

DETERMINATION OF MERGER NOTIFICATION M/23/018 MAXOL – KINSELLA’S FUEL SERVICES

Section 21 of the Competition Act 2002

Proposed acquisition of Kinler Investments Limited, a holding company of Kinsella’s Fuel Services Limited, by Maxol Limited.

Dated 8 June 2023

Introduction

1. On 28 April 2023, 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 Maxol Limited (“Maxol”), an indirectly wholly-owned subsidiary of McMullan Bros., Limited (“McMullan Bros.”), would acquire the entire issued share capital, and thus sole control, of Kinler Investments Limited (“Kinler Investments”), and thereby also sole control of Kinler Investments’ wholly-owned subsidiary, Kinsella’s Fuel Services Limited (“KFSL”), which owns and operates Killeens Service Station on New Line Road, Co. Wexford (the “Target Service Station”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented through a share purchase agreement (the “SPA”) between Maxol and two private individuals, Sarah Butler and Anthony Butler (together the “Sellers”). Pursuant to the SPA, Maxol will acquire the entire issued share capital and, therefore, sole control of Kinler Investments. As of the date of this determination, the SPA has yet to be concluded. The parties furnished a draft of the SPA to the Commission with the notification.

The Undertakings Involved

The Acquirer

3. McMullan Bros. (a family-owned private company with its registered office at 3 Custom House Plaza, IFSC, Dublin 1) is the ultimate parent of Maxol through its wholly-owned subsidiary, Maxol Energy Limited, of which Maxol is in turn a wholly-owned subsidiary.
4. The main activities of Maxol in the State are the wholesale and retail distribution of petroleum products. Maxol is also active in the State in the operation of forecourt convenience stores.
5. For the financial year ending 31 December 2021, McMullan Bros.' worldwide turnover was approximately €657 million, of which approximately €[...] million was generated in the State.

The Target

6. KFSL is controlled by two private individuals, Sarah Butler and Anthony Butler, via the holding company Kinler Investments.
7. Kinler Investments owns 100% of the issued share capital in KFSL. KFSL operates the Target Service Station, which is located on New Line Road, on the edge of Wexford town, within the N25 bypass. The Target Service Station is a retail motor fuel service station operating under the *Emo* brand and also includes a forecourt convenience store operating under the *MACE* brand. KFSL also operates an equestrian retail business adjacent to the Target Service Station.
8. For the financial year ending 31 December 2022, Kinler Investments' turnover was approximately €[...] million, all of which was generated in the State.

Rationale for the Proposed Transaction

9. The parties state the following in the notification:

“Maxol is operating in an increasingly competitive market and is firmly committed to growing through acquisition and expansion. In the last 15 years, Maxol has [.....] on all aspects of forecourt convenience retailing, although it also has a company that markets lubricating oil throughout Ireland.”

Third-Party Submissions

10. No third-party submissions were received.

Market Definition

Relevant Product Market

Views of the Parties

11. The parties state the following in the notification:

“The CCPC has previously determined that the Irish oil industry can be assessed in four market segments: (a) the wholesale supply of refined fuel products; (b) the retail sale of motor fuels; (c) the operation of forecourt convenience stores; and (d) the provision of fuel cards. The relevant activities of the Parties overlap only in respect of two of these segments, specifically in respect of the retail sale of fuel and the operation of forecourt convenience stores.”

Views of the Commission

12. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In relation to the retail sale of motor fuels, in *M/15/020 – Topaz/Esso Ireland*, the Commission analysed the impact of that transaction in the market for the retail sale of motor fuels.¹ For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed the impact of the Proposed Transaction in the market for the retail sale of motor fuels.

13. In relation to the operation of forecourt convenience stores, the Commission has not previously defined a relevant product market for the operation forecourt convenience stores. For the purpose of assessing whether the Proposed Transaction might result in a substantial

¹ See paragraph 146 of the Commission’s determination in *M/15/020 – Topaz/Esso Ireland* available 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

lessening of competition, the Commission has analysed the impact of the Proposed Transaction in the potential market for the operation of forecourt convenience stores.

Relevant Geographic Market

Views of the Parties

14. The parties state the following in the notification:

“The CCPC has previously assessed retail motor fuel on the basis of localised markets. It has recognised that local markets vary in size and scope for specific locations, particularly where a retail motor fuel station is based in an urban or a rural setting. Maxol considers that the relevant market definition should be national in scope and there is considerable wider precedent to support that position.”

Views of the Commission

15. With respect to the retail sale of motor fuels, in M/15/020 – Topaz/Esso Ireland, the Commission concluded that the relevant geographic market for the retail sale of motor fuels is local, with different-sized isochrones for rural and urban areas (a radius of 3.2km applies to a retail motor fuel service station in an urban area, and a radius of 8km applies to a retail motor fuel service station in a rural area).² Since the parties both operate motor fuel service stations located in the vicinity of Wexford town, the Commission considers the relevant potential geographic market to be the retail sale of motor fuels within a radius of 3.2km of the Target Service Station.

16. With respect to the operation of forecourt convenience stores, the Commission has not previously defined a relevant geographic market for the operation forecourt convenience stores. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed the impact of the

² See paragraphs 151 and 158 of the Commission’s determination in M/15/020 – Topaz/Esso Ireland available 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

Proposed Transaction in the potential geographic market for the operation of forecourt convenience stores within a radius of 3.2km of the Target Service Station.

Competitive Analysis

Horizontal Overlap

17. There is a horizontal overlap between the parties' business activities in relation to (i) the retail sale of motor fuels within a radius of 3.2km of the Target Service Station and (ii) the operation of forecourt convenience stores within a radius of 3.2km of the Target Service Station.³

Retail sale of motor fuels within a radius of 3.2km of the Target Service Station

18. Table 1 below lists all nine motor fuel service stations located within a 3.2km radius of the Target Service Station.⁴ As can be seen in Table 1, following the implementation of the Proposed Transaction, Maxol will have one other motor fuel service station within a 3.2km radius of the Target Service Station, but will continue to face competition from eight other motor fuel service stations located within a 3.2km radius of the Target Service Station. Maxol's competitors in this regard including, Applegreen Limited (two service stations), Circle K Ireland Holding Limited, Inver Energy Limited, DCC plc (*Emo*), Certa Ireland Limited, Valero Energy (Ireland) Limited (*Texaco*) and Tedcastles Oil Products Unlimited Company (*Top Oil*). The Commission also notes that Maxol's motor fuel service station on Trinity Street in Wexford town is located almost 3km from the Target Service Station. Accordingly, the Commission considers that the Proposed Transaction raises no horizontal competition concerns in the retail sale of motor fuels within a radius of 3.2km of the Target Service Station.

Table 1: Motor fuel service stations located within a radius of 3.2km from the Target Service Station

Brand Name	Site Name	Address	Distance km from Killeen's Service Station

³ The parties also overlap horizontally in the retail sale of motor vehicle lubricants in the State. Since, however, KFSL generated turnover of only €4,729 from sales of motor vehicle lubricants in the State in 2022, the Commission has not considered this area of overlap any further in the determination.

⁴ Circle K Express located at Drinagh, which falls outside the 3.2km radius, is located at a distance of 3.45km from the Target Service Station.

			(3.2km isochrone)
<i>Emo</i>	Whitemills' Service Station	Whitemill Road Wexford Y35 KX0D	1.26
<i>Circle K</i>	Circle K Express Clonard	Clonard Road Wexford Y35 XND4	0.7
<i>Certa</i>	Certa Wexford Tesco Extra	Distillery Road Wexford Y35 FR98	2.19
<i>Texaco</i>	Boggan's Service Station	New Town Road Wexford Y35 CRX7	2.1
<i>Maxol</i>	Maxol Auto24 Trinity	Trinity Street Wexford Y35 W7VY	2.82
<i>Applegreen</i>	Wexford Service Station	Newtown Road Wexford Y35 D7XW	1.98
<i>Top</i>	Doyle's Filling Station	1798 Street Wexford Y35 V4XD	2.76
<i>Inver</i>	Inver Rocklands	Rosslare Road Wexford Y35 KR2Y	2.86
<i>Applegreen</i>	Applegreen Drinagh	Rosslare Road Wexford Y35 HD9X	2.87

Source: Information provided by the parties and the Commission's research.

The operation of forecourt convenience stores within a radius of 3.2km of the Target Service Station

19. With regard to the operation of forecourt convenience stores within a radius of 3.2km of the Target Service Station, in addition to competition from the forecourt convenience stores at the motor fuel service stations listed in Table 1 above,⁵ Maxol will also continue to face

⁵ With the exception of Certa Wexford Tesco Extra and Maxol Auto24 Trinity, both of which do not operate forecourt convenience stores.

competition from the large supermarket chains and non-forecourt convenience stores located within a radius of 3.2km of the Target Service Station, including from *Aldi* (three stores), *Lidl* (one store), *Tesco Ireland Limited* (one store), *Supervalu* (one store), *Musgrave Group public limited company* (*Centra* (two stores), and *Daybreak* (one store)), *Londis* (one store), and *Dunnes Stores Unlimited Company* (one store).

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

Vertical Overlap

21. The parties state in the notification that there is a vertical overlap between the parties as Maxol is involved in the wholesale supply and distribution of motor fuel. The Commission considers that the Proposed Transaction raises no vertical foreclosure concerns since Maxol will have no ability or incentive to foreclose rival wholesale suppliers or distributors of motor fuel in the State following the implementation of the Proposed Transaction. Following implementation of the Proposed Transaction, Maxol will face a competitive constraint from a number of wholesale suppliers and distributors of motor fuel in the State including *Applegreen Limited*, *Circle K Ireland Holding Limited*, *Valero Energy (Ireland) Limited* and *DCC plc*.

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

Conclusion of Competitive Analysis

23. 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

24. No ancillary restraints were notified.

Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby Maxol Limited, an indirectly wholly-owned subsidiary of McMullan Bros., Limited, would acquire the entire issued share capital, and thus sole control, of Kinler Investments Limited, and thereby also sole control of Kinler Investments Limited's wholly-owned subsidiary, Kinsella's Fuel Services Limited, which owns and operates Killeens Service Station on New Line Road, Co. Wexford, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny
Member
Competition and Consumer Protection Commission