

DETERMINATION OF MERGER NOTIFICATION M/20/029 BROOKFIELD (GREENERGY) – AMBER OIL

Section 21 of the Competition Act 2002

Proposed acquisition of sole control of Amber Oil Products Unlimited Company by Greenergy International Limited.

Dated 26 January 2021

Introduction

1. On 25 September 2020, 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 Greenergy International Limited (“Greenergy”), through its wholly-owned indirect subsidiary Greenergy Amber Holdings Limited (“GAHL”), would acquire sole control of Amber Oil Products Unlimited Company (“Amber”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented through a share purchase agreement dated 11 September 2020, between Greenergy, GAHL and the Sellers¹ (the “SPA”). Pursuant to the SPA, Greenergy will acquire the entire issued share capital, and, therefore, sole control of Amber.

¹ The Sellers are William Fitzgerald, Jennifer Fitzgerald, Patricia Heffernan, Annette O’Murchu, Liam Fitzgerald and [...].

The Undertakings Involved

The Acquirer – Brookfield and Greenergy

3. Brookfield Business Partners LP (“BBP”), a global alternative asset manager, has an [...] % controlling interest in Greenergy.² BBP is the listed vehicle through which Brookfield Asset Management Inc. (“Brookfield”) owns and operates the business services and industrial operations of its private equity group. Brookfield’s capital is invested in its four listed partnerships: (i) Brookfield Property Partners; (ii) Brookfield Infrastructure Partners; (iii) Brookfield Renewable Partners; and (iv) BBP.
4. Brookfield is active in the renewable energy sector in the State through a portfolio of [...] energy companies. Brookfield is also active in infrastructure management and other activities in the State. Table 1 below provides a list of all the portfolio companies owned and controlled by Brookfield (the “Brookfield Portfolio Companies”) that were registered in the State in 2020.
5. The parties state in the notification that none of Brookfield’s controlled portfolio companies with activities in the State is active in the supply of refined oil products in the State.

Table 1: Brookfield Portfolio Companies

Portfolio Company	Business Activity
[...]	Renewable Energy
[...]	Renewable Energy
[...]	Renewable Energy
[...]	Renewable Energy
[...]	Renewable Energy
[...]	Renewable Energy
[...]	Renewable Energy
[...]	Renewable Energy
[...]	Renewable Energy
[...]	Renewable Energy
[...]	Renewable Energy

² BBP has a [...] % controlling interest in Greenergy, with the remaining [...] % held by a number of management and institutional shareholders.

Portfolio Company	Business Activity
a number of companies	Renewable Energy
a number of companies	Infrastructure Management Business
[...]	Developer, owner and operator of holiday parks and the sale and provision of associated goods and services
[...]	Oil and gas company
[...]	[Manufacturer of wood-based panels.]

Source: Information provided by the parties.

6. Greenergy, incorporated in the United Kingdom (“UK”), is active in the importation, storage, blending and transportation of refined oil fuels to wholesale customers primarily in the UK. Greenergy is also active in the production and blending of biofuels. Greenergy is ultimately controlled by BBP.
7. In the State, Greenergy, through its wholly-owned subsidiary Inver Energy Limited (“Inver”), is active in the following areas:
 - The supply of fuel terminalling services (importation and storage) through its interests in Atlantic Fuel Supply Company Limited (“AFSC”)³ which owns an import terminal and storage facility at Shannon Terminal, The Harbour, Foynes, Co. Limerick (the “Foynes Terminal”);
 - The wholesale supply of refined oil products (including the supply of gasoline, diesel, fuel oil, gas oil, kerosene, aviation fuel and marine fuel) to industrial customers, commercial enterprises, independent motor and home heating retailers and resellers in the State;
 - The retail supply of motor fuels through a network of 62 retail motor fuel service stations (including [...] company-leased and dealer-operated (“CLDO”) retail motor fuel service stations, [...] company-owned and dealer-operated (“CODO”) retail motor fuel service stations, and [...] dealer-owned and dealer-operated (“DODO”) retail motor fuel service stations;

³ AFSC is jointly owned by Inver and East Cork Oil Company Unlimited Company.

- The sale of convenience goods through forecourt convenience stores at Inver fuel stations;⁴ and
 - The supply of fuel cards through the Inver-branded fuel card [...].
8. For the financial year ending 31 December 2019, Brookfield's worldwide turnover was approximately €60,613 million, of which approximately €[...] million was generated in the State.⁵
9. For the financial year ending 31 December 2019, Greenergy's worldwide turnover was approximately €18.1 billion, of which approximately €[...] million was generated in the State.

The Target – Amber Oil Products Unlimited Company

10. Amber, incorporated in the State, is a family-run fuel company⁶ based largely in the Munster region. It is involved in the following activities in the State:
- The wholesale supply of refined fuel (gasoline, diesel, gas oil (10pp), and kerosene) to commercial customers, including independent dealers, haulage companies and agricultural contractors;
 - The retail supply of motor fuels through a network of 35 retail motor fuel service stations (including [...] unnamed retail motor fuel service stations⁷, [...] company owned and company operated ("COCO") retail motor fuel service stations, [...] CODO motor fuel service stations, [...] DODO retail motor fuel service stations and [...] franchise retail motor fuel service stations⁸);

⁴ [...].

⁵ Greenergy completed the acquisition of Inver in November 2017 following merger clearance by the European Commission. (see Case M.8601 Greenergy/ Inver at http://ec.europa.eu/competition/mergers/cases/decisions/m8601_116_3.pdf).

⁶ It is owned and controlled by the Sellers.

⁷ These [...] unnamed retail motor fuel service stations allow motorists to pay their fuel at the pumps by using debit, credit or fuel cards.

⁸ The [...] franchise retail motor fuel service stations are [...] and Amber-Branded.

- The retail sale of convenience goods through forecourt convenience stores at Amber retail motor fuel service stations;
 - The supply of fuel cards. The fuel cards issued to customers are Amber-branded but are operated by [...]; and
 - The retail supply of home heating oil to retail customers located in Cork, Kilkenny, Tipperary and Waterford from depots located in Fermoy, Co. Cork and Thurles, Co. Tipperary.
11. For the financial year ending 31 December 2019, Amber’s worldwide turnover was approximately €[...] million, all of which was generated in the State.

Rationale for the Proposed Transaction

12. The parties state the following in the notification:

“The parties’ activities are highly complementary from both a product and geographic perspective, and the degree of overlap between the two businesses is small. The Proposed Transaction [...]. From the perspective of Amber’s current shareholders, the Proposed Transaction [...]”

Third Party Submissions

13. No submission was received.

Contacts between the Commission and the Undertakings Involved

14. On 4 November 2020, the Commission served a Requirement for Further Information (“RFI”) on each of Greenergy and Amber pursuant to section 20(2) of the Act. The service of these RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.

15. Upon compliance with the RFIs from each of Greenergy and Amber, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act)⁹ became 15 December 2020.

Competitive Analysis

Horizontal Overlap

16. There is a horizontal overlap between the parties’ activities in the State due to Inver and Amber’s involvement in the following business activities:

- The wholesale supply of refined fuel products (including gasoline, diesel, gas oil (10ppm) and kerosene)¹⁰;
- The retail sale of motor fuels;
- The operation of forecourts convenience store¹¹; and
- The provision of fuel cards.

The wholesale supply of refined fuel products in the State

Market definition

17. The Commission, in its determination in M/18/075 – Irving / Tedcastles, conducted the competitive assessment of a merger relating to the wholesale supply of refined fuel products without coming to a definitive view on the precise product market definition.¹²
18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In the instant case, it is not necessary for the Commission to conclude on the relevant product markets in respect of the wholesale supply of refined fuel products because, regardless of whether the potential product market is narrower, (i.e., the

⁹ The “appropriate date” is the date from which the time limits for making Phase 1 or Phase 2 determinations begin to run.

¹⁰ The parties state in the notification that [...].

¹¹ [Inver has no direct involvement in, and no direct contractual relationship for, the operation of retail convenience stores at any of the service stations in the Inver network. The operation of retail convenience stores is determined by dealers who contract independently with owners of retail brands.]

¹² Please see paragraph 38 [M/18/075 – Irving / Tedcastles](#).

wholesale supply of refined fuel product by fuel type),¹³ or broader, (i.e., the wholesale supply of all types of refined fuel products), the assessment of the competitive impact of the Proposed Transaction will be unaffected.

19. 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) the wholesale supply of gasoline (including biofuel); (ii) the wholesale supply of motor diesel (including biofuel); (iii) the wholesale supply of gas oil (10ppm) and (iv) the wholesale supply of kerosene. For the sake of completeness, the Commission has also analysed the impact of the Proposed Transaction by reference to the wider potential market for the wholesale supply of all types of refined fuel products.

Geographic Market Definition

20. In respect of the wholesale supply of refined fuel products, the Commission has previously examined mergers on both regional and national geographic markets.¹⁴ 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., regional), or broader (i.e., national), it will not materially alter the Commission's conclusions as to the likely competitive impact of the Proposed Transaction.
21. 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 a potentially regional geographic market, examining its impact in the Munster and Leinster regions where the parties' wholesale businesses are mainly active. For the sake of completeness, the

¹³ 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 hypermarkets), 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).

¹⁴ Please see paragraph 43 [M/18/075 – Irving / Tedcastles](#).

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

The State

22. In relation to the State, the parties provide that Greenergy and Amber's estimated market shares in respect of the wholesale supply of all refined fuel products are approximately [5-10]% and [0-5]%, respectively in 2019. Thus, following implementation of the Proposed Transaction, with a minimal increment, Greenergy would hold an estimated [5-15]% share in respect of the wholesale supply of all refined fuel products in the State.

23. The Commission notes that Greenergy and Amber currently face a competitive constraint from a number of wholesale providers of refined fuel products in the State, including: Circle K Ireland Energy Group Limited ("Circle K"), which owns the Circle K fuel terminal in Dublin port and operates the Enwest fuel terminal in County Galway; Irving Oil Limited ("Irving"), which owns the refinery at Whitegate in County Cork and the TOP terminal in Dublin Port; Applegreen Public Limited Company ("Applegreen") and Valero Energy (Ireland) Limited ("Valero"), which jointly own the Joint Fuels terminal in Dublin Port; and LCC Group Holdings Limited ("LCC"). Following implementation of the Proposed Transaction, these wholesale providers of refined fuel products will continue to exert a competitive constraint on Greenergy.

The Munster Region

24. In relation to the Munster region, the parties estimate that Greenergy and Amber's market shares in respect of the wholesale supply of all refined fuel products were approximately [25-30]% and [0-5]% respectively in 2019.¹⁵ Thus, following implementation of the Proposed

¹⁵ Source: The parties and NORA statistics.

Transaction, with a minimal increment ([0-5]%), Greenergy would hold an estimated [25-35]% share in the wholesale supply of all refined fuel products in the Munster region.

25. The Commission notes that Greenergy currently faces a competitive constraint from its wholesale competitors such as Circle K and Irving in the Munster region. Following implementation of the Proposed Transaction, Circle K and Irving will continue to exert a competitive constraint on Greenergy in the Munster region.

The Leinster Region

26. In relation to the Leinster region, the parties estimate that Greenergy and Amber's market shares in respect of the wholesale supply of all refined fuel products were minimal, i.e., approximately [0-5]% and [0-5]%, respectively in 2019. Thus, following implementation of the Proposed Transaction, Greenergy would hold an estimated [0-5]% share in the wholesale supply of all refined fuel products in the Leinster region.

27. The Commission notes that the parties currently face a competitive constraint from other wholesale competitors, e.g., Circle K, Valero and Applegreen in the Leinster region. These competitors will continue to exert a competitive constraint on Greenergy following implementation of the Proposed Transaction in the Leinster region.

28. 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

The State

29. The parties submitted market share estimates in relation to the wholesale supply of refined fuel products by fuel type on the basis of the National Oil Reserves Agency's ("NORA") annual oil consumption in the State in 2019. Table 2 shows that the parties' combined estimated market shares of different type of refined fuel products range from [5-10]% to [5-15]% following implementation of the Proposed Transaction in the State.

Table 2: Estimated market shares of the parties in relation to the wholesale supply of refined fuel products (by fuel type) in the State in 2019

Supplier	Market share			
	Diesel	Gas Oil (10pp)	Kerosene	Gasoline
Amber	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Greenergy/Inver	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Combined	[5-15]%	[5-15]%	[5-15]%	[5-15]%

Source: The parties and NORA statistics.

30. The parties currently face a competitive constraint from other wholesale competitors, such as Irving, Circle K, Applegreen and Valero. The Commission considers that, following implementation of the Proposed Transaction, Irving, Circle K, Applegreen and Valero will continue to exert a competitive constraint on Greenergy in the wholesale supply of each type of refined fuel products in the State.

The Munster and Leinster Regions

31. The parties submitted market share estimates in relation to the wholesale supply of refined fuel products by fuel type on the basis of the NORA's annual oil consumption in the Munster region and Leinster region. Tables 3 and 4 show that the parties' estimated market shares by type of refined fuel product will range from [20-30]% to [30-40]% in the Munster region, and range from [0-5]% to [5-10]% in the Leinster region following implementation of the Proposed Transaction.

Table 3: Estimated market shares of the parties in relation to the wholesale supply of refined fuel products (by fuel type) in the Munster region in 2019

Supplier	Market share			
	Diesel	Gas Oil (10pp)	Kerosene	Gasoline
Amber	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Greenergy/Inver	[20-25]%	[20-25]%	[25-30]%	[30-35]%
Combined	[20-30]%	[20-30]%	[25-35]%	[30-40]%

Source: The parties and NORA statistics.

Table 4: Estimated market shares of the parties in relation to the wholesale supply of refined fuel products (by fuel type) in the Leinster region in 2019

Supplier	Market share			
	Diesel	Gas Oil (10pp)	Kerosene	Gasoline
Amber	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Greenery/Inver	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	[0-5]%	[0-5]%	[0-10]%	[0-5]%

Source: The parties and NORA statistics.

32. The parties' estimated combined market shares are small (ranging from [0-5]% to [0-10]%) in the Leinster region. Although the parties' combined estimated market shares for the wholesale supply of gasoline are relatively high ([30-40]%) in the Munster region, the Commission considers that the post-merger increment is not significant ([0-5]%). Following implementation of the Proposed Transaction, Irving and Circle K will continue to exert a competitive constraint on Greenery in the Munster region in respect of the wholesale supply of each type of refined fuel products.

33. The parties submit that they are not close competitors in respect of wholesale supply of refined fuel products. Greenery provides non-retail refined oil products straight from the terminal (i.e. on an 'ex-rack basis') to large industrial entities, commercial customers, and home heating retailers and resellers. In contrast to this, Amber supplies these products from its depots (i.e. on an 'ex-depot basis') to smaller customers, independent dealers, haulage companies, and agricultural contractors.

34. In addition, the Commission notes that wholesale supply arrangements for refined fuel products tend to be procured by way of competitive tender with low barriers to customers switching between suppliers. Customers seek the 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.

35. Therefore, the Commission considers the Proposed Transaction is unlikely to raise any competition concerns regardless of whether the geographic market is regional or national for the wholesale supply of refined fuel products by type.

Conclusion

36. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition for the wholesale supply of refined fuel products in the State.

Retail sale of motor fuels and the operation of forecourt convenience stores

Market Definition

37. 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 is no reason to depart from its previous approach 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.

38. In previous determinations, the Commission considered that the appropriate geographic market in respect of retail sale of motor fuels and the operation of forecourt convenience store is local, with different sized isochrones for rural and urban areas. However, where appropriate, cognisance will be taken of local factors such as motorways and commuting patterns.¹⁶ The Commission analysed local markets, which vary in size depending on whether the retail motor fuel station is located in an urban or rural location (a radius of 2.3km applies in respect of a retail motor fuel service station in an urban area, and a radius of 8km applies in respect of a retail motor fuel service station in a rural area.) For the purpose of assessing the Proposed Transaction, the Commission has followed the same approach and used an isochronal analysis as a screening method to identify local geographic markets and potential competition concerns.

Competitive Analysis

39. At the national level, the network of Amber motor fuel service stations consists of 38 motor fuel service stations and the network of Inver motor fuel service stations consists of 62 motor fuel service stations. The total number of motor fuel service stations currently operating in

¹⁶ Paragraph 158 M/15/020-Topaz/Esso.

the State is approximately 1,800.¹⁷ Following implementation of the Proposed Transaction, Greenergy/Inver would account for 5.6% of all motor fuel service stations in the State. Among the network of Amber's 38 motor fuel service stations, 32 are located in the Munster region. There are approximately 600 motor fuel services stations operating in the Munster region. Following implementation of the Proposed Transaction, Greenergy would account for 11.4% of all motor fuel service stations in the Munster region.

Isochronal Analysis for Local Geographic Markets

40. Applying the radii outlined in paragraph 38 above (3.2km for urban areas and 8km for rural areas), there are eight Amber retail motor fuel service stations which overlap with Inver retail motor fuel service stations in the local area.

Table 5: Amber motor fuel service stations which overlap with Inver motor fuel service stations in the local area

Amber	Inver motor fuel service within radius	Competing motor fuel service stations within radius	Competing forecourts and retail stores
Urban Areas			
Amber O'Brien's of Bishopstown (Cork)	Inver Westlink	Circle K (2); Applegreen (1); Maxol (1); Texaco (2)	All competing stations operate forecourts, and there are other retail stores ¹⁸
Amber Service Station Killarney (Kerry)	Inver Fossa	Circle K (2); Applegreen (2); Maxol (1); Tesco (1); Texaco (1); Hegarty's (1)	All competing stations operate forecourts, and there are other retail stores
Amber Service Station Limerick (Limerick)	Inver Fairgreen; Inver Punches Cross; Inver Castletroy	Circle K (3); Maxol (3); Top Oil (1); Great Gas (1)	All competing stations operate forecourts, and there are other retail stores
Amber Service Station Moyross (Limerick)	Inver Ballysimon; Inver Punches Cross	Circle K (6); Applegreen (2); Great Gas (1);	All competing stations operate forecourts, and there are other retail stores

¹⁷ Information supplied by the parties, referenced as 'according to the Irish Petroleum Industry Association (IPIA)'.

¹⁸ There are sufficient number of competing forecourts therefore, the Commission considers that it is not necessary to outline the competing retail stores.

Amber	Inver motor fuel service within radius	Competing motor fuel service stations within radius	Competing forecourts and retail stores
		Maxol (1); Tesco (1); Shreelawn Oil (1)	
Amber Service Station (Thurles)	Inver the Mall Thurles; Inver Harvey's Thurles	Circle K (2); Top Oil (2); Maxol (1); Emo Oil (1)	All competing stations operate forecourts, and there are other retail stores
Rural Areas			
Amber Miltown Malbay (Clare)	Inver Miltown Malbay	Circle K (1)	In addition to the forecourts operated by Circle K, there are other retail stores including Londis(1), SuperValu(1), O'Dwyer's (1), XL(1)
Amber Service Station Woodsgift (Kilkenny)	Inver Johnstone; Inver Freshford	Texaco (1); Kavanagh's (1)	In addition to the forecourts operated by Texaco and Kavanagh, there are other retail stores including Daybreak (1), XL(1), Centra (1) Bergin's Supermarket.
Amber Service Station Kilnoe (Tipperary)	Inver the Mall Thurles	Top Oil (2); Circle K (2); Clohessy's (1)	All competing stations operate forecourts, and there are other retail stores

Source: information provided by the Parties

41. Applying the radii outlined in paragraph 38 above (3.2km for urban areas and 8km for rural areas), there are 11 Inver motor fuel service stations which overlap with Amber retail motor fuel service stations in the local area.

Table 6: Inver motor fuel service stations which overlap with Amber motor fuel service stations in the local area

Inver	Amber motor fuel service stations within radius	Competing motor fuel service stations within radius	Competing retail stores
Inver Vaughans, Miltown Malby (Clare)	Amber Miltown Malby	Circle K (1)	In addition to the forecourts operated by Circle K, there are other retail stores including Londis(1), SuperValu(1), O'Dwyer's (1), XL(1)

Inver Westlink Service Station (Cork)	Amber O'Brien's	Circle K (3), Texaco (2), Maxol (3), Applegreen (1), Top Oil (2)	All competing stations operate forecourts, and there are other retail stores
Inver Fossa (Kerry)	Amber Killarney	Applegreen (2); Circle K (2); Maxol (1)	All competing stations operate forecourts, and there are other retail stores
Inver Freshford (Kilkenny)	Amber Woodsgift	Campus Oil (1)	In addition to the forecourts operated by Texaco and Kavanagh, there are other retail stores including Daybreak (1), XL(1), Centra (1), Bergin's Supermarket.
Inver Johnstown (Kilkenny)	Amber Woodsgift	Texaco (1), Kavanagh's(1)	All competing stations operate forecourts, and there are other retail stores
Inver Ballysimon (Limerick)	Amber Limerick	Circle K(1), Applegreen (1), Maxol (1)	All competing stations operate forecourts, and there are other retail stores
Inver Elm Court (Limerick)	Amber Limerick	Applegreen (1), top Oil (1); Texaco (1), Circle K (3)	All competing stations operate forecourts, and there are other retail stores
Inver Fair Green (Limerick)	Amber Limerick	Top Oil (1); Maxo (2); Circle K (3)	All competing stations operate forecourts, and there are other retail stores

Source: information provided by the Parties

42. Table 5 shows the eight Amber retail motor fuel service stations, which have Inver retail motor fuel service stations located within their local areas (3.2km for urban areas and 8km for rural areas). It also outlines all other competing retail motor fuel service stations and forecourts and retail stores located within the local areas of each these eight Amber motor fuel service stations.
43. Table 6 shows the eleven Inver motor fuel service stations, which have Amber motor fuel service stations located within their local areas (3.2km for urban areas and 8km for rural areas). It also outlines all other competing retail motor fuel service stations and forecourts and retail stores located within the local areas of each these eleven Inver motor fuel service stations.
44. Both Tables 5 and 6 indicate that there will remain a number of other competing retail motor fuel service stations and forecourts within the local area of Amber retail motor fuel service

stations and Inver retail motor fuel service stations following implementation of the Proposed Transaction. In most of the overlap areas, there are a significant number of competing stations (range from 12 to 6 for urban areas and range from 5 to 2 for rural areas) within the local area, with the exception of Amber Miltown Malbay in County Clare (“Amber Miltown”) and Inver Freshford Kilkenny (“Inver Freshford”).

45. Following implementation of the Proposed Transaction, Amber Miltown will face competition from a Circle K motor fuel service station, which is located 5.6 km away from it, in respect of the retail sale of motor fuel in its local area. The Commission notes that Amber Miltown is a [...] retail motor fuel service station which operates on the basis of a [...]. This indicates that Amber has limited influence on the pricing policy and the operation of Amber Miltown. Therefore, the Commission considers that the competitive effect of the Proposed Transaction in respect of the retail sale of motor fuel in the local area of Amber Miltown is limited. Furthermore, Amber Miltown is located in a rural area and there are two competing retail motor fuel service stations 16km away.¹⁹ Overall, the Commission considers that the Proposed Transaction is unlikely to raise horizontal competition concerns regarding retail sale of motor fuel in the local area of Amber Miltown.
46. Following implementation of the Proposed Transaction, Inver Freshford will continue to face a competitive constraint from a Campus Oil motor fuel service station which is located within 8 km from Inver Freshford in respect of the retail sale of motor fuel in its local area. The Commission notes that Amber Woodsgift, Kilkenny (“Amber Woodsgift”) is located at the very edge of the local area of Inver Freshford (7.9 Km). Currently, Amber Woodsgift is competing with a Texaco motor fuel service station and Kavanagh motor fuel service station in its local area. Following implementation of the Proposed Transaction, the Commission considers that Inver Freshford will continue to face inter-brand competition from Campus Oil, Texaco, and Kavanagh retail motor fuel service stations. Therefore, the Commission considers that the Proposed Transaction is unlikely to raise horizontal competition concerns regarding the retail sale of motor fuel in the local area of Inver Freshford.

¹⁹ Emo Oil Ennistymon and Top Oil Ennistymon.

47. With regards to the retail sale of convenience goods, aside from competition from other forecourt convenience stores located within radius as outlined in Table 5 and Table 6 above, the parties also face a competitive constraint from the large supermarket chains, including Tesco Ireland Limited, Musgrave Group public limited company (“Musgrave Group”)(*SuperValu, Centra, Day-Today* and *Daybreak*), Dunnes Stores Unlimited Company, and BWG Food Unlimited Company (“BWG”) (*Spar*). The operation of the forecourt convenience stores in Inver’s retail motor fuel service station is determined by dealers who contract independently with some of the retail brands mentioned above, including the Musgrave Group, BWG, and the Barry Group. Therefore, the Commission considers the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the operation of forecourt convenience stores.
48. In light of the above, the Commission considers that the Proposed Transaction does not raise competition concerns with respect to retail sale of motor fuels and the operation of forecourt convenience stores.

Fuel Cards

Product Market Definition

49. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In its previous decision, the Commission did not come to a definite view regarding the exact product and geographic market definition in respect of the provision of fuel cards, however it has considered the provision of fuel card services in the State.²⁰ For the purpose of its competitive analysis, the Commission assessed the competitive effects of the Proposed Transaction in relation to the potential markets for the provision of fuel card services in the State.

Competitive analysis

50. The parties provide in the notification that the parties’ combined estimated market share is approximately [0-5]% for the provision of fuel cards in the State. Therefore, following

²⁰ Determination M/17/42 *Direct Fuels Limited/Diesel Card Ireland Limited* (2017).

implementation of the Proposed Transaction, Greenergy's estimated market share in respect of the provision of fuel cards will be small.

51. The Commission considers that there is a number of competitors in the market for the provision of fuel cards, including Radius Payment Solutions Limited, CSC Group, and a number of forecourt operators which have their own fuel card offerings, including Circle K, Applegreen, Maxol, and Top Oil. Following implementation of the Proposed Transaction, fuel cards offered by those companies will continue to exert a competitive constraint on Greenergy in respect of the provision of fuel cards in the State.

52. The Commission notes that fuel cards are ancillary to the parties' primary activities in the market for retail motor fuel, as they do not operate fuel card schemes on behalf of third parties and do not participate in the reselling of third-party fuel cards. Therefore, the parties' position in respect of the provision of fuel cards is effectively capped by their position in the retail motor fuel market. Furthermore, following implementation of the Proposed Transaction, Greenergy accounts for a modest percentage ([0-10]%) of all motor fuel stations in the State.

53. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the provision of fuel cards in the State.

Vertical Overlap

54. The parties state in the notification that there are the following vertical relationships between the parties:

- Inver supplies gasoline and diesel to Amber, which resells them through its network of fuel service stations; and,
- Inver supplies home heating oil (gas oil (10pp) and Kerosene) to Amber, which resells them.

Competitive analysis

Retail motor fuel suppliers and Home heating oil suppliers

55. The Commission considers that the Proposed Transaction is unlikely to cause any foreclosure in respect of retail motor fuels suppliers and home heating oil suppliers (input foreclosure). As discussed above, regardless of whether the geographic market is national or regional, following implementation of the Proposed Transaction, Greenergy's estimated market share in respect of each type of refined fuel products is below [25-35]%, with one exception for gasoline in the Munster region ([30-40]%).

56. Furthermore, following the implementation of the Proposed Transaction, Irving, Circle K and Valero will continue to exert a competitive constraint on Greenergy in the wholesale supply of each type of refined fuel products in the State and in particular, Irving and Circle K in the Munster region. In addition, the Commission notes that wholesale supply arrangements for refined fuel products tend to be procured by way of competitive tender with low barriers to customers switching between suppliers. Customers seek best price, improved service and security of supply.

57. Therefore, the Commission considers that following implementation of the Proposed Transaction, Greenergy does not have the ability and/or incentive to foreclose its competitors in respect of retail motor fuels and home heating oils.

Wholesale supply of motor fuel and home heating oil

58. The Commission considers that the Proposed Transaction is unlikely to cause any foreclosure in respect of wholesale supply of refined fuel products (customer foreclosure). As discussed above, regardless of whether the geographic market is national or regional, following the implementation of the Proposed Transaction, Greenergy accounts for 5.6% of all motor fuel stations in the State and 11.4% in the Munster region. The parties provide in the notification that Amber accounts for only a minimal proportion of overall demand for gasoil (10 ppm) and

kerosene (accounting for just [0-5]% and [0-5]%, respectively) in the State.²¹ There is no prospect of Inver's upstream competitors seeing any significant foreclosure of demand.

59. Furthermore, there are a number of significant competitors at retail motor fuel level, such as Circle K, Applegreen, Valero (Texaco), Maxol Limited and Irving (Tedcastles Oil Products Limited). These competitors are expected to continue to exert a competitive constraint on Greenergy following the completion of the Proposed Transaction.

60. Therefore, the Commission considers that following implementation of the Proposed Transaction, Greenergy does not have the ability and/or incentive to foreclose Greenergy's competitors in respect of wholesale supply of refined fuel products.

61. For the above reasons, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

62. 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

63. Clause 17 of the SPA imposes a number of restrictive obligations on the Sellers. The parties state in the notification that none of these restrictive obligations exceeds two years in duration, and each is directly related to and necessary for the implementation of the Proposed Transaction.

64. The scope and duration of the restrictions in clauses 17.1(a), 17.1(b), 17.1(c) and 17.1(e) of the SPA do not exceed the maximum scope and duration acceptable to the Commission.²² The

²¹ Base on Amber's non-retail supplies of gas oil (10 ppm) and kerosene as a proportion of total demand based on NORA statistics.

²² 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) (the EU

Commission considers the restrictions in clauses 17.1(a), 17.1(b), 17.1(c) and 17.1(e) of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction.

65. Clause 17.1(d) of the SPA imposes obligations on the Sellers not to '[...]'.¹

66. The Commission is of the view that, when read in the context of clause 17.1 as a whole, clause 17.1(d) of the SPA appears to function as a 'non-disparagement' clause rather than a 'non-compete' clause. For this reason, the Commission has not reached a view as to whether or not clause 17.1(d) of the SPA is directly related and necessary to the implementation of the Proposed Transaction. Clause 17.1(d) of the SPA will not therefore benefit from the protections offered by sections 4(8) and 5(3) of the Act.

67. In any event, the Commission notes that, unlike the restrictions in clauses 17.1(a), 17.1(b), 17.1(c) and 17.1(e) of the SPA, the restriction contained in clause 17.1(d) of the SPA is not limited in time. As Clause 17.1(d) of the SPA has no temporal limit, it is not consistent with paragraph 20 of the EU Commission's Notice. The Commission is therefore of the view that the duration of the restriction seems to exceed what the implementation of the Proposed Transaction would reasonably require.

Commission's Notice"). 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 acquisition, whereby Greenergy International Limited, through its wholly-owned indirect subsidiary Greenergy Amber Holdings Limited, would acquire sole control of Amber Oil Products Unlimited Company 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