



DETERMINATION OF MERGER NOTIFICATION M/18/004 – MAXOL/BRENNANS

Section 21 of the Competition Act 2002

Proposed acquisition by McMullan Bros., Limited, through its wholly-owned subsidiary Maxol Limited, of the entire issued share capital of Brennan’s Car Sales (Newbridge) Limited

Dated 09 February 2018

Introduction

1. On 23 January 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed acquisition whereby McMullan Bros., Limited (“McMullan Bros”), through its wholly-owned subsidiary Maxol Limited (“Maxol”), would acquire the entire issued share capital of Brennan’s Car Sales (Newbridge) Limited (the “Target”) (the “Proposed Transaction”). Following implementation of the Proposed Transaction, Maxol will acquire a retail motor fuel service station, which currently trades under the *Maxol* brand (the “Target Service Station”), an associated forecourt convenience store (the “Target Store”) which currently trades under the *MACE* brand and the assets, land, and buildings which the Target Service Station and Target Store operate on.

The Proposed Transaction

2. The Target is owned and controlled by Joan Brennan, Carol Brennan, and William Joseph Brennan (the “Vendors”).
3. At the time of the notification, the parties had not yet executed a formal written agreement relating to the Proposed Transaction.¹ Nonetheless, the Commission

¹ The parties submitted to the Commission, together with the notification, a copy of the heads of terms dated 8 October 2017 between Maxol and Brennan’s Car Sales (Newbridge) Limited and, subsequently, a copy of an unsigned draft share purchase agreement.



considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purpose of section 18(1A)(b)(ii) of the Act.

4. The parties have informed the Commission that Maxol will choose an independent licensee to operate the Target Service Station and Target Store, following implementation of the Proposed Transaction. As such, the Target Service Station will continue to operate under the *Maxol* brand and the Target Store will be rebranded under Maxol's own forecourt convenience brand,² following implementation of the Proposed Transaction.

The Undertakings Involved

Maxol

5. Maxol is a subsidiary of Maxol Energy Limited (collectively "the Maxol Group") which, in turn, is a wholly-owned subsidiary of McMullan Bros. McMullan Bros was founded in 1920 and is a private limited company which is owned and controlled by the McMullan family. The other main subsidiaries of Maxol Energy Limited are Maxol Lubricants Limited, which is incorporated in the State, and Maxol Oil Limited which is incorporated in Northern Ireland.
6. Maxol was established in the State in 1920 by William McMullan, and markets a comprehensive range of oil and petroleum products to all sectors of the Irish economy, through its retail and lubricants divisions. Maxol's primary business is in the provision of oil and petroleum products. These business activities account for [...] % of Maxol's turnover and [...] % of the turnover of the Maxol Group.
7. The Maxol Group's network of retail motor fuel service stations consists of 233 branded retail motor fuel service stations throughout the island of Ireland. 137 of these retail motor fuel service stations are located in the State and operated by Maxol under the following types of arrangements:

² The parties informed the Commission that Maxol is currently planning to introduce its own forecourt convenience brand to replace the MACE brand in the State.



- a. 59 of the retail motor fuel service stations in the State are dealer-owned and dealer-operated (“DoDo”). The dealers in question have selected *Maxol* as their chosen brand and fuel provider under solus supply agreements³ between Maxol and the relevant dealer; and
 - b. 78 of the retail motor fuel service stations in the State are company-owned and dealer-operated (“CoDo”). These retail motor fuel service stations are owned by Maxol and are generally operated under licence agreements by independent, locally-based business people.
8. For the financial year ended 31 December 2016, McMullan Bros’ worldwide turnover was approximately €559 million, of which approximately €[...] was generated in the State. For the same period, Maxol generated turnover of approximately €[...], all of which was generated in the State.

The Target

9. The Target is a limited liability company which owns and operates the Target Service Station and the Target Store which are located in Ballymany, Newbridge, Co. Kildare.
10. The Target, and ultimately, the Vendor currently owns the land and buildings in which the Target Service Station and the Target Store operate.
11. For the financial year ended 31 March 2017, the Target’s turnover was €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

12. The notification states:

“Maxol is operating in an increasingly competitive market and is firmly committed to growing through acquisition and expansion. The arrival of Circle K in the Irish market, through the acquisition by Alimentation Couche-Tard Inc. of the Topaz business, which is estimated to have a 34% market share by volume, makes such a strategy imperative.”

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



Third Party Submissions

13. No submission was received.

Competitive Analysis

Horizontal Overlap

14. There is a horizontal overlap between the activities of the parties with respect to the retail sale of motor fuels (diesel (DERV), petrol, and automotive lubricants) and the operation of forecourt convenience stores in the State. For the reasons set out below, the Commission considers that the Proposed Transaction will not substantially lessen competition for the retail sale of motor fuels and the operation of forecourt convenience stores in the State.
15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case, the Commission considers that there are no strong reasons to depart from its previous approach⁴ to market definition in relation to the retail sale of motor fuels and the operation of forecourt convenience stores for the purpose of assessing the competitive effects of the Proposed Transaction.⁵
16. In previous determinations, the Commission has followed the approach to geographic market definition adopted by its predecessor, the Competition Authority, which previously found that there are local markets in relation to the retail sale of motor fuels, which vary in size depending on whether the retail motor fuels forecourt is located in an urban or a rural location (i.e., a radius of 2 miles/3.2km from a retail motor fuel forecourt in an urban location and a radius of 5 miles/8 km in a rural location).⁶

⁴Please see paragraph 15 in M/17/020 – Maxol/Great Gas (Turvey) which can be accessed at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/06/M_17_020-Maxol-Great-Gas-Turvey-1.pdf.

⁵ In relation to the operation of forecourt convenience stores, the Commission has on a number of occasions considered the retail grocery sector, which is comprised of a wide spectrum of outlets. There is a large and varied (in size) number of competitors in the retail sector whose presence will constrain the activities of Maxol as an operator of forecourt convenience stores. The Commission therefore decided not to focus further on this potential market in this determination.

⁶ Please see paragraph 16 M/17/020 – Maxol/Great Gas (Turvey) which can be accessed at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/06/M_17_020-Maxol-Great-Gas-Turvey-1.pdf.



17. As stated above, the Target Service Station is located in Ballymany, Newbridge, Co Kildare, which is in a rural location. On this basis, the Commission identified a potential local market with a 5 mile/8 km radius around the Target Service Station for the purpose of analysing the likely competitive impact of the Proposed Transaction. Using an isochrone mapping software, 11 retail motor fuel service stations were identified as operating within a 5 mile/8 km radius of the Target Service Station, representing 6 competing fascias/brands, as set out in Table 1 below. Following implementation of the Proposed Transaction, the number of fascias/brands in the potential local market where the Target Service Station is located will remain unchanged because the Target Service Station already operates under the *Maxol* brand.⁷

Table 1: Analysis of the retail motor fuel service stations which are located within a 5 mile/8 km radius of the Target Service Station

Operator	Service station address within a 5 mile/8 km radius	Estimated distance from the Target Service Station (km)
Target Service Station	Ballymany, Newbridge, Co Kildare	-
Maxol	Fitzpatrick's Garage Dublin Rd, Kildare Town	6 km
MCL Oil	Ballymany, Newbridge, Kildare	0.6 km
Topaz	Edward Street, Newbridge	1.3 km
Applegreen	Edward Street, Newbridge, Newbridge	1.3 km
	Kilcullen	6.2 km
Naas Oil	Naas Road, Kilcullen, Naas	6 km
Top	Chapman's, Dublin Rd, Kildare Town	5.3 km
	Station Road, Kildare Town	6 km
	Duffys, Naas Road, Newbridge	2.7 km
	Newhall, Naas	6.7 km

⁷ The only aspect that will change is that the Target Service Station will be operated as a CoDo instead of a DoDo, i.e., the Target Service Station will be company owned and independently dealer operated (by a licensee appointed by Maxol).



Source: The Commission and information provided by the parties.

18. Following implementation of the Proposed Transaction, there will remain 5 competitors in the potential local market where the Target Service Station is located whose presence will act as a competitive constraint on the activities of Maxol in the retail sale of motor fuels (diesel (DERV), petrol and automotive lubricants).
19. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition for the retail sale of motor fuels in the potential local area where the Target Service Station is located.

Vertical Relationship

20. Maxol is involved in the wholesale distribution of motor fuels to DoDo and CoDo retail motor fuel service stations in the State. All of the Target Service Station's current fuel requirements are currently met and supplied by Maxol. Following implementation of the Proposed Transaction, the Target Service Station's fuel requirements will continue to be met by Maxol in accordance with the planned licence agreement. Also, there are a number of significant competitors to Maxol, such as *Topaz*, *TOP* and *Applegreen*, which are currently active in supplying refined fuel products to other retailers in the local area where the Target Service Station is located. The Commission therefore considers that Maxol will not have the ability to foreclose wholesale suppliers of refined fuel products who compete with Maxol for the wholesale distribution of motor fuels to DoDo and CoDo retail motor fuel service stations in the local area where the Target Service Station is located. For this reason, the Commission considers that the Proposed Transaction will not result in any vertical competition concerns in the local area where the Target Service Station is located.

Conclusion

21. 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

22. No ancillary restraints were notified.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby McMullan Bros., Limited, through its wholly-owned subsidiary Maxol Limited, would acquire the entire issued share capital of Brennan's Car Sales (Newbridge) 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

Brian McHugh
Member
Competition and Consumer Protection Commission