



DETERMINATION OF MERGER NOTIFICATION M/17/041 - EMO OIL (DCC) / CC LUBRICANTS

Section 21 of the Competition Act 2002

Proposed acquisition by Emo Oil Limited (DCC Public Limited Company) of CC Lubricants Limited

Dated 18 August 2017

Introduction

1. On 12 July 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 Emo Oil Limited (“Emo”), a wholly-owned indirect subsidiary of DCC Public Limited Company (“DCC”), would acquire the entire issued share capital and thus sole control of CC Lubricants Limited (“CCL”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”) between Emo, Andrew Clarke¹ (“the Principal Vendor”) and Roisin Hyland² dated 21 June 2017. Pursuant to the SPA, [Emo] will acquire the entire issued share capital, and thus sole control, of CCL.

The Undertakings Involved

Emo

3. Emo is a wholly-owned indirect subsidiary of DCC and has its registered office at Clonminam Industrial Estate, Portlaoise, County Laois.
4. DCC is a public limited company registered in the State and is listed on the London Stock Exchange. DCC is organised into four divisions: LPG, Retail & Oil, Healthcare and Technology.³ Emo is part of the DCC’s Retail & Oil division.
5. Emo is an oil distributor in the State, where it is involved in the following activities:
 - a. the distribution of diesel, petrol, gas oil, kerosene and fuel oil to domestic, agricultural, commercial and retail customers;

¹ Andrew Clarke currently owns [...] % of CCL’s issued share capital.

² Roisin Hyland currently owns [...] % of CCL’s issued share capital.

³ <https://www.dcc.ie/about-us>



- b. the retail sale of motor fuels at its [...] *Emo* and *Great Gas*-branded filling stations. Of these stations, [...] *Great Gas*-branded stations are unmanned and are owned and operated by *Emo*; the rest are dealer-owned and dealer-operated under five-year branded supply agreements. These stations are located throughout the State, with the majority being located in Leinster; and
 - c. the provision of fuel cards to commercial customers.⁴
6. *Emo* was one of the authorised distributors of *Castrol* (Ireland) Limited's ("Castrol") lubricants in the State until [...], when its distributorship agreement with *Castrol* terminated. *Emo* sold the majority of its remaining stock of *Castrol*-branded lubricants to its United Kingdom-based sister company, *Certas Energy UK Limited* ("*Certas*")⁵ in [...]. [...]⁶
7. For the financial year ending 31 March 2017, *DCC*'s worldwide turnover was approximately €14.5 billion, of which approximately €[...] was generated in the State.

CCL

8. *CCL*, located in Portarlinton, Co. Laois, is a distributor of lubricants for use with all fuel types. *CCL* is currently the authorised distributor in the State for *Chevron*- and *Texaco*-branded lubricants and associated products, such as brake fluid, anti-freeze and gear oil.
9. *CCL* also distributes other lubricant brands such as *Lotos*, *Organkia-Car Polka* and *MacOil* in addition to a small amount of 'own-label' products.
10. For the financial year ending 31 December 2016, *CCL*'s worldwide turnover was approximately €[...], of which at least €[...] was generated in the State, with *CCL* making some limited sales in Northern Ireland.

Rationale for the Proposed Transaction

11. The parties state in the notification:

"DCC/Emo wishes to expand its capabilities in the distribution of fuel products by acquiring a well-established distributor of lubricants.

Previously, Emo was one of a number of authorised distributors of Castrol lubricants. However, Emo had to rely on logistical support from a third party. When its agreement with Castrol terminated in early 2016, Emo sold the majority of its remaining stock in [...]. [...]

[...]. With its nationwide reach and internal logistics, the Proposed Transaction would solve this issue while providing DCC/Emo an opportunity for further growth by promoting CCL's offering to DCC/Emo's existing customer base.

The Proposed Transaction thus offers DCC the possibility to diversify into a product which is complementary to its existing fuel products range."

⁴ <https://www.emo.ie/>

⁵ *Certas* is a subsidiary of *DCC* and also part of *DCC*'s Retail & Oil division.

⁶ In 2016, *Emo* sold approximately €[...] worth of lubricants in the State.



Third Party Submissions

12. No submission was received.

Competitive Analysis

13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. However, for the purposes of this determination, the Commission has considered the activities of the parties in a potential market for the sale, marketing and distribution of lubricants and associated products in the State, as well as on a narrower potential market for the wholesale distribution of lubricants in the State.

Horizontal Overlap

14. Both Emo/DCC and CCL are active in the sale, marketing and distribution of lubricants and associated products such as additives,⁷ brake fluid, anti-freeze and gear oil in the State.
15. The parties submit that the majority of lubricants sold in the State are sold through the wholesale channel, i.e. sold directly to garages for use in repairs, and sold directly to transport, industrial and manufacturing companies for use in machinery. However, some sales of lubricants are also made through retail motor fuel service stations and motor factors (car part retailers).
16. CCL sells lubricants and associated products to fuel retailers and large industrial customers in the State through the wholesale channel.
17. Emo/DCC is also active in the wholesale distribution of lubricants in the State. As mentioned above, Emo was previously one of a number of authorised distributors of *Castrol*-branded lubricants in the State. However, Emo's agreement with *Castrol* terminated in [...] and, in [...] Emo sold the majority of its remaining stock of *Castrol*-branded lubricants to Certas, [...].
18. [...].
19. The parties estimate that the potential market for the wholesale distribution of lubricants in the State is worth between €80 million and €100 million annually.
20. CCL's sales of lubricants in the State in its most recent financial year were approximately €[...]. Therefore, its share in the potential market for the wholesale distribution of lubricants in the State is approximately [0-5]%. As noted above, DCC's wholesale sales (i.e. the sales of Emo and Certas combined) of lubricants in the State in 2016 were minimal, i.e., approximately €[...]. DCC's share of the potential market for the wholesale distribution of lubricants in the State was thus [0-5]% in 2016. Table 1 below sets out

⁷ One example of an additive is AdBlue, a diesel exhaust fluid used mainly in trucks.



the parties' estimates of the market shares of the lubricant suppliers currently active in the State:

Table 1 – Share of Supply in the wholesale distribution of lubricants in the State, 2016

Lubricant supplier	Estimated Share
Maxol Lubricants ("Maxol")	[20-25]%
Finol Oils ("Finol")	[10-15]%
Tedcastles Oil Products ("TOP")	[5-10]%
Gem Oils ("Gem")	[5-10]%
Topaz Energy Group ("Topaz")	[5-10]%
S.J. Burke & Company	[5-10]%
CCL	[0-5]%
Triska Energy	[0-5]%
Michael Walsh Warehousing	[0-5]%
Source LS	[0-5]%
DCC (incl. Certas and Emo)	[0-5]%
Others	[5-15]%

Source: The Parties

21. The parties submit that, although the Proposed Transaction gives rise to a horizontal overlap, both parties are small suppliers in the potential market for the wholesale distribution of lubricants in the State. The parties estimate that, following completion of the Proposed Transaction, their combined share of the potential market for the wholesale distribution of lubricants in the State is unlikely to exceed 5%. Furthermore, the parties will continue to face strong competition from other distributors listed in Table 1 above.
22. In addition, besides the *Chevron* and *Texaco* brands of lubricants which Emo/DCC will be distributing following implementation of the Proposed Transaction, a number of other international brands of lubricants are represented in the State, such as *Castrol*, *Shell*, *Mobil*, *Total*, *Elf*, *Petronas* and *Q8*. The parties state that customers do not face any switching costs when choosing from which supplier to purchase lubricants and associated products.
23. For completeness, the parties note that there is also a minimal overlap between the activities of the parties in the State in the sale of associated products such as additives, brake fluids, anti-freeze and gear oil. The parties consider their respective shares in the potential market for the wholesale distribution of lubricants in the State (set out in Table 1 above) to be an accurate guide to their respective shares in the potential market for the sale of associated products in the State.
24. The Commission considers that, following completion of the Proposed Transaction, Emo/DCC will have a relatively small share of the potential broader market for the sale, marketing and distribution of lubricants and associated products in the State. There is evidence of a large number of competitors (see Table 1 above) which vary in size in the potential market for the sale, marketing and distribution of lubricants and associated products in the State, who will continue to act as a competitive constraint on Emo/DCC



post-transaction. Additionally, the Commission understands that customers can easily switch to competing distributors of lubricant brands and associated products in the State.

25. For the reasons set out above, the Commission considers that the Proposed Transaction will not substantially impact either the potential market for the sale, marketing and distribution of lubricants and associated products in the State or the potential narrower markets for the wholesale distribution of lubricants in the State and the sale of associated products in the State.

Vertical Relationship

26. There is no vertical relationship between the parties. For completeness, the Commission notes that Emo/DCC is active in the retail sale of motor fuels and that some sales of lubricants are made through the retail channel at third party filling stations. Following completion of the Proposed Transaction, the merged entity may therefore decide to distribute some of CCL's lubricants through *Great Gas*- or *Emo*-branded retail motor fuel service stations. However, the Commission considers that neither Emo/DCC nor CCL has market power in any relevant upstream or downstream potential market. In particular, the Commission notes that:
- a. CCL faces strong competition in the State from other lubricants distributors such as Maxol, Finol, TOP, Gem and Topaz. Furthermore, CCL's main supplier, Texaco/Chevron, for which CCL is the authorised distributor in the State, faces strong competition from other suppliers of branded lubricants in the State such as Total, Shell, Castrol and Mobil; and
 - b. Emo/DCC is a relatively small player in the retail sale of motor fuel products in the State and is currently facing strong competition from competing brands including *Topaz*, *Applegreen*, *Maxol*, *Texaco* and *TOP*. Collectively *Emo* and *Great Gas* constitutes the sixth-largest brand of motor fuel in the State, with an estimated share of supply in 2015, by volume and by number of sites, of approximately [0-5]% and [5-10]%, respectively.⁸
27. Given the above factors, 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. There will remain a sufficient number of competitors and consumers in both the upstream and downstream markets in which both Emo/DCC and CCL compete in the State. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

28. 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

29. The SPA contains a number of restrictive obligations on the Principal Vendor. These include non-compete and non-solicitation clauses. The duration of these restrictive

⁸ Source: Experian Catalyst Fuel Report 2016.



obligations does not exceed the maximum duration acceptable to the Commission.⁹
The Commission considers these restrictions to be directly related to and necessary for
the implementation of the Proposed Transaction.

⁹ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



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 transaction, whereby Emo Oil Limited, a wholly-owned indirect subsidiary of DCC Public Limited Company, would acquire the entire issued share capital and thus sole control of CC Lubricants Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny
Member
Competition and Consumer Protection Commission