



DETERMINATION OF MERGER NOTIFICATION

M/23/068

**MCMULLAN BROS/NAAS FUELS
LIMITED**

11 July 2024



Coimisiún um
Iomáiocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

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1. INTRODUCTION

Introduction

- 1.1 On 22 December 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 merger notification form (the “Merger Notification Form”) concerning a proposed transaction whereby McMullan Bros. Limited (“McMullan Bros”), through its wholly owned subsidiary Maxol Limited (“Maxol”), would acquire sole control of Naas Fuels Limited (“Naas Fuels”) (the “Proposed Transaction”).¹

The Proposed Transaction

- 1.2 The Proposed Transaction is to be implemented pursuant to a share purchase agreement, dated 22 December 2023, between Maxol, Grangecon Investments Limited, two private individuals (Sarah King and Brian King) and Naas Oil Co. Limited (the “SPA”).
- 1.3 Following the implementation of the Proposed Transaction, McMullan Bros, through its wholly owned subsidiary Maxol, will acquire the entire issued share capital, and thus sole control, of Naas Fuels. The Proposed Transaction involves the acquisition by Maxol of seven service stations and attached forecourt convenience stores.

The Undertakings Involved

The Acquirer – Maxol

- 1.4 Maxol is a subsidiary of Maxol Energy Limited (together referred to as “the Maxol Group”), which in turn, is a wholly owned subsidiary of McMullan Bros.
- 1.5 Established in Ireland in 1920, Maxol sells a range of oil and petroleum products through its retail and lubricants divisions. Maxol’s primary business is the provision of oil and petroleum products. Maxol Group’s service station network consists of 243 *Maxol*-branded service stations across the island of Ireland, of which 143 service stations are located in the State.
- 1.6 Maxol directly owns ■ of its branded service stations in the State; the remainder are owned by independent dealers. Maxol uses two types of supply arrangements to provide motor fuels to the public via *Maxol*-branded service stations:

¹ McMullan Bros, Maxol and Naas Fuels are the parties to the Proposed Transaction (the “Parties”).

- Maxol enters into wholesale supply agreements with independent dealers who own and operate *Maxol*-branded service stations. Maxol [REDACTED]
[REDACTED] These agreements [REDACTED]
[REDACTED] (these types of arrangements are known as “Dealer owned, Dealer operated – DoDo”); or
 - Maxol sells fuel directly to the public via service stations owned by Maxol and [REDACTED]
[REDACTED].² [REDACTED]
[REDACTED] (these types of arrangements are known “Company owned, Company operated - CoCo”).³
- 1.7 Maxol supplies motor fuels on a wholesale basis to [REDACTED] *Maxol*-branded service stations that are owned by independent dealers and sells motor fuels directly to the public at [REDACTED] *Maxol*-branded service stations that are owned by Maxol.
- 1.8 The vast majority of *Maxol*-branded service stations include a forecourt convenience store.⁴ In the State, Maxol operates its own retail brand at almost all of its forecourt convenience stores. Maxol receives a combination of [REDACTED] and [REDACTED] from the operators of its company-owned sites and imposes certain requirements in relation to the standards and offerings at its forecourt convenience stores. Maxol does not directly engage in the operation of these forecourt convenience stores on a day-to-day basis as they are operated by independent licensees.
- 1.9 For the financial year ending 31 December 2022, the total worldwide turnover of McMullan Bros was €876 million, of which €[REDACTED] was generated in the State.

The Target – Naas Fuels

- 1.10 Naas Fuels is owned by Grangecon Investments Limited, which is in turn controlled by two private individuals, Brian King and Sarah King. Naas Fuels owns and operates seven service stations and attached forecourt convenience stores (each a “Target Station” and collectively the “Target Stations”) in the State. Each Target Station operates under the *Circle K* brand, while

² Alternatively, Maxol may operate the service station directly.

³ These types of supply arrangements are discussed further in section 2 below.

⁴ Merger Notification Form, section 3.3.

each forecourt convenience store operates under the *Gala* brand. While operating under the *Circle K* brand, Naas Fuels sets the price of the motor fuels that are sold at the Target Stations.⁵

Table 1: The Target Stations

Number	Service Station	Address
1	Prosperous Service Station	Clane Road, Prosperous, Co. Kildare, W91 NYP3
2	Ratoath Service Station	Baltrasna, Ratoath Road, Co. Meath, A84 XH04
3	Gorey Service Station	Arklow Road, Gorey, Co. Wexford, Y25 T8Y7
4	Kiltale Service Station	Trim Road, Kiltale, Co. Meath, C15 WPY
5	Ballylinan Service Station	Ballylinan, Co. Laois, R14 XF51
6	Maganey Service Station	Maganey, Co. Carlow, R93 P9C2
7	Wicklow Town Service Station	Whitegates Wicklow Town, Co. Wicklow, A67 TH68

Source: The Parties

- 1.11 For the 11 months prior to 31 October 2023, Naas Fuels' total worldwide turnover was € [REDACTED] all of which was generated in the State.

Rationale for the Proposed Transaction

- 1.12 The Parties stated the following in the Merger Notification Form in relation to the rationale for the Proposed Transaction:

"Maxol is operating in an increasingly competitive market and is firmly committed to growing through acquisition and expansion.

In the last 15 years, [REDACTED]

[REDACTED]

[REDACTED]

⁵ [REDACTED] also own Naas Oil Co. Limited, which is active in the non-retail supply of fuels in the State (that is, directly to domestic, industrial or agricultural customers). This business does not form part of the Proposed Transaction and will continue to operate following the implementation of the Proposed Transaction.

[REDACTED]

[REDACTED]⁶

1.13 Naas Fuels stated the following in relation to the rationale of the Proposed Transaction:

*"[REDACTED] had decided to approach the market and appoint corporate finance advisors because they felt it was an appropriate time to end their time in the business for [REDACTED]."*⁷

Preliminary Investigation ("Phase 1")

Contact with the Undertakings Involved

1.14 On 6 February 2024, the Commission served a requirement for information ("RFI") on each of Maxol and Naas Fuels pursuant to section 20(2) of the Act (the "Maxol Phase 1 RFI" and the "Naas Fuels Phase 1 RFI" respectively, and together the "Phase 1 RFIs"). The service of the Phase 1 RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.

1.15 Maxol provided a full response to the Maxol Phase 1 RFI on 29 February 2024 (the "Maxol Phase 1 RFI Response").

1.16 Naas Fuels provided a full response to the Naas Fuels Phase 1 RFI on 20 February 2024 (the "Naas Fuels Phase 1 RFI Response").

1.17 Upon receipt of a full response to each of the Phase 1 RFIs the "appropriate date" (as defined in section 19(6)(b)(i) of the Act) became 29 February 2024.⁸

1.18 During the Phase 1 investigation, the Commission requested and received, on an ongoing basis, further information and clarifications from the Parties.

Third Party Submissions

1.19 No third party submission was received during the Phase 1 investigation.

⁶ Merger Notification Form, section 2.6, page 7.

⁷ Naas Fuels' response to the Phase 1 RFI, question 1(a).

⁸ The "appropriate date" is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

Market Enquiries

- 1.20 The Commission conducted market enquiries during the Phase 1 investigation and engaged with third parties in relation to its assessment of the competitive effects of the Proposed Transaction. This engagement included conducting calls with and issuing information requests to competitors of the Parties.
- 1.21 Having considered all the information available to it at the conclusion of its Phase 1 investigation, the Commission was unable to form the view that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.
- 1.22 On 10 April 2024, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

Full Investigation (“Phase 2”)

Contact with the Undertakings Involved

- 1.23 On 29 April 2024, the Commission served an RFI on each of Maxol and Naas Fuels pursuant to section 20(2) of the Act (the “Maxol Phase 2 RFI” and the “Naas Fuels Phase 2 RFI” respectively, and together the “Phase 2 RFIs”). In accordance with section 22(4A) of the Act, the issuing of the Phase 2 RFIs had the effect of adjusting the deadline by which the Commission had to conclude its assessment of the Proposed Transaction in Phase 2.
- 1.24 Maxol provided a full response to the Maxol Phase 2 RFI on 6 June 2024 (the “Maxol Phase 2 RFI Response”).
- 1.25 Naas Fuels provided a full response to the Naas Fuels Phase 2 RFI on 6 June 2024 (the “Naas Fuels Phase 2 RFI Response”).
- 1.26 Maxol submitted an economic report by [REDACTED] (“[REDACTED] Economic Report”) on 28 June 2024.

Third Party Submissions

- 1.27 No third party submission was received during the Phase 2 investigation.

Market Enquiries

- 1.28 During the Phase 2 investigation, the Commission continued to seek the views of third parties in relation to the potential competitive effects of the Proposed Transaction.
- 1.29 The Commission requested information from and held calls with competitors of the Parties during its Phase 2 investigation.

Information Sources Relied Upon

- 1.30 In forming its conclusions on the Proposed Transaction, as set out in this Determination, the Commission has considered all the relevant information available to it at the time of making the Determination including information provided by the Parties in response to the Commission's RFIs and information requests, information obtained from third parties, and other information available in the public domain.

2. INDUSTRY BACKGROUND

Introduction

- 2.1 The purpose of this section is to provide context for the identification of potential relevant product and geographic markets and for the Commission's assessment of the competitive effects of the Proposed Transaction set out later in the Determination.
- 2.2 This section provides an overview of:
- The supply of motor fuels in the State;
 - Forecourt convenience stores; and
 - Fuel cards.

The Supply of Motor Fuels in the State

The wholesale supply of motor fuels to service stations

- 2.3 The motor fuels that are supplied to service stations enter the market through terminals that are located across the State. A terminal is a fuel storage and distribution facility.
- 2.4 Motor fuels can be supplied to service stations directly from these terminals or through supplier-owned depots. Fuel companies may supply their own service stations as well as independent service stations: for example, Maxol supplies motor fuels to (i) *Maxol*-branded service stations owned by independent dealers and (ii) *Maxol*-branded service stations owned by Maxol itself. Motor fuels are supplied to service stations throughout the State by fuel companies including Maxol, Circle K Ireland Holding Limited ("Circle K"), Applegreen Limited ("Applegreen"), Irving Oil Whitegate Holdings Limited ("Irving"), Valero Energy (Ireland) Limited ("Valero"), DCC public limited company ("DCC") and Inver Energy Limited ("Inver").
- 2.5 The types of supply arrangements in place between fuel companies and service stations vary depending on the ownership structure of the service station. There are two main service station ownership models in the State:
- Service stations are owned and operated by a fuel company (Company owned, Company operated - CoCo); and,

- Service stations are owned and operated by an independent dealer (Dealer owned, Dealer operated - DoDo).⁹

- 2.6 CoCo service stations are supplied with motor fuels by their parent fuel company on a consignment basis.¹⁰ In this way, the fuel company sells motor fuels to motorists directly. Although the day-to-day operation of the service station may be undertaken by an independent licensee or operator, the fuel company sets the retail price of motor fuels. Licensees or operators may receive a commission or handling fee based on the volume of motor fuels sold.
- 2.7 DoDo service stations typically purchase motor fuels from fuel companies. Pump prices are set independently by the dealer. Depending on the terms of the DoDo agreement, the dealer may adopt the branding of the fuel company supplying its fuel or may operate under its own trading name.

The retail sale of motor fuels

- 2.8 Approximately 873 million litres of road diesel and 931 million litres of petrol were sold at service stations in the State in 2022.¹¹ It is estimated that there were approximately 1,532 service stations in the State in 2022.¹² The largest branded service station networks in the State include *Circle K*, *Applegreen*, *Maxol*, Irving (which trades as *Top Oil*), Valero (which trades as *Texaco*), DCC (which trades as *Emo*, *Certa* and *Greatgas*), and Greenergy (which trades as *Inver* and *Amber*).
- 2.9 Price and the convenience of location are key factors which influence which service station consumers purchase motor fuels from. The Commission has previously stated that “*service stations which have higher prices will see consumers switch their business away if there are alternative options within a reasonable distance.*”¹³

⁹ CCPC, (2022), *Analysis of the Irish Retail Motor Fuel Market*, (“CCPC Motor Fuel Market Report”) page 4, available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/11/Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf> . A small number of service stations operate under ‘CoCo’ structures (owned by a fuel company, operated by an independent dealer) and ‘DoCo’ structures (owned by independent dealers, but receive fuel on consignment from companies) structures.

¹⁰ Under a consignment model, the wholesaler retains ownership of the motor fuel until it is purchased by the customer.

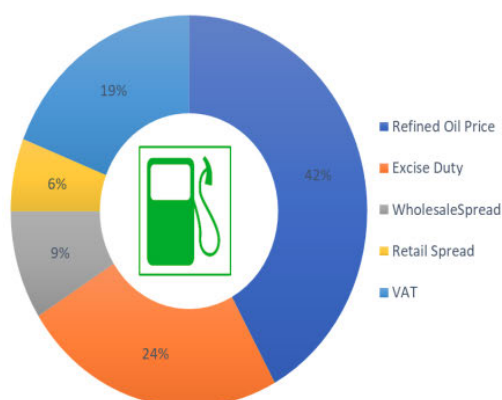
¹¹ Central Statistics Office Ireland (2024), *Forecourt and Non-Forecourt Final Movements*, accessible at <https://data.cso.ie/table/FOM01>

¹² Merger Notification Form, non-confidential annex 2. Based on data produced by Experian Catalist in a nationwide survey completed in 2022.

¹³ CCPC Motor Fuel Market Report, page 7, accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/11/Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf> .

2.10 The retail price of motor fuels has several different components, as shown in Figure 1 below.

Figure 1: Retail Price* components of a litre of petrol



- Refined oil price is the spot price dictated by the international market (Platts Price Assessment).
- Excise duty¹ is charged at the point at which fuel leaves refineries or terminals.
- Wholesale spread is the difference between the price of refined oil entering the terminal and the wholesale price.
- Retail spread is the difference between the wholesale price that services stations pay for the product and the price at which they sell to the consumer, less VAT.
- VAT rate of 23% is added at the end point of sale to consumers.

*based on average price as at the end of March 2022 (Image source: CCPC)

Source: The Commission¹⁴

2.11 Factors that influence pricing decisions across service stations in the State include:

- the wholesale price paid for fuel currently in stock;
- variable overheads; and,
- daily/weekly volumes sold compared to target volumes, and margins realised compared to target margins.¹⁵

2.12 The retail prices of motor fuels are also influenced by the prices charged by other service stations in the local area. The Commission has previously noted that:

“retailers also set prices based on what other service stations in the local area are charging, with some choosing to price similar or undercut their competitors. Lower prices are generally seen in areas where there are a higher number of competitors.”¹⁶

¹⁴ CCPC Motor Fuel Market Report, page 5, accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/11/Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf>.

¹⁵ CCPC Motor Fuel Market Report, page 6, accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/11/Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf>.

¹⁶ CCPC Motor Fuel Market Report, page 6, accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/11/Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf>.

- 2.13 The Parties also stated that they consider their competitors' pricing when setting the price they charge for motor fuels at their service stations.¹⁷
- 2.14 Even in service stations where prices are set centrally by fuel companies such as Maxol, the price of motor fuels at each service station in the network is typically calculated on an individual basis, having regard to local competitive conditions.¹⁸

Forecourt Convenience Stores

- 2.15 Forecourt convenience stores are often attached to service stations in the State and sell groceries, confectionery, snacks, drinks, hot food and other non-fuel products. In recent years, forecourt convenience retailing has formed an increasingly important part of service stations' business. The Irish Petrol Retailers Association (IPRA) has stated the following in relation to the forecourt convenience store aspect of the service station sector:

*"Due to changing demographics with people having to travel further but with less time to eat, forecourt and convenience retailing has become one of the fastest growing sectors of the Irish retail market."*¹⁹

- 2.16 Naas Fuels noted that the quality and range of products supplied in forecourt convenience stores can provide service station operators with an opportunity to differentiate their business from competitors and encourage repeat customers in respect of both its fuel and non-fuel offerings.²⁰

Fuel Cards

- 2.17 Commercial customers, typically operating a fleet of vehicles, may purchase motor fuels at service stations using fuel cards. Fuel cards are payment cards issued by fuel companies (including Maxol, Circle K and Applegreen) and independent operators (including Diesel Card Ireland Limited and Morgan Fuels Ireland Limited) which enable commercial customers to purchase motor fuels at participating service stations without the relevant driver paying at the time of purchase.²¹

¹⁷ Maxol Phase 1 RFI Response, question 4.

¹⁸ Maxol Phase 1 RFI Response, question 5; Circle K Call Note, dated 1 May 2024; Applegreen Call Note, dated 10 May 2024.

¹⁹ Irish Petrol Retailers Association (2022), *Forecourt & Retail News October 2022*, page 13, available at <https://ipra.ie/forecourt-retail-news-october-2022/>

²⁰ Naas Fuels Phase 1 RFI Response, question 1(c).

²¹ Merger Notification Form, section 4.4, pages 13 and 14.

3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

- 3.1 In this section, the Commission identifies the potential product and geographic markets that are relevant for the assessment of the likely competitive effects of the Proposed Transaction. This section sets out the general principles that apply to market definition, the horizontal and vertical overlaps between the activities of the Parties, the views of the Parties and third parties, and finally the Commission's views of the potential relevant product and geographic markets.
- 3.2 Market definition provides a framework for assessing the competitive effects of a merger; it is a means to an end. The boundaries of a market do not in themselves determine the outcome of the analysis of competitive effects to be assessed by the Commission in its merger review, as there may be competitive constraints on the merging parties from outside the relevant market or segmentation within the relevant market or other ways in which some constraints will be more significant than others.²² The Commission has taken such factors into account in its assessment of the competitive effects of the Proposed Transaction, where relevant.

Relevant Principles

- 3.3 The role of market definition is explained in the Commission's Merger Guidelines as follows:

*"Market definition is a conceptual framework within which relevant information can be organised for the purposes of assessing the competitive effect of a merger. Identifying the precise relevant market involves an element of judgement. It is often not possible or even necessary to draw a clear line around the fields of rivalry. Indeed, it is often possible to determine a merger's likely impact on competition without precisely defining the boundaries of the relevant market."*²³

"...if an SLC²⁴ can be shown when a merger is evaluated with respect to a number of alternative markets, there is no need to choose between them;

²² Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014 (the "Commission's Merger Guidelines"), paragraph 2.1 and 2.3.

²³ Commission's Merger Guidelines, paragraph 2.3.

²⁴ That is, a substantial lessening of competition.

it will be sufficient to show that the merger will result in an SLC regardless of the choice of market definition.”²⁵

3.4 According to the Commission’s Merger Guidelines:

“The relevant product market is defined in terms of products rather than producers. It is the set of products that customers consider to be close substitutes. In identifying the relevant product market, the Commission will pay particular attention to the behaviour of customers, i.e., demand-side substitution. Supply-side substitution (i.e., the behaviour of existing and/or potential suppliers in the short term) may also be considered.”²⁶

3.5 The relevant market contains the most significant alternatives available to the customers of the merging parties. Identifying the precise relevant market involves an element of judgement, with appropriate weight being given to factors on both the demand and supply side.²⁷

3.6 The Commission’s Merger Guidelines note that:

“Whether or not a product is a close substitute of a product supplied by one or more of the merging parties will depend on the willingness of customers to switch from one product to the other in response to a small but significant and non-transitory increase in price (or an equivalent decrease in quality). This will involve an assessment of the characteristics and functions of the products in question.”²⁸

3.7 The standard economic test for defining the relevant market is the small but significant non-transitory increase in price (“SSNIP”) test. The SSNIP test seeks to identify the smallest group of products and geographic areas within which a hypothetical monopolist could profitably impose a SSNIP (usually 5-10%), or an equivalent decrease in quality, without a sufficient number of customers switching to alternative products to render the price increase non-profitable. However, the Commission notes that the SSNIP test is just one of the tools used in defining the relevant product market, and its applicability varies depending on pricing practices in the market. A substantial emphasis should also be placed on product characteristics, price

²⁵ Commission’s Merger Guidelines, paragraph 2.4.

²⁶ Commission’s Merger Guidelines, paragraph 2.8.

²⁷ Commission’s Merger Guidelines, paragraph 2.2.

²⁸ Commission’s Merger Guidelines, paragraph 2.9.

and intended use as well as observed substitution patterns between various products that can potentially be included in the same product market.

3.8 As noted in the Commission's Merger Guidelines: *"Market definition should not restrict the range of competitive effects to be assessed by the Commission in its merger review."*²⁹ In coming to a view of the relevant product and geographic markets, the Commission may therefore *"consider segmentation within the relevant market or factors outside the relevant market that impose competitive constraints on firms in the relevant market."*³⁰

3.9 Ultimately, the Commission's definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the merger under investigation.³¹

3.10 In relation to geographic market definition, the Commission's Merger Guidelines state:

*"The product market(s) affected by a merger may be geographically bounded if geography limits some customers' willingness or ability to switch products or some suppliers' willingness or ability to supply to customers. The relevant geographic market is usually defined in terms of the location of suppliers and it includes those suppliers that customers consider to be feasible substitutes. The relevant geographic market may be local, regional, national or wider."*³²

*"The approach to defining the relevant geographic market is similar to that of product market definition. Both can use the SSNIP test as an analytical tool."*³³

3.11 According to the Commission's Merger Guidelines:

"The relevant geographic market consists of all supply locations that would have to be included for the hypothetical monopolist to find it profitable to impose a small but significant non-transitory increase in price. Beginning with the location of each of the merging parties, the SSNIP test is applied by considering what would happen if a hypothetical monopolist of the relevant product at that location imposed a small but

²⁹ Commission's Merger Guidelines, paragraph 2.1.

³⁰ Commission's Merger Guidelines, paragraph 2.1.

³¹ Commission's Merger Guidelines, paragraph 2.6.

³² Commission's Merger Guidelines, paragraph 2.19.

³³ Commission's Merger Guidelines, paragraph 2.20.

significant non-transitory increase in price. If a sufficient number of customers switch to suppliers in other locations, the next closest location where customers can purchase the relevant product is included. The SSNIP test is thus iteratively applied until a hypothetical monopolist could profitably increase the price of the relevant product in a location or group of locations by a small but significant non-transitory amount. This location or group of locations is thus defined as the relevant geographic market.”³⁴

Horizontal and Vertical Overlaps

3.12 In the Merger Notification Form, the Parties identified the following areas of horizontal overlap between their respective activities:

- The operation of retail motor fuel service stations, primarily involving the sale of petrol and diesel;
- The sale of motor vehicle lubricants;
- The provision of fuel cards; and,
- The operation of forecourt convenience stores.³⁵

3.13 The Commission agrees with the horizontal overlaps identified by the Parties.

3.14 With respect to vertical overlaps between their respective activities, the Parties stated that Maxol is involved in the supply and distribution of motor fuels.³⁶ Maxol supplies motor fuels to independently owned service stations, while Naas Fuel purchases motor fuels from Circle K. Therefore, the Commission has identified a potential vertical relationship between the Parties.³⁷

³⁴ Commission’s Merger Guidelines, paragraph 2.21.

³⁵ Merger Notification Form, section 4.1, page 10 and section 4.4.

³⁶ Merger Notification Form, section 4.2.

³⁷ The Commission considers this potential vertical relationship in section 7 of this Determination.

Relevant Product Markets

Previous Decisions

3.15 The Commission has considered the retail sale of motor fuels in several previous merger decisions.³⁸

3.16 Most recently, in its determination in M/23/018 – *Maxol/Kinsella's Fuel Services*, the Commission assessed the competitive effects of that transaction by reference to the following three potential product markets:

- The retail sale of motor fuels;
- The operation of forecourt convenience stores; and,
- The wholesale supply and distribution of motor fuel.³⁹

Views of the Parties

3.17 The Parties stated the following in the Merger Notification Form:

*"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."*⁴⁰

Commission's Analysis of Relevant Product Markets

The retail sale of motor fuels

3.18 Maxol and Naas Fuels both sell motor fuels from their respective service stations. As noted above, the Commission has assessed the retail sale of motor fuels in previous determinations.

3.19 In the present case, the Commission considered various potential segmentations within the retail sale of motor fuels. These included potential segmentations by fuel type (diesel, petrol, etc.) and type of service station (for example, motorway and non-motorway service stations).

³⁸ See, for example, M/20/029 – *Brookfield (Greenenergy)/Amber Oil*, M/18/004 – *Maxol/Brennans*, M/17/020 – *Maxol/Great Gas (Turnvey)* and M/17/011 – *Maxol/Melia's Harold's Cross*.

³⁹ See M/23/018 – *Maxol/Kinsella's Fuel Services*, paragraphs 15 and 18, accessible at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/05/2023.06.08_Determination_Maxol_-_Kinsellas_Fuel_Services-PUBLIC-6.pdf.

⁴⁰ Merger Notification Form, section 4.4.

- 3.20 With respect to potentially segmenting the retail sale of motor fuels by fuel type, the Commission notes that while different types of motor fuels are generally not substitutable from the customer's perspective (as specific vehicles will require a specific type of fuel), different fuel types are generally sold from the same service stations.⁴¹ In any case, the Commission's assessment of the competitive impact of the Proposed Transaction is not affected by whether the retail sale of motor fuels is considered as a single overall potential market or segmented by fuel type.
- 3.21 With respect to potentially segmenting the retail sale of motor fuels by type of service station, the Commission's assessment of the competitive impact of the Proposed Transaction is not affected by whether the retail sale of motor fuels is considered as a single overall potential market or segmented by type of service station.
- 3.22 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market as doing so will not alter its assessment of the competitive effects of the Proposed Transaction. The Commission has found no reason to depart from the general approach taken in its previous merger determinations regarding the retail sale of motor fuels. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the potential product market for the retail sale of motor fuels.

The operation of forecourt convenience stores

- 3.23 Maxol and Naas Fuels both operate forecourt convenience stores at their respective service stations. The Commission has assessed the operation of forecourt convenience stores in a previous decision.⁴²
- 3.24 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market as doing so will not alter its assessment of the competitive effects of the Proposed Transaction. The Commission has found no reason to depart from the general approach taken in its previous merger determination regarding the operation of forecourt convenience stores. The Commission has therefore assessed the competitive effects

⁴¹ The European Commission has also noted that all fuel types are generally sold from the same point of sale and are therefore substitutable from a supply-side perspective. See Case M.9014 - *PKN Orlen/Grupa Lotos*, paragraph 598.

⁴² See M/23/018 – *Maxol/Kinsella's Fuel Services*, paragraphs 15 and 18, accessible at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/05/2023.06.08_Determination_Maxol_-_Kinsella's_Fuel_Services-PUBLIC-6.pdf.

of the Proposed Transaction by reference to the potential product market for the operation of forecourt convenience stores.

The sale of fuel cards

- 3.25 The Commission has previously assessed the potential market for the provision of fuel cards in M/20/029 – *Brookfield (Greenergy)/Amber Oil*.⁴³
- 3.26 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market as doing so will not alter the competitive effects of the Proposed Transaction. The Commission has found no reason to depart from the general approach taken in its previous merger determination regarding the sale of fuel cards. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the potential product market for the provision of fuel cards.

The sale of motor lubricants

- 3.27 The Commission has not previously considered a potential market for the sale of motor lubricants.
- 3.28 Maxol's sales of motor lubricants are primarily generated from sales to industrial and large customers: sales to these customers are not made through Maxol's service station network. However, Maxol sells a small amount of motor lubricants from its service stations.
- 3.29 Naas Fuels informed the Commission that it sells a small amount of motor lubricants at certain Target Stations.
- 3.30 Motor lubricants are sold from motor garages and motor stores as well as service stations. Sales through service stations likely represent a small part of the overall potential market for the sale of motor lubricants. In any case, the Commission considers that its assessment of the potential market for the retail sale of motor fuels, which assesses competition between service stations only, will capture any potential competition concerns in the sale of motor lubricants. Therefore, for the purpose of its assessment of the Proposed Transaction, the Commission has not assessed a separate potential product market for the sale of motor lubricants.

⁴³ See <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/09/M-20-029-Determination-public-version.pdf>.

The wholesale supply and distribution of motor fuel

3.31 In M/23/018 – *Maxol/Kinsella's Fuel Services*, the Commission assessed the wholesale supply and distribution of motor fuel.⁴⁴ The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market as doing so will not alter the competitive effects of the Proposed Transaction. The Commission has found no reason to depart from the general approach taken in its previous merger determinations regarding the wholesale supply and distribution of motor fuel. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the potential product market for the wholesale supply and distribution of motor fuels.

Conclusion on relevant product markets

3.32 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission has, in the course of its assessment of the Proposed Transaction, found no reason to depart from the general approach as set out in previous merger determinations, and has, accordingly, assessed the competitive effects of the Proposed Transaction by reference to four potential product markets:

- The retail sale of motor fuels;
- The operation of forecourt convenience stores;
- The sale of fuel cards; and,
- The wholesale supply and distribution of motor fuel.

Relevant Geographic Markets

3.33 Having identified four potential relevant product markets, the Commission now assesses the geographic dimension of each of these potential markets.

⁴⁴ The Commission's determination is accessible at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-23-018-maxol-kinsellas-fuel-services/>.

Previous decisions

3.34 The Commission has assessed the retail sale of motor fuels in previous merger determinations.⁴⁵ In these decisions, the Commission assessed the retail sale of motor fuels on a national basis as well as by reference to various local catchment areas.⁴⁶ With respect to urban areas, the Commission assessed competition within a 3.2km radius of the relevant target station. With respect to rural areas, the Commission assessed competition within an 8km radius of the relevant target station.⁴⁷

Views of the Parties

3.35 With respect to the relevant geographic market, the Parties stated that *“the relevant market definition should be national in scope.”*⁴⁸ Furthermore, the Parties submitted that the geographic frame of reference is wider than that which has been previously applied by the Commission for several reasons, including:

- *“The national road network has reduced journey times since the [Commission’s] original analysis and facilitated greater competition by providing greater access to a wider range of locations”;*⁴⁹ and,
- *“The increased efficiency of vehicles means that it is cost-effective to travel longer distances in order to avail of cheaper prices and moreover the vast majority of consumers are now in the habit of doing so.”*⁵⁰

3.36 The Parties identified “destination” service stations,⁵¹ which lay outside the catchment areas and often along motorways, as competitors to their service stations within the relevant catchment areas.

⁴⁵ See M/23/018 – Maxol/Kinsella’s Fuel Services, M/20/029 – Brookfield (Greenery)/Amber Oil, M/18/004 – Maxol/Brennans, M/17/020 – Maxol/Great Gas (Turnvey) and M/17/011 – Maxol/Melia’s Harold’s Cross.

⁴⁶ See M/20/029 – Brookfield (Greenery)/Amber Oil

⁴⁷ See M/23/018 – Maxol/Kinsella’s Fuel Services, paragraph 15, accessible at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/05/2023.06.08_Determination_Maxol_-_Kinsellas_Fuel_Services-PUBLIC-6.pdf. Also see M/20/029 – Brookfield (Greenery)/Amber Oil, M/18/004 – Maxol/Brennans, M/17/020 – Maxol/Great Gas (Turnvey) and M/17/011 – Maxol/Melia’s Harold’s Cross.

⁴⁸ Merger Notification Form, section 5.1.

⁴⁹ Merger Notification Form, section 5.1.

⁵⁰ Merger Notification Form, section 5.1.

⁵¹ Naas Fuels describe a destination service station as a service station where people travel to as an end-destination due to some service or product offering that is located there or where they specifically add this destination onto a journey such as a haulier specifically choosing a service station as a destination along a route due to their services/offering.

3.37 In its response to the Maxol Phase 1 RFI, Maxol stated that it does not consider competition solely by reference to any specific distance but it does identify “marker stations”⁵² based on a combination of the following factors:

- closest stations;
- proximity to arterial routes;
- significant volume of sales;
- the strength of national brands; and,
- the range of services available instore and on the forecourt.

3.38 In response to the Naas Fuels Phase 1 RFI, Naas Fuels stated that:

“In addition to fuel stations within their immediate geographic areas (i.e. within the towns of Wicklow and Gorey) those service stations located along national motorways and major roads leading into those towns are also competing with the Target Stations. This is because there is more passing traffic on motorways. Although these stations are geographically further from the Wicklow and Gorey service stations than the other competitors listed, they would tend to compete for customers due to the high number of commuters to Dublin, Waterford and other major towns and cities who live in Gorey and Wicklow and the frequency with which those commuters would pass those stations during their commute.”⁵³

Views of Third Parties

3.39 The Commission engaged with a number of third parties in relation to the market definition. These third parties operate service stations in Gorey, Co. Wexford and Wicklow town, Co. Wicklow.⁵⁴ The Commission focused its assessment of the competitive effects of the Proposed Transaction in these two areas due to the high concentration of service stations following the implementation of the Proposed Transaction.

3.40 The third parties which engaged with the Commission offered views with respect to the areas within which they compete with other service stations. All third parties indicated that they compete with service stations located both within and outside of their immediate local area,

⁵² Marker stations are competitor service stations in respect of which Maxol monitors the price charged for motor fuels.

⁵³ Naas Fuels Phase 1 RFI Response, question 3.

⁵⁴ Some of these third parties also operated service stations across the State.

albeit to varying extents.⁵⁵ For example, D&H Doyles in Gorey stated that it competes with services stations outside of Gorey that are located along commuter routes.⁵⁶

Commission's Analysis of Relevant Geographic Markets

The retail sale of motor fuels

3.41 As noted above, the Commission has previously considered the retail sale of motor fuels on both a national and local basis. Within local urban areas, the Commission has applied a radius of 3.2km from the relevant service station. With respect to local rural areas, the Commission has assessed competition within an 8km radius of the relevant service station.⁵⁷

3.42 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic market as doing so will not alter the competitive effects of the Proposed Transaction. The Commission has found no reason to depart from the general approach as set out in previous merger determinations regarding the retail sale of motor fuels. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the following potential geographic frames of reference:

- The retail sale of motor fuels in the State;
- The retail sale of motor fuels within a 3.2km radius of each urban Target Station; and,
- The retail sale of motor fuels within an 8km radius of each rural Target Station.

3.43 The Commission has not previously outlined what constitutes an urban or rural area in its previous determinations in this sector. According to the Central Statistics Office ("CSO"), the census definition of an urban area is a town with a total population of 1,500 or more, while towns with population of less than 1,500 are considered rural.⁵⁸ The Commission has applied this definition in this Determination.

3.44 These specific radii are referred to in this Determination as "the local catchment areas".

⁵⁵ See Circle K Call Note, dated 1 May 2024; Applegreen Call Note, dated 10 May 2024; Osbourne Call Note, dated 14 May 2024; and P&H Doyles email to the Commission, dated 28 March 2024.

⁵⁶ See P&H Doyles email in response to the Commission's queries, dated 28 March 2024.

⁵⁷ See M/23/018 – Maxol/Kinsella's Fuel Services, paragraph 15, accessible at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/05/2023.06.08_Determination_Maxol_-_Kinsellas_Fuel_Services-PUBLIC-6.pdf.

⁵⁸ See, CSO, Urban and Rural Life in Ireland, available at <https://www.cso.ie/en/releasesandpublications/ep/p-urli/urbanandrurallifeinireland2019/introduction/>.

The operation of forecourt convenience stores

3.45 The Commission has previously considered the operation of forecourt convenience stores.⁵⁹

The Commission has applied the same radii when assessing forecourt convenience stores as it applied when assessing the retail sale of motor fuels, namely a 3.2km radius for urban areas and an 8km radius for rural areas.⁶⁰

3.46 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic market in relation to the operation of forecourt convenience stores as doing so will not alter the Commission's assessment of the competitive effects of the Proposed Transaction. The Commission has found no reason to depart from the general approach as set out in its previous merger determinations regarding the operation of forecourt convenience stores. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the following geographic frames of reference:

- The operation of forecourt convenience stores within a 3.2km radius of each urban Target Station; and,
- The operation of forecourt convenience stores within an 8km radius of each rural Target Station.

3.47 As noted above, these specific radii are referred to as "the local catchment areas".

The sale of fuel cards

3.48 As noted above, the Commission has previously considered the sale of fuel cards on a national basis.⁶¹ Fuel cards are typically sold at several service stations within a network and can be used to purchase motor fuels from service stations across a supplier's network.

3.49 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic market in relation to the sale of fuel cards as doing so will not

⁵⁹ M/23/018 – Maxol/Kinsella's Fuel Services, M/20/029 and Brookfield (Greenery)/Amber Oil.

⁶⁰ See M/23/018 – Maxol/Kinsella's Fuel Services, paragraph 16, accessible at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/05/2023.06.08_Determination_Maxol_-_Kinsellas_Fuel_Services-PUBLIC-6.pdf.

⁶¹ See M/20/029 – Brookfield (Greenery)/Amber Oil, accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/09/M-20-029-Determination-public-version.pdf>. The Commission has also referred to this potential relevant market as "the provision of fuel card services", see M/17/042 – Diesel Card Ireland (Radius) / Direct Fuels, accessible at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/07/11_6_2017-M-17-042-Direct-Fuels-Limited-Diesel-Card-Ireland-Limitserivceed_public.pdf.

alter the Commission's assessment of the competitive effects of the Proposed Transaction. The Commission has found no reason to depart from the general approach taken in its previous merger determinations regarding the sale of fuel cards. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the sale of fuel cards on a national basis.

The wholesale supply and distribution of motor fuels in the State

- 3.50 There is a potential vertical relationship between the Parties, as Maxol supplies motor fuels to service stations and Naas Fuels owns and operates service stations.
- 3.51 The Commission has previously assessed the wholesale supply and distribution of motor fuels in the State.⁶²
- 3.52 In this instance, it is not necessary for the Commission to define the precise relevant geographic market as doing so will not alter the Commission's assessment of the competitive effects of the Proposed Transaction. The Commission has found no reason to depart from the general approach taken in its previous merger determinations regarding the wholesale supply and distribution of motor fuels. For the purposes of its competitive assessment of the Proposed Transaction, the Commission has assessed the vertical competitive effects of the Proposed Transaction by reference to the wholesale supply and distribution of motor fuels to service stations in the State.

Conclusion on relevant geographic markets

- 3.53 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. As noted above, the Commission has found no reason to depart from the general approach as set out in its previous merger determinations. Accordingly, the Commission has assessed the competitive effects of the Proposed Transaction by reference to seven potential geographic markets:

- The retail sale of motor fuels in the State;
- The retail sale of motor fuels within an 8km radius of each rural Target Station;

⁶² See M/23/018 – *Maxol/Kinsella's Fuel Services*, paragraph 16, accessible at https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/05/2023.06.08_Determination_Maxol_-_Kinsellas_Fuel_Services-PUBLIC-6.pdf.

- The retail sale of motor fuels within a 3.2km radius of each urban Target Station;
- The operation of retail forecourt convenience stores within an 8km radius of each rural Target Station;
- The operation of retail forecourt convenience stores within a 3.2km radius of each urban Target Station;
- The sale of fuel cards in the State; and,
- The wholesale supply and distribution of motor fuels in the State.

Overall Conclusion on Relevant Market Definition

3.54 Having regard to the evidence available to it, the Commission has assessed the competitive effects of the Proposed Transaction by reference to the following potential markets:

- The retail sale of motor fuels in the State;
- The retail sale of motor fuels within an 8km radius of each rural Target Station;
- The retail sale of motor fuels within a 3.2km radius of each urban Target Station;
- The operation of retail forecourt convenience stores within an 8km radius of each rural Target Station;
- The operation of retail forecourt convenience stores within a 3.2km radius of each urban Target Station;
- The sale of fuel cards in the State; and,
- The wholesale supply and distribution of motor fuels to service stations in the State.

4. RELEVANT COUNTERFACTUAL

Introduction

4.1 The test in section 22(3) of the Act is whether a merger or acquisition will result in a substantial lessening of competition (an “SLC”). It requires an assessment of the effects of a merger or acquisition on the state of competition in a relevant market. In assessing the likely effects of a merger on competition, the Commission typically compares the situation that may be expected to arise following the merger with that which would have prevailed without the merger. The market situation without the merger is often referred to as the “counterfactual”. The Commission generally adopts the prevailing conditions of competition as the counterfactual against which it assesses the impact of the merger.⁶³

4.2 The Commission’s Merger Guidelines state that:

“The term ‘counterfactual’ refers to the state of competition without the merger or acquisition. In other words the “actual” situation is the merger being put into effect and the “counterfactual” is the situation in the absence of the merger being put into effect. The counterfactual provides the reference point, or the point of comparison, for assessing competitive effects arising from a merger.”⁶⁴

4.3 Inevitably there is a degree of uncertainty as regards hypothetical future events, and the Commission will consider all the evidence adduced by parties to a merger or acquisition as to whether there is likely to be an SLC in the future. The Commission must ultimately ask itself whether it is satisfied on the balance of probabilities that there will be an SLC caused by the merger. The Commission is, however, not under an obligation to make findings of fact (whether on a balance of probabilities basis or otherwise) in respect of each item of evidence. Nor is it obliged to find that any particular potential event is more likely than not to occur before it can take it into account in its overall assessment of the probability of SLC.

4.4 Paragraph 1.15 of the Commission’s Merger Guidelines states the following:

“[T]he Commission will expect the merging parties to substantiate any counterfactual they propose with objective evidence supported, where

⁶³ See Commission’s Merger Guidelines, paragraph 1.12.

⁶⁴ See Commission’s Merger Guidelines, paragraph 1.12.

necessary, by independent expert analysis. Such evidence and analysis should obviously be consistent with the parties' own internal pre-merger assessments of the likely counterfactual."

Views of the Parties

4.5 The Parties did not comment on the relevant counterfactual to the Proposed Transaction.

Views of the Commission

4.6 In the course of its investigation, the Commission found no evidence to suggest that a relevant counterfactual other than the prevailing conditions of competition would be the appropriate counterfactual against which the Proposed Transaction should be assessed.

The Commission's Conclusion on the Relevant Counterfactual

4.7 Based on the above, for the purposes of assessing the Proposed Transaction, the Commission considers that the relevant counterfactual is that, absent the Proposed Transaction, Naas Fuels would remain in the market. In other words, the *status quo ante* would prevail. In particular, the prevailing conditions of competition would be maintained and Naas Fuels would remain an independent undertaking active in the potential markets set out in Section 3 of this Determination.

5. COMPETITIVE ASSESSMENT: HORIZONTAL UNILATERAL EFFECTS

Introduction

5.1 In this section, the Commission sets out its analysis of the likelihood of horizontal unilateral effects occurring from the implementation of the Proposed Transaction in each of the following potential markets:

- The retail sale of motor fuels in the State;
- The retail sale of motor fuels within an 8km radius of each rural Target Station;
- The retail sale of motor fuels within a 3.2km radius of each urban Target Station (together referred to as the retail sale of motor fuels within the local catchment areas);
- The operation of retail forecourt convenience stores within an 8km radius of each rural Target Station;
- The operation of retail forecourt convenience stores within a 3.2km radius of each urban Target Station (together referred to as the operation of retail forecourt convenience stores within the local catchment areas); and,
- The sale of fuel cards in the State.

Relevant Principles

5.2 Unilateral effects, as explained in paragraph 4.8 of the Commission's Merger Guidelines, occur when *"a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors."*

5.3 In addition, the European Commission's "Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings", (the "EC Horizontal Merger Guidelines") state the following in respect of *"Non-coordinated effects"*:

"A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging

firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.⁶⁵

- 5.4 In considering the likelihood of the Proposed Transaction resulting in unilateral effects, the Commission assessed the arguments put forward by the Parties and the evidence collected from the Parties and third parties.

The Retail Sale of Motor Fuels in the State

- 5.5 There are approximately 1,532 service stations in the State.⁶⁶ There are 143 *Maxol*-branded service stations in the State, representing approximately [5-10]% of all service stations in the State.⁶⁷ Naas Fuels owns and operates seven service stations, representing less than 1% of the service stations in the State. Therefore, at a national level, the Proposed Transaction would result in a minimal increase in Maxol's share of the number of service stations in the State.
- 5.6 Furthermore, following the implementation of the Proposed Transaction, there will remain a significant number of service stations in the State, including those operated by *Circle K*, *Applegreen*, *Top Oil* and *Texaco*, among others, that will continue to exert a competitive constraint on Maxol on a national basis.
- 5.7 Therefore, the Commission considers that the Proposed Transaction does not give rise to horizontal competition concerns in respect of the retail sale of motor fuels in the State, when the Proposed Transaction is assessed using the State as the geographic frame of reference.

⁶⁵ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004) OJ C 31/03, p 5-18, paragraph 24 (available at [2004000022en5-18 5..5 \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2004/672/2004000022en5-18 5..5 (europa.eu))).

⁶⁶ Merger Notification Form, non-confidential annex 2.

⁶⁷ The Commission notes that some service stations within the *Maxol*-branded network are not owned by Maxol. Therefore, this estimated share may overestimate Maxol's share in the retail sale of motor fuels in the State.

The Retail Sale of Motor Fuels within the Local Catchment Areas⁶⁸

Catchment areas with no horizontal overlaps

5.8 Naas Fuels owns and operates seven service stations in the State. There is no *Maxol*-branded service station within the local catchment areas of four of the Target Stations, namely the Ratoath Service Station, the Prosperous Service Station, the Kiltale Service Station and the Ballylinan Service Station (see Table 2 below).

Table 2: Target Stations which are not located within the local catchment areas of a *Maxol*-branded service station

Target Station	Relevant Catchment Area	Nearest <i>Maxol</i> -branded service station	Approximate distance from Target Station to nearest <i>Maxol</i>	Number of third party suppliers within 8km of the Target Station ⁶⁹
Ratoath Service Station	3.2km (Urban)	Conway's <i>Maxol</i> Service Station (SPAR)	4.7km	3 ⁷⁰
Prosperous Service Station	3.2km (Urban)	<i>Maxol</i> Service Station, Sallins	9km	7 ⁷¹
Kiltale Service Station	8km (Rural)	<i>Maxol</i> Service Station, Souhan's	8.5km	3
Ballylinan Service Station	8km (Rural)	Fitzpatrick's <i>Maxol</i> Service Station	14.5km	5

Source: The Commission, based on information provided by the Parties

5.9 As there is no *Maxol*-branded service station within the local catchment areas of these four Target Stations, the Commission considers that the Proposed Transaction does not raise

⁶⁸ As noted above at paragraph 3.44, the local catchment areas are: (i) within 8km of a rural Target Station; and (ii) within 3.2km of an urban Target Station.

⁶⁹ While a service station may operate under a brand, it may be independently owned with price setting power. The Commission has used available information to determine the number of separate suppliers active in each catchment area regardless of branding.

⁷⁰ Applegreen operates a service station that is located approximately 3.4km from the Target Station. Given this service station's close proximity to the local catchment area, the Commission considers it appropriate to assess this service station as a third party supplier within the local catchment area of Ratoath Service Station.

⁷¹ The population of Prosperous in 2022 was approximately 2,413. Consequently, Prosperous is considered an urban area using the CSO's census definition. However, there is no service station within 3.2km of the Target Station in Prosperous. Therefore, for completeness, the Commission has listed the number of third party suppliers within 8km of the Target Station to illustrate alternative suppliers in the area.

horizontal competition concerns in the retail sale of motor fuels in these catchment areas.⁷²

Therefore, these catchment areas are not discussed further in this Determination.

Catchment areas with horizontal overlaps

5.10 The Commission has identified three Target Stations located within the local catchment area of a Maxol-branded service station, namely the Maganey Service Station in Co. Kildare, the Gorey Service Station in Co. Wexford and the Wicklow Town Service Station in Co. Wicklow (see Table 3 below).

Table 3: Overview of local areas where there is a Maxol service station within the local catchment areas of a Target Station

Target Station	Relevant Catchment Area	Nearest Maxol-branded service station	Approximate distance from Target Station	Number of suppliers in the catchment area ⁷³	Number of suppliers in the catchment area post Proposed Transaction
Maganey Service Station	8km (Rural)	Maxol Horan's	5km	8	7
Gorey Service Station	3.2km (Urban)	Maxol Service Station Gorey	0.7km	5	4
Wicklow Town Service Station	3.2km (Urban)	Maxol Service Station Rathnew	3km	4	3

Source: The Commission, based on information provided by the Parties

5.11 As shown in Table 3 above, there are three catchment areas in which the Parties' activities overlap in the retail sale of motor fuels:

⁷² For the sake of completeness, the Commission has also considered the retail sale of motor fuels within an extended 8km radius of the Target Station in Ratoath. Within this extended radius, there would be 9 third party suppliers, with Circle K remaining the largest supplier in the area. Consequently, the Commission did not identify any competition concerns on the basis of this extended catchment area.

⁷³ While a service station may operate under a brand, it may be independently owned with price setting power. The Commission has used available information to determine the number of separate suppliers active in each catchment area regardless of branding.

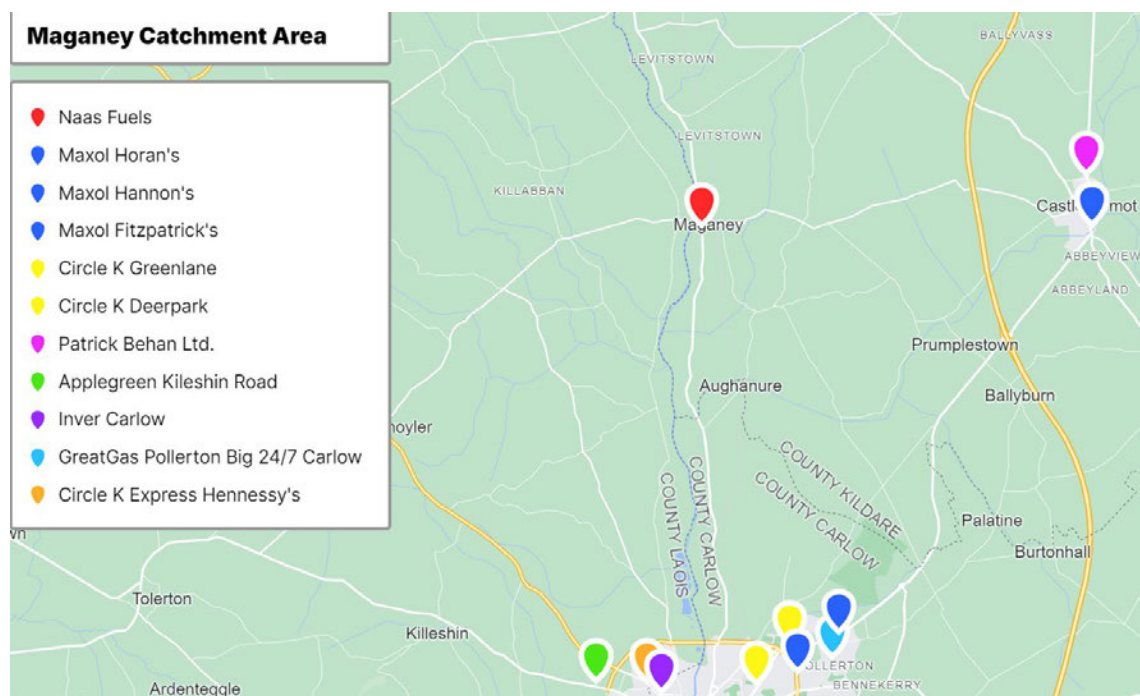
- 8km from the Target Station in Maganey, Co. Kildare (the “Maganey Catchment Area”);
- 3.2km from the Target Station in Gorey, Co. Wexford (the “Gorey Catchment Area”); and
- 3.2km from the Target Station in Wicklow Town, Co. Wicklow (the “Wicklow Catchment Area”).

5.12 Therefore, the Commission has considered the likely competitive impact of the Proposed Transaction in these three catchment areas in further detail.

Maganey Catchment Area

5.13 Map 1 below shows the location of each retail supplier of motor fuels in the Maganey Catchment Area.

Map 1: Retailers of Motor Fuels in the Maganey Catchment Area





Source: The Commission, based on information provided by the Parties

5.14 As shown in Map 1, the Target Station is located in Maganey, Co. Kildare, with several service stations located to the south in Carlow Town and to the east in Castledermot. Most services stations are located over 7km from the Target Station, with Patrick J Behan Limited in Castledermot being the closest service station, located at approximately 6.5km from the Target Station.

5.15 Table 4 below sets out the estimated shares for the retail sale of motor fuels within the Maganey Catchment Area in 2022.

Table 4: The retail sale of motor fuels within the Maganey Catchment Area in 2022

Supplier	Service Station	Brand	Distance from Target Station	Estimated Volume (litres)		Estimated Share
Naas Fuels	Circle K King's Maganey Service Station	Circle K	N/A			[0-5]%
Maxol	Maxol Horan's	Maxol	6.46km			[15-20]%
	Maxol Hannon's Service Station		7.5km			
	Maxol Fitzpatrick's Service Station		7.11km			
Parties Combined						[20-25]%
Circle K	Circle K Greenlane	Circle K	9.1km			[40-45]%
	Circle K Deerpark		8.3km			
Patrick J Behan Ltd	Inver Castledermot	Inver	6.43km			[10-15]%
Applegreen	Applegreen Killeshin Road	Applegreen	7.76km			[5-10]%
Inver	Inver Carlow	Inver	7.78km			[5-10]%
DCC Limited	GreatGas Pollerton Big 24/7 Carlow	GreatGas	7.46km			[0-5]%

Brian Hennessy	Circle K Express Hennessy's	Circle K	7.61km		[0-5]%
Total					100% ⁷⁴

Source: The Commission, based on information provided by the Parties

- 5.16 As shown in Table 4 above, the implementation of the Proposed Transaction would see Maxol's share in the retail sale of motor fuels in the Maganey Catchment Area increase from [15-20]% to [20-25]%. Six competitors, operating seven service stations, will remain active in the Maganey Catchment Area following the implementation of the Proposed Transaction.
- 5.17 Market concentration refers to the degree to which production or supply in a particular market is concentrated in the hands of a few large firms. The Commission's Merger Guidelines state that:⁷⁵

"Market concentration provides a snapshot of market structure and is often a useful indicator of the likely competitive impact of a merger. It is of particular relevance to the assessment of horizontal mergers. A horizontal merger that has little impact on the level of concentration in the market under consideration is unlikely to lead to an SLC.

Market concentration, however, is not determinative in itself.

[...]

Market shares are important when measuring concentration. The market shares of firms in the market can give an indication of the extent of a firm's market power. The combined market share of the merging parties, when compared with their respective market shares pre-merger, can provide an indication of the change in market power resulting from the merger. Competition concerns are more likely to arise when the merger creates a merged entity with a large market share."

⁷⁴ Share estimates have been rounded to the nearest whole number.

⁷⁵ Commission's Merger Guidelines, paragraphs 3.2 to 3.4.

- 5.18 Paragraphs 3.9 to 3.10 of the Commission's Merger Guidelines set out that the Commission utilises the Herfindahl-Hirschman Index ("HHI") as a measure of market concentration. The Commission's Merger Guidelines state that the Commission will have regard to the following HHI thresholds:

"A post-merger HHI below 1,000 is unlikely to cause concern.

Any market with a post-merger HHI greater than 1,000 may be regarded as concentrated and highly concentrated if greater than 2,000.

Except as noted below, in a concentrated market a delta of less than 250 is unlikely to cause concern and in a highly concentrated market a delta of less than 150 is unlikely to cause concern."

- 5.19 Prior to the implementation of the Proposed Transaction, the retail sale of motor fuels within the Maganey Catchment Area is highly concentrated. Table 5 below illustrates that the HHI in the retail sale of motor fuels in the Maganey Catchment Area following the implementation of the Proposed Transaction would be approximately 2,893, which is indicative of a highly concentrated market, as set out in paragraph 3.10 of the Commission's Merger Guidelines. The change in the HHI of 188 is just above the figure of 150, the threshold below which the Commission considers that a post-merger HHI is unlikely to cause concern.

Table 5: The HHI in the retail sale of motor fuels within the Maganey Catchment Area⁷⁶

	HHI
Pre-Proposed Transaction	2705
Post-Proposed Transaction	2893
HHI delta	188

Source: The Commission, based on market share information provided by the Parties

- 5.20 While the retail sale of motor fuels in the Maganey Catchment Area is highly concentrated, the Proposed Transaction would see Maxol increase its share by just under [0-5]%. Maxol would

⁷⁶ As the market share information has been rounded, the HHI figures are subject to minor variations.

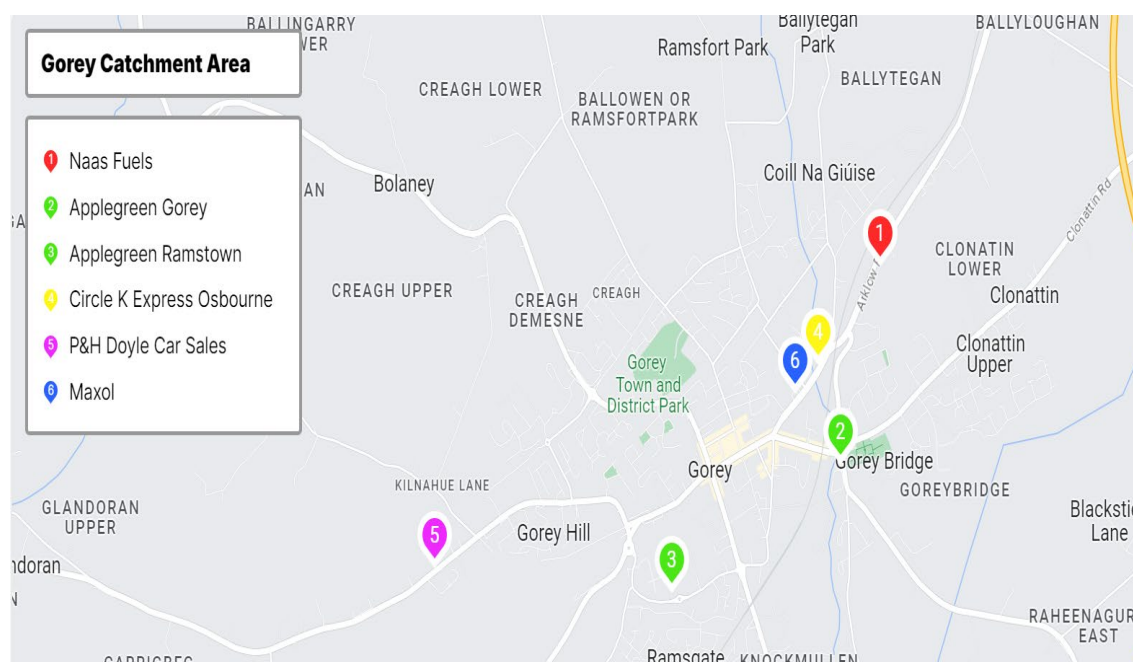
continue to be the second largest supplier of motor fuels in the Maganey Catchment Area. Furthermore, Maxol will continue to face a competitive constraint from the six remaining competitors in the Maganey Catchment Area. In particular, the Commission notes that Circle K ([40-45]%) and Patrick J Beehan (*Inver*) ([10-15]%), two of the largest suppliers in the Maganey Catchment Area, will exert a strong competitive constraint on Maxol following the implementation of the Proposed Transaction.

- 5.21 Given the significant constraint the six remaining competitors will exert on Maxol in the Maganey Catchment Area following the implementation of the Proposed Transaction and the relatively small increment in Maxol's share, the Commission considers that the Proposed Transaction does not raise horizontal competition concerns in the retail sale of motor fuels in the Maganey Catchment Area.

Gorey Catchment Area

- 5.22 Map 2 below shows the location of each retail supplier of motor fuels in the Gorey Catchment Area.

Map 2: Retailers of Motor Fuels in the Gorey Catchment Area



Source: The Commission, based on information provided by the Parties

- 5.23 As shown in Map 2, most service stations in the Gorey Catchment Area are closely grouped together in or very close to Gorey town. There are three service stations (Circle K Express

Osbourne, Maxol and Applegreen Gorey) located within 1km of the Target Station (in red, number 1 on Map 2). The M11 motorway runs along the eastern side of Gorey town.

5.24 Table 6 below lists the estimated shares for the retail sale of motor fuels in the Gorey Catchment Area in 2022.

Table 6: Retail sale of motor fuels in the Gorey Catchment Area in 2022

Map Number	Supplier	Service Station	Brand	Distance from Target Station	Estimated Volume (litres)		Estimated Share
1	Naas Fuels	Circle K King's Gorey Service Station	Circle K	N/A			[15-20]%
6	Maxol	Maxol Service Station Gorey	Maxol	0.66km			[20-25]%
Parties Combined							[35-40]%
2	Applegreen	Applegreen Gorey	Applegreen	0.8km			[35-40]%
3		Applegreen Gorey Ramstown		1.67km			
4	Circle K	Circle K Express Osborne Gorey	Circle K	0.49km			[10-15]%
5	P&H Doyle Car Sales	Circle K P&H Doyle Service Station	Circle K	2.68km			[5-10]%
Total							100% ⁷⁷

Source: The Commission, based on information provided by the Parties

⁷⁷ Share estimates have been rounded to one decimal point.

- 5.25 As shown in Table 6 above, Maxol's share in the retail sale of motor fuels will increase from [20-25]% to [35-40]% in the Gorey Catchment Area following the implementation of the Proposed Transaction. Three competitors, operating four service stations, will remain active in the Gorey Catchment Area following the implementation of the Proposed Transaction.
- 5.26 Prior to the Proposed Transaction, the retail sale of motor fuels within the Gorey Catchment Area is highly concentrated, reflected in a HHI of 2,535 in 2022. Table 7 below illustrates that, following the implementation of the Proposed Transaction, the HHI in the retail sale of motor fuels in the Gorey Catchment Area would be approximately 3,323. The change in the HHI of 788 is well above the figure of 150, the threshold below which the Commission considers that a post-merger HHI is unlikely to cause concern.⁷⁸

Table 7: The HHI in the retail sale of motor fuels within the Gorey Catchment Area⁷⁹

	HHI
Pre-Proposed Transaction	2535
Post-Proposed Transaction	3323
HHI delta	788

Source: The Commission, based on market share information provided by the Parties

- 5.27 Notwithstanding the fact that the Proposed Transaction would reduce the number of retail suppliers of motor fuels active in the Gorey Catchment Area from five to four, the Commission considers that the Proposed Transaction is unlikely to give rise to unilateral effects in the potential market for the retail sale of motor fuels in the Gorey Catchment Area for the reasons set out below.
- 5.28 First, following the implementation of the Proposed Transaction, Maxol will continue to face a competitive constraint from the three remaining retail suppliers of motor fuels (which operate four service stations in total) in the Gorey Catchment Area, namely Applegreen ([35-40]%), Circle K Express Osbourne ([10-15]%) and P&H Doyle Car Sales ([5-10]%). In assessing the competitive constraint Maxol will face in the Gorey Catchment Area following implementation

⁷⁸ See paragraphs 3.10-3.11 of the Commission's Merger Guidelines.

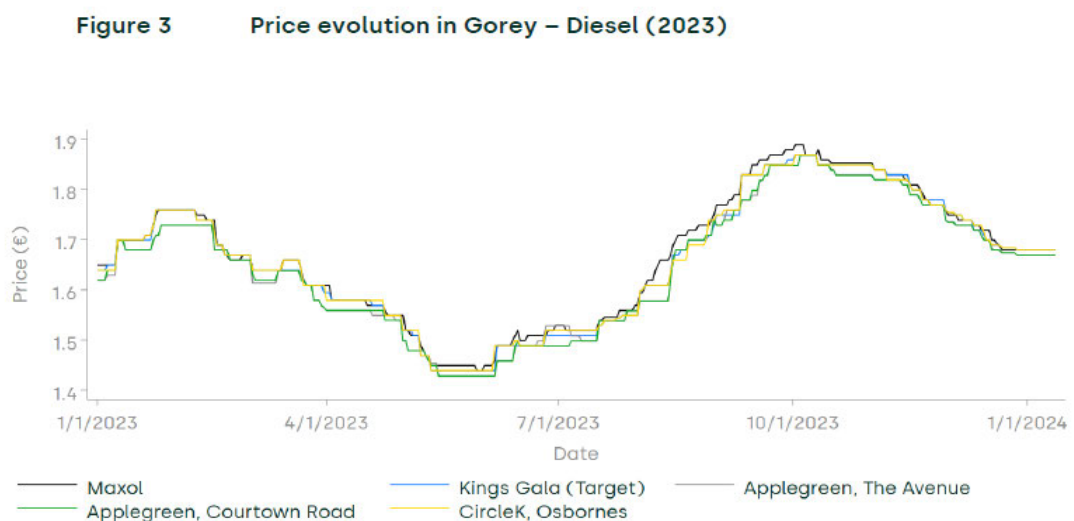
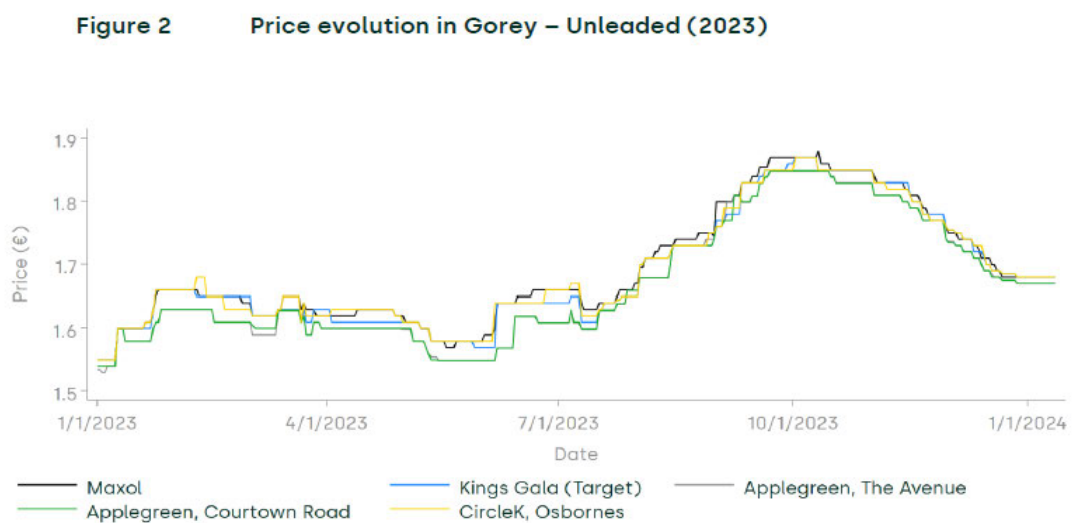
⁷⁹ As market share information has been rounded, the HHI figures are subject to minor variations.

of the Proposed Transaction, the Commission has considered previous pricing trends in the area as well as internal documents of the Parties.

Pricing in the Gorey Catchment Area

5.29 As noted above, Maxol submitted the [REDACTED] Economic Report. The [REDACTED] Economic Report analysed pricing within the Gorey Catchment Area in 2023. As shown in Figure 2 below, all suppliers offer comparable prices.

Figure 2: Pricing in the retail sale of motor fuel in the Gorey Catchment Area in 2023



Source: The [REDACTED] Economic Report

5.30 Noting the minimal difference between the different suppliers' prices, the [REDACTED] Economic Report stated that *"all competitors follow each other's prices closely – either directly or indirectly."*⁸⁰

5.31 The [REDACTED] Economic Report also provided information on which service stations offered the lowest prices within the Gorey Catchment Area. Table 8 below shows the average price offered by each service station as well the percentage of days in 2023 each service station offered the lowest price.

Table 8: Pricing in the retail sale of motor fuels in Gorey Catchment Area in 2023⁸¹

Service Station	Average price by service station in Gorey (2023)		Percentage of days a station charges the lowest price in Gorey (2023)	
	Diesel	Unleaded	Diesel	Unleaded
Target Station	1.660	1.687	9.32%	7.95%
Maxol	1.668	1.693	5.48%	2.74%
Osbourne	1.661	1.690	13.70%	8.49%
Applegreen (The Avenue)	1.648	1.669	78.36%	89.32%
Applegreen (Courtown Road)	1.647	1.669	83.29%	90.96%

Source: The [REDACTED] Economic Report

⁸⁰ The [REDACTED] Economic Report, page 12.

⁸¹ If two service stations have the lowest price on a particular day, then both are ranked as lowest. Consequently, the total for the columns in Table 8 can be more than 100%.

5.32 As shown above, Applegreen’s two service stations offered the lowest prices for both petrol and diesel over the course of 2023, while the remaining service stations offered broadly comparable, higher prices. The [REDACTED] Economic Report indicates that all suppliers compete with one another within the Gorey Catchment Area. While Maxol will be constrained by all suppliers within the Gorey Catchment Area, the Commission considers that Applegreen will exert a particularly significant competitive constraint, as it has two service stations in close proximity to Maxol and has consistently offered the lowest prices in the area in 2023.

Internal Documents

5.33 Both Parties’ internal documents indicate that they monitor and compete with all suppliers within the Gorey Catchment Area. An internal document (see Figure 3 below) provided to the Commission in response to the Naas Fuels Phase 1 RFI indicates that Naas Fuels monitors the price of motor fuels supplied by all service stations currently active in the Gorey Catchment Area. This indicates that Naas Fuels competes with all service stations within the Gorey Catchment Area.

Figure 3: Naas Fuels’ internal Gorey price tracker

Local Prices				
Station	Petrol	Difference	Diesel	Difference
Circle K	0	-1.799	0	-1.799
Applegreen	1.769	-0.03	1.769	-0.03
Maxol	1.769	-0.03	1.769	-0.03
Doyles	1.789	-0.01	1.789	-0.01
Ozborne	1.789	-0.01	1.789	-0.01
Kings	1.799	0	1.799	0

Source: Naas Fuels

5.34 In an internal document titled “[REDACTED]”, Maxol listed Applegreen service stations (in green, numbered 2 and 3 on Map 2), Naas Fuels’ service station (in red, numbered 1 on Map 2) and Circle K Express Osbourne (in yellow, numbered 4 on Map 2) in Gorey [REDACTED] within the Gorey Catchment Area. In this internal document, which was provided in response to the Maxol Phase 2 RFI, [REDACTED]
[REDACTED]
[REDACTED]. This internal document similarly indicates that Maxol competes with all service stations within the Gorey Catchment Area. The Commission considers that Maxol will continue

to be constrained by the remaining suppliers in the retail sale of motor fuels in the Gorey Catchment Area following the implementation of the Proposed Transaction.

- 5.35 **Second**, existing competitors can expand their retail sales of motor fuels following the implementation of the Proposed Transaction. All suppliers of motor fuels currently active in the Gorey Catchment Area informed the Commission that they would be able to increase the volume of motor fuels sold in their respective service stations in response to an increase in demand for motor fuels in the Gorey Catchment Area. Suppliers active in the Gorey Catchment Area informed the Commission that their capacity to increase the volume of motor fuels sold in the Gorey Catchment Area is not limited by factors such as on-site storage capacity and, furthermore, deliveries of motor fuels could be increased to meet demand.⁸²
- 5.36 **Third**, there will remain competition from stations located outside of the catchment area following the implementation of the Proposed Transaction. The Commission considers that service stations located outside of the Gorey Catchment Area, particularly those located along the M11 motorway, may exert, to some degree, a competitive constraint on Maxol in the retail sale of motor fuels in the Gorey Catchment Area and will continue to do so following the implementation of the Proposed Transaction. In response to the Naas Fuels Phase 1 RFI, Naas Fuels identified a Circle K service station located off the M11 motorway, approximately 9.2km north of the Target Station in Gorey, as its largest competitor in the retail sale of motor fuels in Gorey.⁸³ Circle K, one of the largest service station operators in the State, stated that this service station on the M11 motorway competes with service stations located within Gorey town, noting that these stations all formed part of the same “*micro market*”.⁸⁴
- 5.37 Overall, competitors of the Parties in the Gorey Catchment Area indicated to the Commission that, although they compete most closely with service stations located within the Gorey Catchment Area, they also compete to some extent with service stations located outside the Gorey Catchment Area. For example, P&H Doyles stated that it competes with “*all stations in the South East - particularly those on the main commuter roads.*”⁸⁵ Circle K Express Osbourne noted that Gorey is a “*destination shopping town*” and draws customers from outside the town,

⁸² Applegreen Call Note, dated 10 May 2024; Osbourne Call Note, dated 14 May 2024; P&H Doyles email to the Commission, dated 24 May 2024.

⁸³ Naas Fuels Phase 1 RFI Response, Question 2.

⁸⁴ See Circle K Call Note, dated 1 May 2024.

⁸⁵ P&H Doyles email to the Commission, dated 28 March 2024.

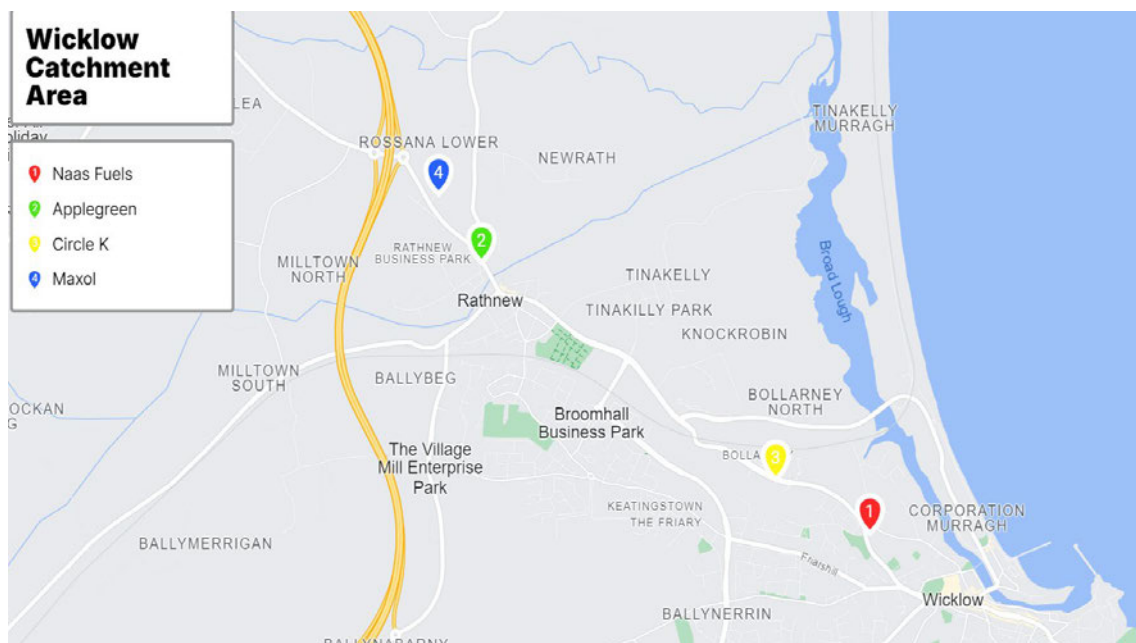
and therefore, it competes with stations located further afield. This indicates that the market could be wider than 3.2km.⁸⁶

- 5.38 Therefore, for the reasons set out above, the Commission considers that the Proposed Transaction does not raise horizontal competition concerns in the retail sale of motor fuels in the Gorey Catchment Area.

Wicklow Catchment Area

- 5.39 Map 3 below shows the location of each retail supplier of motor fuels in the Wicklow Catchment Area.

Map 3: Retailers of motor fuels in the Wicklow Catchment Area



Source: The Commission, based on information provided by the Parties

- 5.40 While the Parties' service stations in the Wicklow Catchment Area are located on the same road (the R750), they are separated by a distance of almost 3km. The Target Station (in red, number 1) is located close to the centre of Wicklow town and Maxol's service station (in blue, number 4) is located close to Exit 16 on the M11 motorway. There are two service stations located

⁸⁶ If the Commission were to extend the catchment areas to encompass a radius of 8km (the radius applied to rural service stations), this would include three new competitors without materially altering the market shares outlined in Table 8 above.

between the Parties' service stations in the Wicklow Catchment Area, namely Applegreen and Circle K.

5.41 Table 9 below provides estimated shares for the retail sale of motor fuels in the Wicklow Catchment Area in 2022.

Table 9: Retail sale of motor fuels in the Wicklow Catchment Area in 2022

Map Number	Supplier	Service Station	Brand	Distance from Target Station	Estimated Volume (litres)	Estimated Share
1	Naas Fuels	Circle K King's Wicklow Town Service Station	Circle K	N/A	██████	[30-35]%
4	Maxol	Maxol Service Station Rathnew	Maxol	2.99km	██████	[20-25]%
Parties Combined					██████	[50-55]%
2	Applegreen	Applegreen Rathnew	Applegreen	2.57km	██████	[20-25]%
3	Circle K	Circle K Wicklow	Circle K	0.6km	██████	[20-25]%
Total					██████	100% ⁸⁷

Source: The Commission, based on information provided by the Parties

5.42 Maxol's share in the retail sale of motor fuels would increase from [20-25]% to [50-55]% in the Wicklow Catchment Area following the implementation of the Proposed Transaction. Two competitors, each operating a single service station, will remain active in the Wicklow Catchment Area following the implementation of the Proposed Transaction.

⁸⁷ Share estimates have been rounded to one decimal point.

5.43 Prior to the Proposed Transaction, the retail sale of motor fuels in the Wicklow Catchment Area is highly concentrated. Table 10 below illustrates that the HHI in the retail sale of motor fuels in the Wicklow Catchment Area following implementation of the Proposed Transaction would be approximately 3,926. The change in the HHI of 1,367 is well above the figure of 150, the threshold below which the Commission considers that a post-merger HHI is unlikely to cause concern.⁸⁸

Table 10: The HHI in the retail sale of motor fuels within the Wicklow Catchment Area⁸⁹

	HHI
Pre-Proposed Transaction	2,559
Post-Proposed Transaction	3,926
HHI delta	1,367

Source: The Commission, based on market share information provided by the Parties

5.44 Naas Fuels is currently the largest retail supplier of motor fuels in the Wicklow Catchment Area, while Maxol is the fourth largest retail supplier of motor fuels in the same area. Following the implementation of the Proposed Transaction, Maxol would become the largest retail supplier of motor fuels in the Wicklow Catchment Area, followed by Applegreen ([20-25]%) and Circle K ([20-25]%).

5.45 Notwithstanding the fact that the Proposed Transaction will reduce to three the number of retail suppliers of motor fuels active in the Wicklow Catchment Area, the Commission considers that the Proposed Transaction is unlikely to give rise to unilateral effects in the potential market for the retail sale of motor fuels in the Wicklow Catchment Area for the reasons set out below.

5.46 First, the Parties are not each other's closest competitor within the catchment area. The Commission has found that the Parties, geographically, are not each other's closest competitor in the retail sale of motor fuels in the Wicklow Catchment Area. As shown in Map 3 above, while the Parties are located on the same road, they are separated by almost 3km; the Target

⁸⁸ See paragraphs 3.10-3.11 of the Commission's Merger Guidelines.

⁸⁹ As the market share information has been rounded, the HHI figures may be subject to minor variations.

Station located close to the centre of Wicklow town while Maxol's service station is located close to an exit on the M11 motorway. There are two third-party service stations located between the Parties in the Wicklow Catchment Area: Applegreen and Circle K. The latter service station is located closest to the Target Station.

- 5.47 The Commission has found that, while all service stations in the Wicklow Catchment Area compete with one another in the retail sale of motor fuels, the Target Station's closest competitor is Circle K, which is located approximately 600 metres from it. In the Naas Fuels Phase 1 RFI Response, Naas Fuels identified this Circle K service station as its closest competitor in the retail sale of motor fuels in the Wicklow Catchment Area "*due to their proximity*" to one another.⁹⁰ The Commission considers that Maxol will continue to be constrained by the remaining retail suppliers of motor fuels in Wicklow Catchment area following the implementation of the Proposed Transaction.
- 5.48 **Second**, existing competitors can expand their retail sales of motor fuels following the implementation of the Proposed Transaction. Both Applegreen and Circle K informed the Commission that they can increase the volume of motor fuels sold from their respective service stations in response to an increase in demand for motor fuels in the Wicklow Catchment Area. Both Applegreen and Circle K informed the Commission that their capacity to increase the volume of motor fuels sold in the Wicklow Catchment Area is not limited by factors such as on-site storage capacity and that deliveries of motor fuels could be increased to meet demand.⁹¹
- 5.49 **Third**, there is, and will remain, strong competition from service stations located outside of the catchment area. The Commission has found that service stations located outside of the Wicklow Catchment Area exert, to varying degrees, a competitive constraint on Maxol in the retail sale of motor fuels in the Wicklow Catchment Area and will continue to do so following the implementation of the Proposed Transaction. An internal document (see Figure 4 below) provided to the Commission in response to the Naas Fuels Phase 1 RFI indicates that Naas Fuels monitors the price of motor fuels charged by service stations that are located outside of the Wicklow Catchment Area.

⁹⁰ Naas Fuels Phase 1 RFI Response, question 2.

⁹¹ Circle K Call Noted, dated 1 May 2024; Applegreen Call Note, dated 10 May 2024.

Figure 4: Naas Fuels internal Wicklow price tracker

Local Prices				
Station	Petrol	Difference	Diesel	Difference
Circle K	1.698	0.019	1.698	0.019
Applegreen	1.668	-0.011	1.668	-0.011
Maxol	1.679	0	1.679	0
Go	1.649	-0.03	1.649	-0.03
		1.679		1.679

Source: Naas Fuels

5.50 Specifically, Naas Fuels monitors the price charged by Go Fuels, which is located approximately 4.8km from Naas Fuels to the north-east in Ashford, Co. Wicklow.⁹² Indeed, Naas Fuels stated that customers have previously quoted Go Fuels' lower prices when purchasing motor fuels from Naas Fuels.⁹³ Maxol also stated that it monitors this Go Fuels service station in Ashford [REDACTED]. In an internal document titled "[REDACTED]", Maxol identifies [REDACTED]

Furthermore, the [REDACTED] Economic Report provided pricing information in relation to Wicklow town which shows that *Go Fuels* consistently offered the lowest prices in the area in 2023.⁹⁴ Therefore, the Commission considers that service stations located outside the Wicklow Catchment Area (such as Go Fuels) will exert a strong competitive constraint on Maxol in the retail sale of motor fuels following the implementation of the Proposed Transaction.

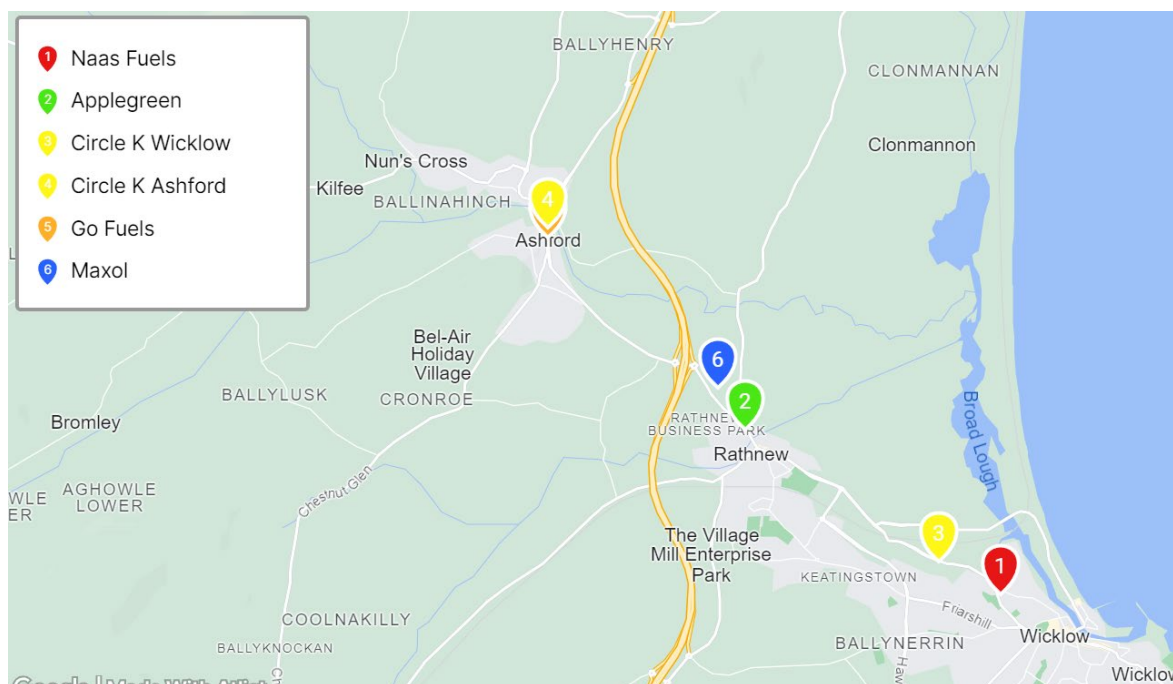
5.51 **Fourth**, while it is the Commission's practice, as a starting point, to assess competition within the relevant distance from the target's site (in this case, the Target Station in Wicklow Town), assessing competition within the relevant distance from the acquirer's site (in this case, Maxol's service station in Wicklow Town) captures the local competitive constraints faced by both the target and the acquirer. Applying the 3.2 km radius to Maxol's service station in Rathnew introduces two new service stations to the geographic frame of reference (see Map 4 below).

⁹² See Map 4 below.

⁹³ Naas Fuels Phase 2 RFI response, question 12, Naas Fuels internal document "Wicklow - Fuel Price Check for 06 January 2023.msg".

⁹⁴ [REDACTED] Economic Report, pages 16 to 18.

Map 4: The retail supply of motor fuels within 3.2km radius of Maxol's service station in Rathnew



Source: The Commission

- 5.52 As shown in Map 4 above, there are two additional service stations, Go Fuels and Circle K Ashford, that are located within a 3.2km radius of Maxol's service station in Wicklow Town. While these service stations are located outside of the Wicklow Catchment Area, they are located approximately 2km from Maxol's service station, and are therefore closer to Maxol's service station than the Target Station. Consequently, there will be three remaining retail suppliers of motor fuels, operating four service stations, within close proximity to Maxol's existing service station following the implementation of the Proposed Transaction.
- 5.53 The Commission considers that the evidence outlined above indicates that Maxol will continue to be constrained by the remaining suppliers located within and outside of the Wicklow Catchment Area in the retail sale of motor fuels following the implementation of the Proposed Transaction.
- 5.54 For the reasons set out above, the Commission considers that the Proposed Transaction does not raise horizontal competition concerns in the Wicklow Catchment Area.

Conclusion on the retail sale of motor fuels in the State

5.55 For the reasons set out above, the Commission considers that the Proposed Transaction does not give rise to unilateral horizontal competition concerns in the potential markets for the retail supply of motor fuels within the local catchment areas of each Target Station.

The Operation of Retail Forecourt Convenience Stores within the Local Catchment Areas⁹⁵

5.56 As part of the Proposed Transaction, Maxol is acquiring seven forecourt convenience stores attached to the Target Stations.

5.57 Maxol's forecourt convenience stores will continue to compete with the forecourt convenience stores operated by the other service stations within the local catchment areas identified above. Furthermore, all forecourt convenience stores will continue to face competition from supermarket and non-forecourt convenience stores within the respective catchment areas. For example, within the Gorey Catchment Area and Wicklow Catchment Area, in addition to competing forecourt convenience stores, Maxol's forecourt convenience stores will continue to be constrained by a range of supermarkets and other retail outlets, such as *Aldi*, *Centra*, *Dunnes Stores*, *Lidl*, *Tesco* and *Supervalu*.

5.58 The Commission therefore considers that the Proposed Transaction does not give rise to horizontal competition concerns in the potential market for the operation of forecourt convenience stores in the local catchment areas outlined above.

The Sale of Fuel Cards in the State

5.59 Maxol sells a proportion of its fuel to commercial customers by way of *Maxol*-branded fuel cards. Naas Fuels sells *Circle K* and *DCI* branded fuel cards. Given these branded fuel cards are sold at service stations across the State, Naas Fuels' share in the provision of fuel cards is minimal.

5.60 The Proposed Transaction would result in a minimal increase in Maxol's share in the provision of fuel cards in the State, as it would acquire seven service stations, from which, following the Proposed Transaction, it will sell Maxol fuel cards. Following the implementation of the

⁹⁵ For clarity, and as noted above, the local catchment areas are (i) within an 8km radius of a rural Target Station; and (ii) within a 3.2km radius of an urban Target Station.

Proposed Transaction, Maxol will continue to face competitive constraints from *Circle K*, *Applegreen*, *Texaco* and *Top Oil* among others in the provision of fuel cards in the State.

- 5.61 The Commission therefore considers that the Proposed Transaction does not give rise to horizontal competition concerns in the potential market for sale of fuel cards in the State.

Overall Conclusion on Horizontal Effects

- 5.62 For the reasons set out above, the Commission considers that the Proposed Transaction does not give rise to horizontal competition concerns in the State.

6. COMPETITIVE ASSESSMENT COORDINATED EFFECTS

Introduction

- 6.1 Coordinated effects can occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Thus, the key question⁹⁶ is whether a proposed transaction would materially increase the likelihood that firms would successfully coordinate their behaviour or would strengthen existing coordination between firms in this market.
- 6.2 Section 5 of this Determination sets out the Commission's view that, based on the information in its possession, any likely competitive effects of the Proposed Transaction are mainly unilateral in nature.
- 6.3 On the basis of the information in the possession of the Commission and the relevant counterfactual, no plausible coordinated effects theory of harm was identified. Therefore, the Commission considers that the Proposed Transaction does not give rise to any coordinated effects in the potential relevant markets identified in paragraph 3.54 of this Determination.
- 6.4 Therefore, no further discussion of coordinated effects is carried out for the purposes of assessing the likely effects of the Proposed Transaction in the identified potential relevant markets.

⁹⁶ See paragraph 4.23 of the Commission's Merger Guidelines.

7. VERTICAL RELATIONSHIP

Introduction

7.1 The Commission has identified one potential vertical relationship between Maxol and Naas Fuels. Maxol is active in the wholesale supply and distribution of motor fuels to service stations, while Naas Fuels owns and operates seven service stations in the State.

7.2 The Commission considers that the Proposed Transaction does not give rise to vertical foreclosure concerns in relation to the wholesale supply and distribution of motor fuels in the State for the following reasons:

- **Input foreclosure:** Maxol's share in the wholesale supply and distribution of motor fuels in the State will not materially change as a result of the Proposed Transaction, as it will now supply motor fuels to an additional seven service stations.⁹⁷ Furthermore, non-*Maxol* owned service stations in the State will continue to be able to purchase motor fuels from a range of wholesale suppliers, such as *Circle K*, *Applegreen*, *Texaco* and *Top Oil*. These suppliers will continue to exert a competitive constraint on Maxol in the wholesale supply and distribution of motor fuels to service stations in the State. The Commission considers that this increase is unlikely to result in Maxol gaining the ability or incentive to engage in input foreclosure. Therefore, the Commission considers that input foreclosure is unlikely to arise in respect of the wholesale supply and distribution of motor fuels to service stations in the State following the implementation of the Proposed Transaction.
- **Customer foreclosure:** Maxol has an estimated [5-10]% share in the retail sale of motor fuels in the State.⁹⁸ Maxol's acquisition of the seven Target Stations as part of the Proposed Transaction will therefore result in a minimal increase in Maxol's overall share in the retail sale of motor fuels in the State. Other wholesale suppliers will continue to be able to sell to a large number of service stations. Therefore, the Commission considers that the Proposed Transaction is unlikely to result in Maxol gaining the ability

⁹⁷ In this respect, the Commission notes paragraph 25 of the European Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("EC Vertical Merger Guidelines"), which states that the European Commission is "*is unlikely to find concern in non-horizontal mergers, be it of a coordinated or of a non-coordinated nature, where the market share post-merger of the new entity in each of the markets concerned is below 30 % and the post-merger HHI is below 2 000.*"

⁹⁸ Merger Notification Form, section 5.2.

or incentive to engage in customer foreclosure. The Commission considers that customer foreclosure is unlikely to arise in respect of the wholesale supply and distribution of motor fuels to service stations in the State following the implementation of the Proposed Transaction.

Conclusion on Vertical Relationship

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

8. ANCILLARY RESTRAINTS

8.1 No ancillary restraints were notified.

9. CONCLUSION

- 9.1 In light of its analysis of all the information and evidence available to it, as set out in this Determination, the Commission has formed the view that the Proposed Transaction will not result in a substantial lessening of competition in any of the potential relevant markets.

10. DETERMINATION

The Competition and Consumer Protection Commission (the “Commission”), in accordance with section 22(3)(a) of the Competition Act 2002, as amended (the “Act”), has determined that the result of the proposed acquisition whereby McMullan Bros. Limited, through its wholly owned subsidiary Maxol Limited, would acquire sole control of Naas Fuels 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.

Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

Brian McHugh

Chairperson

Competition and Consumer Protection Commission



Coimisiún um
Iomáiocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

