Determination approving the Transaction on [] June 2017.

In accordance with the terms of the proposals given by Applegreen to the Commission on [] June 2017 in relation to the Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Applegreen (“the Commitments”), I hereby confirm Applegreen’s compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Applegreen] and ending on the date hereof.

Yours faithfully,

[Name]

CEO

Applegreen Public Limited Company

¹⁶ This certificate should be dated and issued to the Competition and Consumer Protection Commission within six (6) months of the date of the Determination and, thereafter, within twelve (12) months after the date of submission of the first certificate issued to the Competition and Consumer Protection Commission and at intervals of twelve (12) months thereafter.