



## DETERMINATION OF MERGER NOTIFICATION M/18/075 - IRVING / TEDCASTLES

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### Section 21 of the Competition Act 2002

**Proposed acquisition by Irving Oil Limited of sole control of Hillingdon Investment Company Unlimited Company.**

**Dated 07 January 2019**

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#### **Introduction**

1. On 4 September 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 Glitterglen Limited (“Glitterglen”), a wholly-owned subsidiary of Irving Oil Limited (“Irving”) would acquire sole control of Hillingdon Investment Company Unlimited Company (“Hillingdon”), the ultimate holding company of the Tedcastles Group (“Tedcastles”), from the Reihill family (the “Proposed Transaction”).

#### **The Proposed Transaction**

2. The Proposed Transaction involves the acquisition by Irving, through Glitterglen, of the entire issued share capital of Hillingdon by way of a sale and purchase agreement, a shareholders agreement and three put and call option agreements, i.e.,
  - The sale and purchase agreement (the “SPA”) is between: the SPA shareholders<sup>1</sup>; Glitterglen; Irving; and, [...] (the “Reihill Representative”) dated 21 August 2018 pursuant to which Irving will acquire [...] % of the issued share capital of Hillingdon.

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<sup>1</sup> The SPA shareholders are as follows:[...].



- On completion of the SPA, a shareholders agreement (the “Shareholders Agreement”) will be entered into between: the Reihill shareholders<sup>2</sup>; Irving; the Reihill Representative; and, the Reihill grantors<sup>3</sup>. The Shareholders Agreement will [...]. Following completion of the SPA and pursuant to the Shareholders Agreement, Irving will acquire sole control of Tedcastles within the meaning of section 16(1)(b) of the Act.
  - The first put and call option agreement, dated 21 August 2018, is between the grantors<sup>4</sup>; Glitterglen; Irving; and the Reihill Representative. The second put and call option agreement, dated 21 August 2018, is between [...]; Glitterglen; Irving and the Reihill Representative. The third put and call option agreement, dated 21 August 2018, is between [...]; Glitterglen; Irving and the Reihill Representative (all put and call option agreements together, the “First, Second and Third Put and Call Option Agreements”). Following the execution of the SPA and the Shareholders Agreement, Irving intends to acquire the remaining [...] of the issued share capital of Hillingdon through the exercise of the First, Second and Third Put and Call Option Agreements.
3. Therefore, following the implementation of the SPA and the Shareholders Agreement, Irving will acquire sole control of Tedcastles within the meaning of section 16(1)(b) of the Act.

### **The Undertakings Involved**

#### *The Acquirer – Irving*

4. Glitterglen is a private limited company, registered in the State, which is ultimately owned and controlled by Irving.
5. Irving is an international refining and marketing company headquartered in Saint John, New Brunswick, Canada where it operates Canada’s largest refinery. Irving also

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<sup>2</sup> The Reihill shareholders are as follows:[...].

<sup>3</sup> The Reihill grantors are as follows: [...].

<sup>4</sup> The grantors are as follows: [...].



operates a number of wholesale supply terminals and a network of over 900 fuelling stations in Canada and the United States, as well as a terminal in Amsterdam.

6. In the State, Irving operates the Whitegate refinery in Cork<sup>5</sup> (the “Whitegate Refinery”), through its subsidiary Irving Oil Whitegate Holdings Limited. The Whitegate Refinery processes light, low sulphur crude oil (up to 75,000 barrels per day). The portion of Whitegate Refinery’s production which is sold into the State is equivalent to approximately [...] % of demand for refined fuel products in the State in 2017.<sup>6</sup> Irving is involved in the following activities in the State:
  - a. the refining (of crude oil) and ex-refinery sale of refined fuel products<sup>7</sup> (i.e., the production and ex-refinery sale of refined fuel products) at the Whitegate Refinery delivered to marine terminals both in the State and outside of the State; and,
  - b. the wholesale supply of refined fuel products<sup>8</sup> to industrial customers (e.g. factories, hospitals, etc.), commercial enterprises (hauliers, car rental fleets, etc.), independent motor and home heating retailers and resellers.
7. For completeness, Irving does not own any fuel terminals, retail forecourts or depots in the State. Therefore, it is not active in the State in relation to (i) the supply of fuel terminalling services (importation and storage), (ii) the retail sale of motor fuels, (iii) the retail sale of home heating fuels, or (iv) the supply of aviation fuel, asphalt or lubricants.

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<sup>5</sup> The Whitegate Refinery in Cork is Ireland’s only refinery.

<sup>6</sup> Market share estimates were provided by the parties and based on the total volume of refined fuel products produced by Irving at the Whitegate Refinery and sold into the State compared to the National Oil Reserve Agency’s total annual oil consumption in the State.

<sup>7</sup> The European Commission has previously considered a distinction between different levels of the distribution chain, i.e., sales made at the ex-refinery level (fuels sold directly from the refinery to third parties in cargo), the wholesale (non-retail) level (the re-selling of refined fuel products by wholesalers to retailers and other large industrial customers) and the retail level. For more information, please see COMP/M.4348 – PKN/Mazeki (2006), paragraph 9. See also COMP/M.5846 – Shell/Consan/JV (2011); COMP/M.5445 – Mytilineos/Motor Oil/Corinthos Power (2009). The sale of such refined fuel products includes the Whitegate Refinery’s output as well as third party refinery output which is imported by Irving into the Whitegate Refinery.

<sup>8</sup> Such refined fuel products include the Whitegate Refinery’s output as well as third party refinery output which is imported by Irving into the Whitegate Refinery.



8. For the financial year ending 31 December 2017, Irving's worldwide turnover is approximately €[...], of which approximately €[...] was generated in the State.

*The Target - Tedcastles*

9. Hillingdon is the ultimate parent company of Tedcastles, which is ultimately owned and controlled by the Reihill family. Tedcastles is headquartered in Eastpoint Business Park, Dublin 3, Ireland. Tedcastles operates under its *Top Oil* brand in the State and is involved in the following activities in the State:

- a. the supply of fuel terminalling services (importation and storage) through its ownership of an import terminal in Dublin port with a maximum (nominal) tank capacity of approximately [...] tonnes (the "TOP Terminal");<sup>9</sup>
- b. the wholesale supply of refined fuel products (i.e., on an ex-rack basis) to industrial customers, commercial enterprises, independent motor and home heating retailers and resellers in Ireland;
- c. the retail sale of motor fuels and home heating fuels to end consumers through its retail network which includes the following:
  - the operation of and supply to [...] company-owned and company operated retail forecourts which are operated via a wholly owned subsidiary of Tedcastles, Sirio Retail Operations Limited;
  - the supply to [...] dealer-owned and dealer-operated retail forecourts that are generally *Top Oil* branded and have supply agreements with Tedcastles;
  - the supply to [...] licensee sites, a hybrid model, whereby Tedcastles supplies the sites and has full control over the fuel sales but the shop sales and running of the forecourt are the responsibility of the licensee;

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<sup>9</sup> Tedcastles only provides fuel terminalling services in respect of one third-party customer, namely the International Airlines Group ("IAG") at Dublin Airport, whereby Tedcastles has entered into a throughput arrangement to import and store IAG owned aviation fuel. The remainder of Tedcastles fuel terminalling operations relate to Tedcastles own use.



- the operation of and supply to [...] fuel card sites<sup>10</sup> which are leased by Tedcastles where either *Top Oil* customers or other branded fuel card customers can purchase fuel<sup>11</sup>; and
  - the operation of and supply to 22 inland depots through which Tedcastles sell home heating fuel and other commercial oil products to end users (i.e. residential home heating customers, large industrial users, construction companies and agricultural customers).
- d. the supply of aviation fuelling services at Shannon Airport, County Clare. Tedcastles' aviation operations are managed by Tedcastles Aviation Fuels Limited, which is based at Shannon Airport, County Clare. Tedcastles Aviation Fuels Limited is responsible for the management and operation of the "into-plane" activity which is outsourced from the management of Shannon Airport Authority DAC. Tedcastles is not engaged in the supply of aviation fuel itself.
10. For completeness, Tedcastles is not active in: (i) the production and ex-refinery sale of refined petroleum in the State or outside of the State or (ii) the supply of asphalt or lubricants.
11. For the financial year ending 31 March 2017, Hillingdon's worldwide turnover is approximately €[...] billion, of which approximately €[...] million was generated in the State.

#### **Rationale for the Proposed Transaction**

12. The parties state the following in the notification:

*"Irving has a long history of refining and marketing quality transportation and heating fuel products in North America. By combining its North American experience with its Whitegate Refining operation, its other European operations, and the Tedcastles organization, Irving Oil will be well positioned to effectively compete over the long term against major petroleum refining and marketing companies already serving the Irish market. Irish consumers will benefit from Irving's supply of competitively priced, quality and locally produced fuels."*

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<sup>10</sup> The parties state the following in the merger notification form: "This includes a number of small sites which are classified as one. When expanded out the number of physical sites is [...]".

<sup>11</sup> Fuelcard sites are predominately used in the heavy goods vehicle fuel segment.



*The economic rationale for Irving's acquisition of Tedcastles is driven by two key factors. Firstly, the Proposed Transaction will allow Irving to benefit from synergies across its various North American and European operations, including its Canadian Refinery, its Whitegate Refinery, its London Trading Office, and its Amsterdam Blending Operations. Secondly, downstream growth in the fuel supply market in Ireland will allow Irving to expand beyond its significant operations in Eastern Canada and the North-East US, thereby further diversifying its geographic presence.*

*The Proposed Transaction provides Irving with an opportunity to vertically integrate in Ireland by, entering the downstream retail market, enhancing its product offering, and allowing it to compete more effectively with some of the largest petroleum refiners, marketers and retailers in the world, which are currently serving the Irish market (and vertically integrated within Ireland); for example Valero Energy Ireland (Texaco), Circle K (previously Topaz), Applegreen and Greenergy International Limited (Inver Energy Limited)."*

### Industry Background

13. In the State, Irving is primarily involved in the refining and wholesale supply of refined fuel products, while Tedcastles is primarily involved in the wholesale and retail supply of refined fuel products.
14. The value chain for fuel products starts with crude oil, which is produced worldwide and transported by ship or pipeline to refineries. Through an oil refining process, crude oil is converted into different refined oil (fuel) products and then transported and stored, mostly in large sea fed terminals.
15. According to the National Oil Reserves Agency ("NORA")<sup>12</sup>, the demand<sup>13</sup> for refined oil products in 2017 in the State was approximately 6.5 billion [litres].<sup>14</sup>
16. Refined oil (fuel) products are either imported into the State through sea fed fuel terminals or refined at the country's only refinery, the Whitegate Refinery, which as

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<sup>12</sup> For more information about NORA, please see <http://www.nora.ie/>.

<sup>13</sup> The volumes recorded by NORA are the aggregate monthly volumes of oil sales (including own consumption) that are subject to the NORA Levy and the Biofuel Levy, based on the collective returns made to the Department of Communications, Climate Action and Environment.

<sup>14</sup>For more information, please see:

[http://www.nora.ie/fileupload/PDF%20Version%20Volumes%20of%20Oil%20Consumption%20Subject%20to%20NORA%20Levy%20Month%20by%20Month%20in%20Litres%202017\(1\).pdf](http://www.nora.ie/fileupload/PDF%20Version%20Volumes%20of%20Oil%20Consumption%20Subject%20to%20NORA%20Levy%20Month%20by%20Month%20in%20Litres%202017(1).pdf) .



previously mentioned is owned by Irving. There are currently five terminals importing refined fuel products in the State:

- TOP Terminal, Dublin port, which is owned by Tedcastles;
- Joint Fuels Terminal, Dublin port, which is jointly owned by Valero Energy (Ireland) Limited (“Valero”) and Applegreen Public Limited Company (“Applegreen”);
- Circle K Terminal, Dublin port, which is owned by Circle K Ireland Energy Group Limited (“Circle K”)<sup>15</sup>;
- Foynes Terminal, Limerick, which is owned by Atlantic Fuel Supply Company Limited (“AFSC”). AFSC is jointly owned by Inver Energy Limited (“Inver”) and East Cork Oil Company Unlimited Company; and
- Enwest Terminal, Galway, which is owned by Galway Harbour and operated by Circle K.

17. In addition to the above import terminals, some refined fuel products are imported into the State by road from the LCC Oil Terminal in Derry, Northern Ireland.

18. Road diesel and petrol are the main refined products consumed in the State and are mainly used in transport. Gasoil is used mainly for off-road and agricultural purposes. Aviation fuel (Jet A1) and kerosene are mainly consumed in international aviation and heating respectively.<sup>16</sup> Fuel oil is mainly used by power stations and other heavy industries (e.g., mining, shipbuilding, steel, chemicals, machinery manufacturing) but its consumption is on the decline.<sup>17</sup>

## Preliminary Investigation

### Market Enquiries

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<sup>15</sup> Circle K owns two terminals at Dublin port, however, the Commission notes that one of the oil berths and terminals owned by Circle K in Dublin port primarily handles non-transport or heating fuel, therefore, the Commission considers that this terminal does not have a major role in importing refined fuel products.

<sup>16</sup> Both derived from dual-purpose kerosene (DPK) and it is only the method of handling and storage that differs.

<sup>17</sup> For more information regarding the industry background, please see “Section D. Industry Background” in the Commission’s determination of M/15/020 – Topaz/Esso Ireland which is accessible at: [https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-15-020-Full-Phase-2-Determination-Topaz\\_Esso-Ireland\\_0.pdf](https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-15-020-Full-Phase-2-Determination-Topaz_Esso-Ireland_0.pdf)



19. During its preliminary investigation, the Commission issued questionnaires to various parties at different stages of the fuel industry supply chain, e.g., customers, competitors and suppliers of Irving and Tedcastles.
20. The Commission received full responses from the majority of the parties contacted and undertook a series of follow-up meetings and phone calls with the respondents.
21. During the course of its market enquires, a number of third parties raised concerns regarding the possibility of partial input foreclosure in relation to the distribution of refined fuel products to smaller distributors in the State. One third party raised concerns that following implementation of the Proposed Transaction, Irving might increase the price of ex-refinery sale at the Whitegate Refinery. The Commission took these third party concerns into account in its competitive assessment.

#### **Contacts between the Commission and the Undertakings Involved**

22. On 11 October 2018, the Commission served a Requirement for Further Information (“RFI”) on each of Irving and Tedcastles pursuant to section 20(2) of the Act. This adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in the Phase 1 investigation.
23. Upon compliance with the RFIs from each of Irving and Tedcastles, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 30 November 2018.
24. In December 2018, the Commission discussed its preliminary views on the Proposed Transaction with legal representatives of the parties. Further submissions were received from the parties addressing the issues raised by the Commission.
25. On 21 December 2018, the parties submitted a joint submission to the Commission setting out their reasoning as to why Irving would not have the incentive to limit supply and/or increase prices to smaller distributors in the State. The Commission took the parties’ submission into account when conducting its competitive assessment.

#### **Third Party Submissions**





26. During the Phase 1 investigation, the Commission received one anonymous third party submission. The anonymous third party raised a number of issues in relation to the Proposed Transaction. These issues included potential (partial) input foreclosure in relation to the wholesale supply of refined fuel products to small distributors in some regions in the State as well as a potential increase in the price of refined fuel products to small distributors in some regions in the State. The Commission has taken this submission into account in its analysis below.

### Competitive Analysis

#### *Horizontal Overlap*

#### Overlap activities

27. Table 1 below presents a list of the business activities in which Irving and Tedcastles are currently active in the State.

**Table 1: Irving and Tedcastles business activities in the State - 2017/18**

Product/Service	Irving	Tedcastles	Overlap or Not
Refining (the production and ex-refinery sale of refined fuel products)	√	X	X
Importation of refined fuel products	√	√	√
Fuel Terminalling (importation, storage and bulk sale of refined fuel products) <sup>18</sup>	X	√	X
Wholesale/commercial distribution of fuel products	√	√	√
Heating oil retail	X	√	X
Transport fuels retail	X	√	X
Retail convenience stores	X	√	X
Coffee shops	X	√	X
Car washes	X	√	X
Fuel cards	X	√	X

<sup>18</sup> Including transport fuels (road diesel (DERV) and petrol), dual purpose kerosene (DPK)(kerosene and aviation fuel (Jet A1)) and gasoil (green diesel).



Aviation fuel (Jet A1) into plane	X	√	X
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Source: Commission based on information supplied by Irving and Tedcastles.

28. In light of Table 1 and paragraph 31 below, the Commission considers that both Irving and Tedcastles are involved in the following business activities:
- importation of refined fuel products into the State; and
  - wholesale supply of refined fuel products in the State.
29. The parties state in the notification that Irving “*is not active in Ireland in relation to (i) fuel terminalling services (importation and storage)*”.<sup>19</sup> The Commission considers that all of the companies which import refined fuel products into the State, own fuel terminal facilities in the State, such as, Valero, Circle K, Tedcastles.<sup>20</sup> However, not all companies which own fuel terminal facilities in the State import refined fuel products into the State. For example, AFSC, which owns the fuel terminal in Foynes, Co. Limerick, is not active in importing refined fuel products. Similarly, not all companies which own terminal facilities in the State provide terminalling services to third parties in the State, for example, [...]”<sup>21</sup>.
30. The parties further state in the notification that Irving is active “*in selling Whitegate’s output (and to a limited extent third party refinery output)*”.<sup>22</sup> The Commission understands that Irving imports refined fuel products from its refinery in Canada and third parties’ refineries into its Whitegate Refinery. Irving estimates that the percentage of refined fuel products that it imported from third parties’ refineries into the State in 2017 was approximately [...] % in respect of all the refined fuel products sold by Irving in the State in 2017.
31. In light of the above, the Commission considers that although Irving is not supplying any terminalling services to any third parties in relation to the storage aspect of the fuel terminalling services, it does import refined fuel products to its Whitegate

<sup>19</sup> Page 4 of the merger notification.

<sup>20</sup> In the case of Irving, it owns the facilities at the Whitegate Refinery.

<sup>21</sup> [...].

<sup>22</sup> Page 4 of the merger notification.



Refinery. Therefore, for completeness, the Commission considers that both Irving and Tedcastles are active in the importation of refined fuel products into the State.

32. The Commission will therefore assess whether or not the Proposed Transaction will result in a substantial lessening of competition (“SLC”) for the two overlapping areas, outlined in paragraph 28 above, in the following section.

### **Importation of refined fuel products into the State**

#### *Market definition*

33. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case, it is not necessary for the Commission to conclude on the relevant product market in respect of the parties’ activities regarding the importation of refined fuel products into the State, as regardless of whether the potential product market is narrower (i.e., the importation of refined fuel products), or broader (i.e., the provision of fuel terminalling services including importation of refined fuel products and the supply of fuel terminal services)<sup>23</sup>, the Proposed Transaction is unlikely to raise any competition concerns. Since Irving does not supply fuel terminalling services to third parties, the Commission considers that the market that is likely to be impacted by the Proposed Transaction is the potential market for the importation of refined fuel products.
34. Similarly, it is not necessary for the Commission to conclude on the potential geographic market in respect of the importation of refined fuel products. Given almost all refined fuel products imported by the parties are sold in the State, the Commission will assess the potential competitive effects of the Proposed Transaction, in respect of the importation of refined fuel products into the State.

#### *Competitive Analysis*

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<sup>23</sup>The Commission has previously examined the importation of refined fuel products as part of fuel terminalling services, i.e., in its M/15/20 Topaz/Esso Ireland decision. In its Topaz/Esso Ireland determination, the Commission examined the importation of refined fuel products together with storage and bulk sale of refined fuel products as one potential product market, i.e., the supply of fuel terminalling services. As mentioned above, there is no horizontal overlap between the parties activities with respect to the supply of fuel terminalling services.



35. In relation to all imported refined fuel products sold in the State (by volume), Irving currently holds approximately [0-10]% share in the State, while Tedcastles holds approximately [15-25]% share in the State.<sup>24</sup> Thus, following implementation of the Proposed Transaction, Irving will hold an estimated [20-30]% share in respect of the importation of refined fuel product sold in the State.
36. For the following reasons, the Commission considers that the Proposed Transaction is unlikely to raise any competition concerns in respect of the importation of refined fuel products into the State:
- From supply-side substitution, the Sustainable Energy Authority of Ireland reported in 2016 that approximately 76% of refined petroleum product imports came from the UK with the next three largest sources being Sweden, Norway and the US<sup>25</sup>. Therefore, the supply of refined fuel products into the State appears to be wider than the EU. There are little barriers for Irving's competitors listed in paragraph 29 above to import refined fuel products from abroad.
  - The Commission's market enquiries suggest that fuel importers regularly procure refined fuel products by way of competitive tender on the international market. The Commission notes that there is a relatively small price difference in product prices between different regions in Europe, which are mainly due to the cost of shipping. The Commission has not identified any tariff barriers or substantial costs that would prevent cross-border trade in refined fuel products.<sup>26</sup>
  - Following implementation of the Proposed Transaction, Irving will continue to face competition from other large vertically integrated global fuel companies, such as Valero, *Circle K*, and Inver, which are currently operating in the State.

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<sup>24</sup> These figures are calculated based on information provided by the parties. The total volume of imported refined fuel products into the State is calculated based on the assumption that approximately 71% of the total refined fuel products consumption in the State (NORA figure) are imported into the State, as mentioned in paragraph 6 above. Although the total volume of imported refined fuel products into the State excludes the total volume of refined fuel products refined through Whitegate Refinery and sold in the State, Commission has taken the fact that Whitegate Refinery supplies approximately [...] % of refined fuel products in the State into account in its competitive assessment.

<sup>25</sup> Sustainable Energy Authority of Ireland, "Energy Security in Ireland: A Statistical Overview" (2016 Report).

<sup>26</sup> Paragraph 32 M.727 - BP/MOBIL.



- Furthermore, during the Commission's market enquiries, [...]. In addition, the Commission's market enquiries suggested that irrespective of the Proposed Transaction, Inver, Circle K and Valero will all have spare capacity for importing and storing additional refined fuel products in their terminals.

37. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the importation of refined fuel product into the State.

### **Wholesale supply of refined fuel products**

#### *Product Market Definition*

38. In respect of the wholesale supply of refined fuel products, the Commission considers that it is not necessary to conclude on the relevant product market. The Commission notes that regardless of whether the potential product market is narrower, (i.e., wholesale supply of refined fuel product by fuel type),<sup>27</sup> or broader, (i.e., the wholesale supply of all types of refined fuel products), the Proposed Transaction is unlikely to raise any competition concerns.

39. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the following narrower potential product markets i.e., (i) wholesale supply of gasoline (incl biofuel); (ii) wholesale supply of motor diesel (incl biofuel); (iii) wholesale supply of gas oil (10ppm) and (iv) wholesale supply of gas oil (1000ppm). For the sake of completeness, the Commission has also analysed the impact of the

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<sup>27</sup> Please see *COMP/M.3291 – Preem/Skandinaviska Raffinaderi (2003)*; *COMP/M.3375 – Statoil/SDS (2004)*; *COMP/M.3543 – PKN Orlen/Unipetrol (2005)*; *COMP/M.3516 – Repsol/Shell Portugal (2004)*; *COMP/M.4208 – Petroplus/European Petroleum Holdings (2006)*; *COMP/M.4545 – Statoil/Hydro (2007)*; *COMP/M.5005 – Galp Energia/Exxonmobil Iberia (2008)*; *COMP/M.5169 – Galp Energia Espana/Agip Espana (2008)*; *COMP/M.6261 – North Sea Group / Argos Groep / JV*. The European Commission previously examined the market for the wholesale supply of refined fuel products consisting of the wholesale supply to independent resellers or retailers, not integrated upstream (e.g. unbranded service station operators such as supermarkets), as well as to large industrial and commercial end-customers (hospitals, car rental fleets, factories, etc.) and that this market constituted a distinct relevant product market. For further information please see cases *COMP/M.4545 Statoil / Hydro (2007)*; *COMP/M.5005 Galp Energia / Exxonmobil Iberia (2008)*; and *COMP/M.5169 Galp Energia Espana / Agip Espana (2008)*.



Proposed Transaction by reference to the potential market for the wholesale supply of all types of refined fuel products.

#### *Geographic Market Definition*

40. The European Commission has previously considered the geographic scope of the markets for wholesale supply of refined fuel products to be at least national.<sup>28</sup>
41. The Parties state in the notification that *“the relevant geographic market for the wholesale supply of refined petroleum products is 150km from Dublin Port and Whitegate Refinery respectively (i.e., Munster and wider Leinster).”*
42. In this case, it is not necessary for the Commission to conclude on the potential geographic market in respect of the wholesale supply of refined fuel products. The Commission notes that regardless of whether the potential geographic market of the wholesale supply of refined fuel products is narrower, (i.e., a radius of 150 km from Dublin Port and a radius of 150 km from Whitegate Refinery), or broader (i.e., national), the Proposed Transaction is unlikely to raise any competition concerns.
43. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the potential geographic market being regional, i.e., a radius of 150 km from Dublin Port (Leinster region), where Tedcastles is predominantly active, and a radius of 150 km from Whitegate Refinery (Munster region), where Irving is predominantly active. For the sake of completeness, the Commission has also analysed the impact of the Proposed Transaction by reference to the State.

#### *Competitive Analysis*

##### The wholesale supply of all refined fuel products

##### *National*

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<sup>28</sup> Please see COMP/M.4532 – Lukoil / ConocoPhillips (2007); COMP/M.3291 – Preem/Skandinaviska Raffinaderi (2003).



44. In relation to the State, the parties estimated that Irving currently holds a [10-20]% share in the wholesale supply of all refined fuel products in the State, while Tedcastles holds a [10-20]% share in the State. Thus, following implementation of the Proposed Transaction, Irving will hold an estimated [20-30]% share in the wholesale supply of all refined fuel products in the State. The Commission notes that Irving and Tedcastles currently face a competitive constraint from other wholesale competitors, e.g., Circle K, Valero, Applegreen, and Inver. These competitors will continue to exert a competitive constraint on Irving in the State, following the implementation of the Proposed Transaction.

#### *Munster Region*

45. In relation to the Munster region, the parties estimated that Irving currently holds a [25-35]% share in the wholesale supply of all refined fuel products in the Munster region while Tedcastles holds a [10-20]% share in the Munster region.<sup>29</sup> Thus, following implementation of the Proposed Transaction, Irving will hold an estimated [30-40]% share of the wholesale supply of all refined fuel products in the Munster region. In addition, the Commission notes that Irving currently faces a competitive constraint from its wholesale competitors with terminal facilities which are closest to the Whitegate Refinery, e.g., Atlantic Fuels Storage Company's terminal in Foynes, Co. Limerick (jointly owned by Greenergy and East Cork Oil) and the Enwest terminal in Galway (currently operated by Circle K). These competitors will continue to exert a competitive constraint on Irving in the Munster region, following implementation of the Proposed Transaction.

#### *Leinster Region*

46. In relation to the Leinster region, the parties estimated that Irving currently holds a [0-10]% share in the wholesale supply of all refined fuel products in the Leinster region while Tedcastles holds a [15-25]% share in the Leinster region.<sup>30</sup> Thus, following implementation of the Proposed Transaction, Irving will hold an estimated [20-30]% share in the wholesale supply of all refined fuel products in the Leinster region. The

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<sup>29</sup> The Commission notes that these market share estimates are based on the parties' information.

<sup>30</sup> The Commission notes that these market share estimates are based on the parties' information.



Commission notes that Tedcastles currently faces a competitive constraint from other wholesale competitors at Dublin Port, e.g., *Circle K* which owns two terminal facilities in Dublin Port as well as the Joint Fuels Terminal which is jointly owned by *Valero* and *Applegreen*. These competitors will continue to exert a competitive constraint on Irving, following the implementation of the Proposed Transaction.

47. In light of the above, the Commission considers that if the potential relevant product market includes all refined fuel products, the Proposed Transaction is unlikely to raise any competition concerns regardless of whether the geographic market is regional or national.

#### The wholesale supply of refined fuel products by fuel type

##### *National*

48. The parties submitted market share estimates in relation to the wholesale supply<sup>31</sup> of refined fuel products - by fuel type - on the basis of the NORA's annual oil consumption<sup>32</sup> in the State. The parties provided market share estimates in the wholesale supply of refined fuel products – by fuel type – in the State in 2017.<sup>33</sup> Table 2 shows that Irving's market share by type of motor fuel product will range from approximately [30-40]% to [40-50]% following implementation of the Proposed Transaction .

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<sup>31</sup> Market share estimates are based on the total volume of refined fuel products sold by Irving and Tedcastles in the State and NORA's total annual oil consumption in the State. In addition, Irving noted the difficulty in categorising Irving's customers when estimating wholesale supply market share estimates, in particular that, "[i]t is not possible for Irving to categorise its customers between "wholesalers" [...] and / or "retailers" [...] with any degree of accuracy. While Irving does supply to terminal operators / owners and wholesalers that also own and operate retail networks, Irving has no visibility of what volumes such customers supply onward at the wholesale level or downstream through its retail network." Thus, the market share estimates in relation to the wholesale supply of refined fuel products are a best estimate of market shares in relation to the wholesale supply of refined fuel products in the State.

<sup>32</sup> For more information concerning the volume of oil consumption which is subject to the NORA levy, please see <http://www.nora.ie/statistics.312.html>.

<sup>33</sup> While the wholesale activities of Irving and Tedcastles are predominantly located in Munster and Leinster, respectively, NORA's figures do not segment oil consumption on a regional basis. Furthermore, Irving noted the difficulty in estimating the exact location of each wholesale customer, "Further, as mentioned above, the final destination of shipments from the Whitegate truck rack is not known to Irving Oil. Once the product is loaded onto the customer trucks or third party fuel hauler trucks via the truck rack, the destination is only known by the particular wholesaler customer."





**Table 2: Estimated Market Share of Irving and Tedcastles in relation to the wholesale supply of refined fuel products (by fuel type) in the State in 2017**

Refined petroleum type	NORA total annual consumption	Irving <sup>34</sup>	Tedcastles <sup>35</sup>	Total
Gasoline (incl. Biofuel)	1,204,824,292	[25-35]%	[10-20]%	[35-45]%
Motor Diesel (incl. Biofuel)	3,409,282,635	[25-35]%	[10-20]%	[40-50]%
Gas Oil (10ppm)	741,805,511	[20-30]%	[10-20]%	[30-40]%
Gas Oil (1000ppm)	108,870,028	Unavailable <sup>36</sup>	[0-10]%	N/A
Kerosene	1,016,858,117	[30-40]%	[10-20]%	[40-50]%

Source: The parties and NORA statistics.

#### *Munster Region and Leinster Region*

49. Estimated market share information related to each type of refined fuel product at a regional level is not available to the Commission. However, as previously noted, Irving's only facility in the State is the Whitegate Refinery in Cork, while Tedcastles' terminal facility is the TOP Terminal located at Dublin port. As a result, Irving's activities in the wholesale supply of refined fuel products is predominantly located in the Munster region,<sup>37</sup> while Tedcastles' wholesale business is focused in the Leinster<sup>38</sup> region.

<sup>34</sup> The estimated market shares in relation to Irving includes refined fuel products produced at the Whitegate Refinery as well as refined fuel products sourced by Irving on the open market/imported and thus supplied in the State.

<sup>35</sup> The Commission notes that the market share estimates provided in Table 1 in relation to Tedcastles relate to the supply of refined fuel products to third parties and Tedcastles' own network. If the volumes of refined fuel products supplied to Tedcastles' own network are discounted, Tedcastles estimated market shares are as follows: [0-10] % (Gasoline (incl. Biofuel)); [0-10] % (Motor Diesel (incl. Biofuel)); [0-10] % (Gas Oil (10ppm)); [0-10] % (Gas Oil (1000ppm)); [0-10] % (Kerosene).

<sup>36</sup> Irving noted the following in relation to the difficulty in estimating market share for Gasoil 1000ppm, "As identified above NORA can only report on consumption volumes in Ireland where it collects the NORA levy per litre in respect of volumes sold (if applicable). In certain instances, for some refined fuel products (for example gasoil that is purchased for particular uses such as marine / ship fuel) NORA do not collect the levy in respect of volumes sold and therefore the NORA statistics may not accurately reflect the actual volumes sold in the State (by refineries, terminals, wholesalers, etc.)."

<sup>37</sup> The parties provided the following information in relation to Irving's minimal wholesale activities in the Leinster region, "[...]".

<sup>38</sup> The parties provided the following information in relation to Tedcastles minimal wholesale activities in the Munster region, "[...]"



50. The Commission considers that although the parties' combined estimated market shares for the wholesale supply of refined fuel products for different fuel types are relatively high both national and regional (Munster Region and Leinster Region), following implementation of the Proposed Transaction, *Greenergy*, *Circle K* and *Valero* will continue to exert a competitive constraint on Irving in the wholesale supply of each type of refined fuel products.
51. In addition, the Commission's market enquires indicated that wholesale supply arrangements for refined fuel products tend to be procured by way of competitive tender<sup>39</sup> with low barriers to customers switching<sup>40</sup> between suppliers. Customers seek best price, improved service and security of supply. The main switching cost for customers relates to transport costs (for shifting its supply point), which is typically absorbed by the new wholesale supplier in order to secure the new customer. The Commission is aware of recent examples of customers switching (away from both Tedcastles and Irving) in relation to the wholesale supply of different types of refined fuel products in the State. For example, Irving noted the following:
- "[...]"*
52. Furthermore, Tedcastles provided the following example:
- "Applegreen who previously had a supply agreement with Tedcastles have decided not to renew its agreement (instead choosing to self-supply following its acquisition of 50% of the JFT terminal in Dublin. [...]."*
53. [...].
54. Therefore, the Commission considers the Proposed Transaction is unlikely to raise any competition concerns regardless of whether the geographic market is regional or national in respect of the wholesale supply of refined fuel products by type.

### *Conclusion*

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<sup>39</sup> Wholesale supply arrangements tend to be 1 to 3 years in length.

<sup>40</sup> An example of Irving's customers includes the following:[...].



55. In light of the above, the Commission considers that the Proposed Transaction will not lead to a substantial lessening of competition in the wholesale supply of refined fuel products in the State.

### **Vertical relationship**

56. There are two existing vertical relationships between the parties' activities in the State:

(i) the production and ex-refinery sale of refined fuel products, as Irving is active in the production and ex-refinery sale of refined fuel products from its refinery in Whitegate, Cork and supplies such ex-refined fuel products to Tedcastles<sup>41</sup>; and,

(ii) the supply of refined fuel products from Irving to Tedcastles in respect of Tedcastles retail operations.<sup>42</sup>

57. The Commission has considered whether the Proposed Transaction would raise foreclosure concerns in respect of the above-mentioned vertical relationships in the State.

*(i) the production and ex-refinery sale of refined fuel products from Irving's Whitegate Refinery to Tedcastles*

58. Irving currently supplies refined fuel products to Tedcastles from the Whitegate Refinery. As such, there is a vertical relation between Irving and Tedcastles in relation to the ex-refinery sale of refined fuel products in the State. The Commission considers that following implementation of the Proposed Transaction, Irving will not have the ability and incentive to foreclose the ex-refinery sale of refined fuel products to Tedcastles' competitors based on the following reasons:

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<sup>41</sup> As previously mentioned, Tedcastles is not active in the production and ex-refinery sale of refined fuel products in the State. In previous decisions, the European Commission has stated that motor fuels can be sold directly from the refinery to third parties in cargo (ex-refinery sales) and they can then be re-sold to retailers and other large industrial customers (non-retail sales) usually in quantities equivalent to one tanker lorry. Please see paragraph 17 of *Case COMP/M.5846 - SHELL/ COSAN/ JV*, which can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m5846\\_20110103\\_20310\\_1578185\\_EN.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m5846_20110103_20310_1578185_EN.pdf)

<sup>42</sup> As previously mentioned, unlike Tedcastles, Irving is not currently active in the retail supply of refined fuel products in the State.



- a. Irving competes with both international refineries and international fuel trading companies with respect to the ex-refinery sale of refined fuel products in the State. Ireland imports approximately 71% of its refined petroleum product demand from countries such as the UK, Sweden, Norway and the US. The Commission's market enquiries suggest that following implementation of the Proposed Transaction, Irving will continue to face competition at the ex-refinery level from a number of international refineries and global trading companies, e.g., *Tatneft*, *Valero* (located in United Kingdom, United States and Canada), *Petroineos*, *Greenergy* (trading office located in London), all of which currently supply refined fuel products into the State.
- b. The Commission's market enquiries suggest that refined fuel importers in the State frequently (every 12 months) engage in a tender process to obtain the most competitively priced refined fuel products on the international market.
- c. During the Commission's market enquiries, Irving confirmed to the Commission that *"it has no intention of restricting supply of refined petroleum products to the advantage of Tedcastles following implementation of the Proposed Transaction. Irving intends to continue to supply refined petroleum products to a wide range of customers following the Proposed Transaction"*.

59. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise any vertical foreclosure concerns with respect to the ex-refinery sale of refined fuel products in the State.

*(ii) the wholesale supply of refined fuel products from Irving to Tedcastles for its retail operations*

60. There is a vertical relationship between the parties in relation to the retail sale of motor fuels and home heating fuels. There is currently a supply arrangement between Irving and Tedcastles in the State in relation to the wholesale supply of gasoline, diesel, kerosene, gas oil 10 ppm and gas oil 1000 ppm. Irving supplies these products to Tedcastles and Tedcastles resells these through its network of *Top Oil* branded motor fuel service stations and *Top Oil* branded fuel depots in the State.



61. The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in the State with respect to the retail sale of motor fuels and home heating fuels for the following reasons:

- a. Input foreclosure: Following implementation of the Proposed Transaction, on the basis of NORA's total fuel volumes, Irving will hold a [35-45]%, [40-50]%, [30-40]% and [25-35]% share in the wholesale supply of gasoline, diesel, gas oil 10ppm and kerosene respectively, in the State.<sup>43</sup> However, there are a number of competing wholesale suppliers of motor fuels and home heating fuels in the State, and as such, following implementation of the Proposed Transaction, service stations/fuel depots which compete with *Top Oil* branded motor fuel service stations and *Top Oil* branded fuel depots will continue to have a number of alternative suppliers for gasoline, diesel, gas oil 10ppm and kerosene, other than Irving, to choose from, e.g., *Valero*, *Greenery* and *Circle K*;
- b. Customer foreclosure: the parties state in the notification that Tedcastles held a minimal [5-15]% share<sup>44</sup> in the retail supply of motor fuels in the State in 2018 and a minimal [0-10]% share in the retail supply of home heating fuels in the State in 2018.<sup>45</sup> In addition, there are a number of competitors in the State which are currently active in the retail sale of motor fuel, e.g., *Circle K*, *Applegreen*, *Texaco*, *Maxol*, *Tesco*, *Great Gas*, *Inver*, *Amber*, *Campus*, *Emo*, *Tara*. There are also a number of competitors in the State which are currently active in the retail sale of home heating fuels, e.g., *East Cork Oil*, *Corrib Oil*, *Jones Oil*, *Emo Oil* and *Campus*. Therefore, following implementation of the Proposed Transaction, there will likely be a significant number of alternative motor fuel service stations and fuel depots to which alternative wholesale

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<sup>43</sup> Based on 2017 data.

<sup>44</sup> The Commission notes that this market share estimate is based on the amount of motor fuel volumes sold. Alternatively, Tedcastles holds an [5-15]% share in the retail sale of motor fuels - by outlet share - in 2018. Market share estimates were provided by the parties and sourced from Experian Catalist dated July 2018.

<sup>45</sup> The Commission did not find any evidence which contradicts those figures during its investigation.



suppliers of motor fuels and home heating fuels can supply motor fuels and home heating fuels.

- c. The Commission considers that there will remain a sufficient number of competitors and customers following implementation of the Proposed Transaction in all markets in which both Irving and Tedcastles currently compete.

62. The Commission considers that, following the implementation of the Proposed Transaction, the parties will neither have the ability nor the incentive to: (i) foreclose any motor fuel service stations from obtaining motor fuels from motor fuel wholesalers; (ii) foreclose any fuel depots from obtaining home heating fuels from home heating fuel suppliers; (iii) foreclose any motor fuel wholesalers from supplying motor fuels to motor fuel service stations; or (iv) foreclose any home heating fuel suppliers from supplying home heating fuels to fuel depots in the State. Accordingly, the Commission considers that the Proposed Transaction is not likely to lead to any vertical foreclosure concerns in the State in relation to the retail sale of motor fuels and home heating fuels.

63. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any vertical foreclosure concerns in the State.

#### **Conclusion**

64. 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**

65. Section 14 of the SPA and Section 8 of each of the First, Second and Third Put and Call Option Agreements contain non-compete and non-solicitation obligations on the particular [...]. The duration of these non-compete and non-solicitation obligations



does not exceed the maximum duration acceptable to the Commission<sup>46</sup>. The Commission considers that these non-compete and non-solicitation obligations are directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

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<sup>46</sup> 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://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.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 acquisition whereby Glitterglen Limited, a wholly owned subsidiary of Irving Oil Limited would acquire sole control of Hillingdon Investment Company Unlimited Company, the ultimate holding company of the Tedcastles Group, 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**