



## DETERMINATION OF MERGER NOTIFICATION M/15/019 - TEDCASTLES OIL PRODUCTS / THE ASHBOURNE OIL CO.

---

### Section 21 of the Competition Act 2002

### Proposed acquisition by Tedcastles Oil Products of Certain Assets of The Ashbourne Oil Co. Limited

Dated 15 May 2015

---

#### Introduction

1. On 10 April 2015, in accordance with section 18(1) of the Competition Act 2002, as amended<sup>1</sup> (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Tedcastles Oil Products (“TOP”) would acquire sole control over certain assets, constituting the retail fuel distribution business and related goodwill (“the Target Assets”), of The Ashbourne Oil Co. Limited (“Ashbourne Oil”).

#### *The Proposed Transaction*

2. On 12 March 2015, TOP offered Ashbourne Oil written proposed terms of agreement for the acquisition of the Target Assets, which Ashbourne Oil accepted on 18 March 2015.
3. A copy of the signed proposed terms of agreement was received by the Commission as part of the merger notification. Notwithstanding the fact that a formal written purchase agreement had not yet been executed at the time of the notification, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.

#### The Undertakings Involved

##### *The Acquirer*

4. TOP is 100% Irish-owned and part of the Tedcastles Group of companies, which is owned by the Reihill family. It has its registered office at Promenade Road, Dublin 3.

---

<sup>1</sup> It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.



5. The main activity of TOP in the State is the importation and distribution (non-retail and retail) of petroleum products through a fuel terminal in Dublin Port and a network of 21 distribution depots and 23 service stations across the country.
6. In the financial year ending 31 March 2014, TOP had a worldwide turnover of €[...] billion, of which €[...] billion was generated in the State.

#### **The Vendor**

7. Ashbourne Oil is a private limited company<sup>2</sup> incorporated in the State in 1981, with its registered office and main place of business at Kilbrew, Ashbourne, County Meath.
8. Ashbourne Oil is a retail supplier of kerosene, marked gas oil (green diesel) and road diesel (DERV)<sup>3</sup> in the Ashbourne area.

#### **The Target Assets**

9. It is proposed that TOP will acquire sole control over the Target Assets of Ashbourne Oil, which comprise Ashbourne Oil's retail fuel distribution business and the goodwill in the business (including the use of the trading names, telephone numbers and all historical customer trading information, such as names and addresses, telephone numbers and any other relevant information dating from the past two years).
10. In the year ended 31 December 2014, turnover attributable to the Target Assets was approximately €4.28 million, the entirety of which was generated in the State.

#### **Rationale for the Proposed Acquisition**

11. The notification states:

*“TOP believes that the Proposed Transaction would enhance its presence and improve its oil distribution and retail reach in the Ashbourne region. The enlarged group will have the means to unlock commercial opportunities offered by an increased presence in the Ashbourne area.”*

#### **Third Party Submissions**

12. No submission was received.

#### **Competitive Analysis**

13. 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 precise relevant markets.
14. Ashbourne Oil operates one retail fuel depot<sup>4</sup> located in Kilbrew, approximately 6km outside Ashbourne town in County Meath, from which it sells kerosene, marked gas oil

---

<sup>2</sup> Two individuals are joint shareholders and co-directors in Ashbourne Oil, being Raymond Coyle and Rosamond Coyle (née Blood).

<sup>3</sup> Diesel Engined Road Vehicle (DERV).

<sup>4</sup> Consisting of one diesel pump and storage tanks for diesel, kerosene and gas oil.



and road diesel in the Ashbourne area. It had sales of approximately 1.2 million litres of road diesel for the 12 month period ending 31 December 2014 from a diesel pump in its yard. Ashbourne Oil does not offer unleaded petrol, car wash services, a convenience store or the other offerings typically associated with a full service retail filling station. It is not located on a national primary road and its customers are almost exclusively from the surrounding area.

15. For the financial year ended 31 December 2014, Ashbourne Oil procured 100% of its petroleum products from TOP, including approximately 2 million litres of kerosene and 1.5 million litres of marked gas oil. As a retail supplier of kerosene and marked gas oil to agricultural, commercial and domestic customers in the Ashbourne area, approximately 78% of Ashbourne Oil's sales occur within 10km of Ashbourne town, with a further 15% occurring within 20 km of Ashbourne. Ashbourne Oil also had a relatively small amount of sales of lubricants and home heating oil tanks<sup>5</sup> in 2014.
16. TOP is a vertically integrated company importing petroleum products into the State through its 55,000 tonne terminal in Dublin Port then break-bulking these products, using its network of 21 distribution depots, to supply the fuel requirements of a wide range of customers in the agriculture sector, commercial institutions, hotels, the fishing and naval industries, the haulage sector and domestic home-heating users. TOP also has a network of 23 motor fuel retail service stations across the State.
17. In the Ashbourne area, the Kilmoon Service Station in Kilmoon Cross, approximately 8km from Ashbourne on the main N2 national road, is a TOP retailer. TOP Kilmoon operates as a full service petrol station with a convenience store, car wash services and a full range of motor fuels. Due to its location on a national primary road, its customers are a mix of passing trade, local customers and commercial customers (who can purchase fuel at a lower rate than retail customers due to commercial bulk-buying using fuel cards).
18. TOP Kilmoon also supplies kerosene and marked gas oil to agricultural, commercial and domestic customers in the Ashbourne area. In 2014, it had sales of less than 50,000 litres in each of the two product ranges, i.e. kerosene and marked gas oil. Since the parties view the retail sales of kerosene and marked gas oil to be economically viable up to a 50km radius (taking into account road haulage costs), both the TOP depots at Dublin Port and Drogheda can be viewed as competing with Ashbourne Oil for such sales into the Ashbourne area.
19. Consequently there are a number of minor horizontal overlaps in the activities of the parties:
  - i. Retail sale of road diesel - both Ashbourne Oil and TOP through TOP Kilmoon sell road diesel to consumers in the Ashbourne area from their respective forecourts (pumps) near Ashbourne town<sup>6</sup>. Within a radius of [...]km from Ashbourne Oil, there are eight retail service stations<sup>7</sup> (including TOP Kilmoon) selling road diesel and the parties estimate that Ashbourne Oil and TOP hold market shares of

<sup>5</sup> Generating turnover of approximately €5,000 and €2,000 respectively in 2014.

<sup>6</sup> Both approximately 6km and 8km from Ashbourne town.

<sup>7</sup> Some of the larger competitors with estimated market shares of 10% and more are Topaz Ashbourne, Topaz Coolfore, Applegreen Ashbourne, Esso Ashbourne and Texaco Claremont.



- approximately [...] % and [...] % respectively in the market for the retail sale of road diesel in the Ashbourne area (i.e. within a radius of [...] km from Ashbourne Oil);
- ii. Retail sale of kerosene and marked gas oil - Ashbourne Oil operates a retail fuel depot, approximately 6 km outside Ashbourne town, from which it retails kerosene and marked gas oil into the Ashbourne area. Approximately 93% of Ashbourne Oil's sales occur within 20 kilometres of Ashbourne town. Besides TOP Kilmoon, which is approximately 8 km from Ashbourne town, TOP also retails kerosene and marked gas oil to customers in the Ashbourne area from its depots in Dublin and Drogheda. Within a radius of [...] km from Ashbourne Oil, there are more than thirteen oil companies/distributors<sup>8</sup> (including TOP) selling kerosene and marked gas oil into the Ashbourne area. The parties estimate that Ashbourne Oil and TOP each holds a market share of approximately [...] % and [...] % respectively of the market for retail sales of kerosene within the Ashbourne area (i.e. within a radius of [...] km from Ashbourne Oil) and a market share of approximately [...] % and [...] % respectively in the market for the retail sale of marked gas oil within the same area; and
  - iii. Retail sale of lubricants and home heating oil tanks - both TOP and Ashbourne Oil had small amounts of sales of lubricants and home heating oil tanks in 2014, which amounted – in the case of each of TOP and Ashbourne Oil – to less than 0.02% of annual sales.
20. In all of the above areas of overlap, there are a large and varied (in size) number of competitors whose presence will constrain the activities of the merged entity post-transaction.
21. With regard to the vertical aspect of the proposed transaction (i.e., TOP being the sole supplier to Ashbourne Oil) it will not, in the Commission's view, result in any foreclosure, in particular because, in both the upstream non-retail supply of petroleum products and the downstream petroleum products retailing market, especially kerosene, marked gas oil and road diesel, there are a number of large competitors whose presence will constrain the activities of the merged entity post-transaction. In the Commission's view, TOP does not have sufficient market power in any these segments to allow it to engage in a foreclosure strategy post merger.<sup>9</sup>
22. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

### Ancillary Restraints

23. The proposed transaction contains a covenant restricting the vendor's two individual shareholders/directors from working in any commercial fuel business in the sales territory of Ashbourne Oil for a specified period following completion of the proposed transaction.

---

<sup>8</sup> Some of the larger competitors (with estimated market shares of 7% and more) are Topaz Energy, Jones Oil, Valero Energy, Campus Oil, Emo Oil and Curran Oil.

<sup>9</sup> For example it is estimated that nationally TOP holds market shares in the retail market for kerosene, marked gas oil and road diesel of less than 8% and that TOP holds estimated market shares of less than 11% nationally in the non-retail market for each of these particular product segments.



24. The parties state that the covenant is necessary in a transaction of the nature of the proposed transaction, i.e. transferring a business as a going concern with goodwill and trade names being transferred and to protect and preserve the integrity of the underlying business given the close relationship between the business, its individual directors/shareholders and its customers. The parties therefore view the covenant to be fair and reasonable.
25. The duration of the ancillary restraint does not exceed the maximum duration acceptable to the Commission<sup>10</sup> and the Commission considers the restriction to be directly related and necessary to the implementation of the proposed transaction.

---

<sup>10</sup> In this respect, the Commission follows the approach adopted by the EU Commission in paragraph 20 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



## **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Tedcastles Oil Products would acquire sole control over certain assets, constituting the retail fuel distribution business and related goodwill, of The Ashbourne Oil Co. Limited, will not be to substantially lessen competition in any market for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Isolde Goggin**  
**Chairperson**  
**Competition and Consumer Protection Commission**