



DETERMINATION OF MERGER NOTIFICATION M/21/047 – SHUTTINGTON HOLDINGS/H2 PROPERTIES

Section 21 of the Competition Act 2002

Proposed acquisition by Shuttington Holdings Unlimited Company of sole control of H2 Properties Limited

Dated: 22 October 2021

Introduction

1. On 17 September 2021, in accordance with section 18(1)(a) of the Competition Act 2002 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 Shuttington Holdings Unlimited Company (“Shuttington”), a wholly-owned subsidiary of Ballinasmalla Holdings Unlimited Company (“BH”), would acquire the entire issued share capital of H2 Properties Limited (“H2”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement dated 14 September 2021 between the current shareholders of H2¹ (the “Sellers”), and Shuttington (the “SPA”). Pursuant to the terms of the SPA, Shuttington will acquire the entire issued share capital and thus sole control of H2.

The Undertakings Involved

The Acquirer – Shuttington

3. Shuttington is a holding company incorporated in Ireland and registered under company number 322562, and is a wholly owned subsidiary of BH.

¹ The current shareholders of H2 are three private individuals, namely Caroline Ruth Hoban, Sean Heaphy, Alastair Hoban, and Silverdrive Limited. A further private individual, Martin Hoban, is party to the SPA for the purposes of specific clauses of the SPA.



4. BH has a number of wholly owned subsidiaries (including Shuttington) which together form the Corrib Oil Group ("Corrib Oil").² These subsidiaries of BH include the following:

- Shuttington (all trade in each of BH's service stations is carried out through Shuttington Holdings ULC);
- Corrib Oil Company ULC (all trade in each of BH's oil distribution depots is carried out through Corrib Oil Company ULC);
- Ashview Service Station Limited (non-trading);
- Bar View Service Station Limited (non-trading);
- Coole Park View Service Station Limited (non-trading);
- Corrib Capital ULC (non-trading);
- Geraghty Oil Products Limited (non-trading);
- Habbleston Limited (non-trading);
- Reekview Service Station Limited (non-trading);
- Robe view Service Station Limited (non-trading);
- Suttons Oil Limited (non-trading);
- Cloonan Oil Limited (non-trading);
- James Kilroy Oil Limited (non-trading);
- Ruby Oil Roscommon Limited (non-trading);
- Shannonside Oil Limited (non-trading);
- Nick Hayes Oil Products Limited (non-trading);
- Corrib Bio Holdings LLC (non-trading);
- Fuel Bio Holdings LLC (non-trading);
- Fuel Bio One LLC (non-trading);

² For more information, see: <https://www.corriboil.com/>



- Sunband Holdings ULC (non-trading);
 - Sean M Bourke Castlebar ULC (non-trading); and
 - The Midland Oil Company Limited (non-trading).
5. Corrib Oil is involved in the supply of oils and fuels in the State. From a geographic perspective, Corrib Oil's activities are primarily focused on the west, midlands and mid-west of the State.
6. More particularly, Corrib Oil is involved in the commercial oil business through the sale of home heating oil products, agricultural fuels, commercial oils and engine oils from its thirty-two fuel depots in the State. In addition, Corrib Oil owns and operates twenty service stations geographically dispersed across the west, midlands and mid-west of the State.
7. For the financial year ending 31 December 2020, Corrib Oil's worldwide turnover was approximately €[...], all of which was generated in the State.

The Target – H2

8. H2 was established in 2004, under company registration number 335110. It currently owns and operates a network of eleven service stations and adjacent convenience stores in the State, together with one standalone supermarket in Listowel, Co. Kerry.
9. H2 consists of a number of wholly-owned subsidiaries who are primarily involved in the business of operating motor fuel service stations. These subsidiaries include the following:
- H2 Allenwood Limited (which operates the Texaco Spar Service Station, Allenwood, Co. Kildare, including a Spar convenience store and fuel forecourt area);
 - H2 Valtex Limited (which operates the Texaco Spar Service Station, The Parkway, Co. Limerick, including a Spar convenience store, fuel forecourt and car wash area);
 - H2 Bridge Limited (which operates the Texaco Spar Service Station, Bridge Road, Listowel, Co. Kerry, including a Spar convenience store and fuel forecourt area);
 - H2 Roscrea Limited (which operates the Texaco Spar Service Station, Birr Road, Roscrea, Co. Tipperary, including a Spar convenience store, fuel forecourt and car wash area);



- H2 Suir Limited (which operates the Texaco Spar Service Station, John Street, Carrick-on-Suir, Co. Tipperary, including a Spar convenience store and fuel forecourt area);
- H2 Retail Limited (which operates the following Spar convenience stores and service stations: Texaco Spar Service Station, Cork Road, Fermoy, Co. Cork; Top Spar Service Station, Roxboro Road, Roxboro, Co. Limerick; Texaco Spar Service Station, Shanganagh Road, Shankill, Co. Dublin; Spar, Market St, Listowel, Co. Kerry);
- H2 Ferbane Limited (which operates the Texaco Spar Service Station, Athlone Road, Ferbane, Co. Offaly, including a Spar convenience store and fuel forecourt area); and
- H2 Mountmellick Limited (which owns and operates the Texaco Spar Service Station, Tullamore Road, Mountmellick, Co. Laois, including a Spar convenience store and fuel forecourt area).

H2 also owns and operates the Texaco Spar Service Station, Clane Road, Celbridge, Co. Kildare.

10. From a geographic perspective, H2's activities are primarily focused on the east, midlands and south-west of the State.
11. For the financial year ending 31 December 2020, H2's worldwide turnover was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

12. The parties state the following in the notification:

"The Proposed Transaction aligns with [Shuttington's] strategy to expand its retail motor fuel service station offering. [Shuttington] currently owns and operates approximately twenty (20) motor fuel service stations in Ireland. The addition of H2's eleven (11) service stations would increase [Shuttington's] motor fuel service stations in Ireland and complements [Shuttington's] current network of motor fuel service stations. The Proposed Transaction will also improve [Shuttington's] brand awareness [...]."

Third Party Submissions



13. No third-party submissions were received.

Competitive Analysis

Horizontal Overlap

14. There is a horizontal overlap between the activities of Corrib Oil and H2 as both parties are involved in the retail sale of motor fuels from service stations together with the ancillary activity of the operation of adjacent convenience stores. Motor fuels consist of two main products:

- a) Petrol – petrol is an unleaded fuel which is blended with biofuels (ethanol) to achieve a minimum octane rating of 95 (though some service stations may also sell petrol with a higher-octane rating); and
- b) Diesel – there is one principal grade of diesel sold in the State to consumers for the purposes of operating motor vehicles.

Market Definition

15. The parties submit that the relevant product market is the sale of motor fuels from service stations, as this is the primary function of H2's assets.

16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In previous determinations, in relation to the operation of forecourt convenience stores, the Commission did not consider it necessary to include standalone retail grocery stores in its competitive assessment,³ and accordingly conducted its competitive analysis in respect of the product market for the retail sale of motor fuels and the operation of associated forecourt convenience stores only.⁴

17. In this case, the Commission considers that there are no strong reasons to depart from its previous approach to market definition in relation to the retail sale of motor fuels and the

³ See, for example, the Commission's determination in: *M/17/011 Maxol/Melia Harold's Cross*, where the Commission found that there was a large and varied (in size) number of competitors in the retail sector whose presence constrained the activities of Maxol as an operator of forecourt convenience. The Commission has followed a similar approach in respect of this determination.

⁴ The text of the Commission's determination in: *M/17/011 Maxol/Melia Harold's Cross*, is available at the following link: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17011-maxolmelias-harolds-cross/>



operation of associated forecourt convenience stores for the purpose of assessing the competitive effects of the Proposed Transaction.

Geographic market definition

18. In previous determinations,⁵ the Commission has followed the approach to geographic market definition adopted by its predecessor, the Competition Authority, which previously found that there are local markets in relation to the retail sale of motor fuels, which vary in size depending on whether the retail motor fuels forecourt is located in an urban or a rural location (i.e., a radius of 2 miles/3.2km from a retail motor fuel forecourt in an urban location and a radius of 5 miles/8km in a rural location). For the purposes of assessing the Proposed Transaction, the Commission has followed the same approach and used isochrone analysis as a screening method to identify both the local geographic markets and potential competition concerns.⁶

19. For the sake of completeness, the Commission has also assessed the competitive effects of the Proposed Transaction with reference to the broader national geographic market, i.e. the State.⁷

Competitive Assessment

National Level

20. Corrib Oil operates twenty service stations with associated forecourt convenience stores in the State and H2 operates eleven service stations with associated forecourt convenience

⁵ See, for example, the Commission's determination in: *M/17/039 – TOP / KEC (Kinsale and Carrigaline businesses)*, the text of which is available at the following link: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/07/M.17.039-TOP-KEC-Kinsale-and-Carrigaline-businesses-1.pdf>; and the Commission's determination in: *M/17/019 – Petrogas (Applegreen)/certain assets of PR Reilly Limited*, the text of which is available at the following link: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/Public-Determination-of-M.17.019-Petrogas-Topaz-Howth-Road-Killester.pdf>

⁶ See, for example, the Commission's determination in: *M/19/047 DCC (Ceartas Energy)/Motor Fuel Service Stations*, the text of which is available at the following link: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2019/12/Public-Determination-M-19-047-Certas-Tesco.pdf>

⁷ Consistent with the Commission previous approach in *M/19/047 – DCC (Certas Energy)/Motor Fuel Service Stations of Tesco*, the text of which is available at the following link: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2019/12/Public-Determination-M-19-047-Certas-Tesco.pdf>



stores in the State. The parties estimate that there are approximately 1,787 service stations with associated forecourt convenience stores in the State.⁸

21. Table 1 below sets out the parties' estimated shares in respect of the retail sale of motor fuels and the operation of associated forecourt convenience stores, in terms of sites operated, and in terms of total volume of motor fuels sold in the State in 2018:

Brand	Number of open sites	Market share by number of open sites %	Total volume of motor fuel sold (million litres)	Market share by total volume of motor fuel sold %
Corrib Oil	[...]	0-5%	[...]	0-5%
H2	[...]	0-5%	[...]	0-5%
Combined	[...]	0-5%	[...]	5-10%
Circle K	[...]	20-30%	[...]	30-40%
Top Oil	[...]	10-20%	[...]	5-10%
Applegreen	[...]	10-20%	[...]	10-20%
Maxol	[...]	5-10%	[...]	5-10%
Texaco	[...]	5-10%	[...]	10-20%
Great Gas/Emo	[...]	5-10%	[...]	0-5%
Inver	[...]	0-5%	[...]	0-5%
Campus Oil	[...]	0-5%	[...]	0-5%
Amber Oil	[...]	0-5%	[...]	0-5%
Tesco Ireland ⁹	[...]	0-5%	[...]	0-5%
Independent/Other	[...]	20-30%	[...]	5-10%
Total	[...]	100%	[...]	100%

Source: Independent third-party data from Experian Catalist, February 2019 *IFCR Magazine*

⁸ Source: Provided by the parties based on independent third-party data from Experian Catalist, contained in the February 2019 *IFCR Magazine*.

⁹ The DCC entities of Great Gas and Emo took over operation of the Tesco Ireland service stations pursuant to a transaction notified to the Commission in December 2019 and approved in February 2020. For more information, please see: [M/19/047 – DCC \(Certas Energy\)/motor fuel service stations of Tesco - CCPC Business](#)



22. As is evident from Table 1 above, the parties' combined market share in respect of the market for the retail sale of motor fuels and the operation of associated forecourt convenience stores in 2018 is low: approximately 5-10% by volume and 0-5% by number of open sites.
23. Further, in respect of the financial year ending 2020, the parties estimate their combined market share in respect of total volume of motor fuels sold in the State to be approximately 0-5%, based on data collated by the National Oil Reserves Agency ("NORA") regarding the consumption of liquid motor fuels in the State.¹⁰
24. Finally, as is evident from Table 1 above, there are a number of large and smaller entities involved in the retail sale of motor fuels and the operation of associated forecourt convenience stores which will continue to exercise a competitive constraint on Corrib Oil post-transaction.
25. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns in respect of the retail sale of motor fuels and the operation of associated forecourt convenience stores at a national level.

Local level- Isochrone Analysis

26. Applying the abovementioned radii as set out in paragraph 19, there is no overlap between the service stations operated respectively by Corrib Oil and H2. The shortest distance between any two of Corrib Oil and H2's service stations is between H2's service station in Mountmellick, Co. Laois and Corrib Oil's service station in Portlaoise, Co. Laois, which is a distance of 8.13km on a direct line and 8.9km by road.
27. In the case of these two service stations, there are up to seven competing service stations within a 5 mile/8km radius of Corrib Oil's Portlaoise service station, and one other competing service station within a 5 mile/8km radius of H2's Mountmellick service station.
28. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns in respect of the local markets in the State for the retail sale of motor fuels and the operation of associated forecourt convenience stores.

¹⁰ For more information, please see: [PDF Version Volumes of Oil Consumption Subject to NORA Levy - Year to December 2020\(4\).pdf](#)



Conclusion on horizontal overlap

29. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

30. The parties state in the notification that there is limited vertical overlap in the State with respect to the activities carried on by the parties in relation to the supply of motor fuels to service stations.

31. However, the Commission considers that there is no vertical relationship for the purposes of assessing the competitive effects of the Proposed Transaction as neither of the parties is vertically integrated in relation to the sale of motor fuels in the State. Both parties are active at the retail level of motor fuels only and source supply from wholesaler suppliers (i.e., [...]) operating in the State for the purposes of supplying their motor fuel service station networks.

32. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

33. 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

34. The parties state in the notification that Clause 11.2 of the SPA contains certain non-compete obligations which the parties believe are directly related and necessary to the implementation of the Proposed Transaction.
35. Clause 11.2.1 of the SPA contains a non-compete obligation upon the Sellers. The Commission notes that the non-compete obligation does not exceed the maximum duration acceptable to the Commission.¹¹ The Commission considers this non-compete obligation to be directly related to and necessary for the implementation of the Proposed Transaction insofar as it relates to the State.
36. Clause 11.2.2 and Clause 11.2.3 of the SPA contain certain non-solicitation obligations upon the Sellers, in respect of certain persons [...]. The Commission notes that these non-solicitation obligations do not exceed the maximum duration acceptable to the Commission.¹² The Commission considers these non-solicitations obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

¹¹ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its Notice on restrictions directly related and necessary to concentrations (2005) OJ C56/03 (the “European Commission Notice”). For more information, see [https://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](https://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)

¹² In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of the European Commission Notice.



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 Shuttington Holdings Unlimited Company, a wholly-owned subsidiary of Ballinasmalla Holdings Unlimited Company, would acquire the entire issued share capital of H2 Properties Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission