



DETERMINATION OF MERGER NOTIFICATION M/15/061 - EAST CORK OIL / M.W. FUELS T/A TARA OIL & TARA 24/7 SERVICE STATION

Section 21 of the Competition Act 2002

Proposed acquisition by East Cork Oil Company of M.W. Fuels Company Limited t/a Tara Oil and certain assets constituting Tara 24/7 Service Station

Dated 14 December 2015

Introduction

1. On 04 November 2015, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby East Cork Oil Company (“East Cork Oil”) would acquire the entire issued share capital of M.W. Fuels Company Limited, trading as Tara Oil (“the Target” or “Tara Oil”), and sole control over certain assets, constituting Tara 24/7 Service Station, with related trade and goodwill (“the Target Assets” or “Tara 24/7”).

The Proposed Transaction

Share Acquisition

2. On 23 October 2015, East Cork Oil and M.W. Ireland Limited (“the Vendor”) entered into a Share Purchase Agreement pursuant to which East Cork Oil would acquire the entire issued share capital, and thus sole control, of the Vendor’s wholly owned subsidiary, Tara Oil.

Asset Acquisition

3. On 23 October 2015, East Cork Oil and the Vendor, together with its individual shareholder², entered into a Contract for Sale for the acquisition of property assets constituting Tara 24/7, together with its associated retail fuel business and goodwill.

The Undertakings Involved

The Acquirer

¹ 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.

² [...].



4. East Cork Oil is an Irish private unlimited company with its registered office at Broomfield West, Midleton, Co. Cork. It is a wholly owned subsidiary of Carrigacotta Holding Company, which in turn is owned by two individuals³.
5. The principal activity of East Cork Oil is the distribution of fuel products in the Munster region⁴ through a network of 22 company-owned depots. The fuel product range includes home heating oil (kerosene and marked gasoil) and transport fuel (e.g. road diesel, also called DERV⁵, and petrol). Customers of East Cork Oil include domestic consumers, farmers, agricultural contractors, haulage companies, large industrial users and retail service stations.
6. East Cork Oil also has a 50% shareholding in the Atlantic Fuel Supply Company Limited (“AFSC”) terminal complex in Foynes, which is operated by Inver Energy (“Inver”), a third party fuel company which has no involvement in this transaction. However, East Cork Oil does purchase product from Inver.
7. In the financial year ended 31 July 2015, East Cork Oil had total turnover of €[...], the entirety of which was generated in the State.

The Vendor

8. The Vendor is the ultimate parent company of the M.W. Group⁶ which is 100% owned and controlled by one individual⁷.
9. The principal activity of the Vendor is the distribution of fuel products for commercial, industrial and domestic use and the operation of a retail service station. In addition, the Vendor acts as an investment holding company in receipt of investment income from other investment assets. The other investments held by the Vendor are not involved in the proposed transaction.

The Target and Target Assets

10. In terms of the proposed share acquisition, East Cork Oil will acquire sole control over Tara Oil, an Irish private company limited by shares, which operates a fuel distribution business from its company-owned depot on Dock Road, Limerick. Tara Oil distributes fuel products for commercial, industrial and domestic use and its product offering includes heating oil, which includes marked gas oil (sulphur free and agricultural diesel), kerosene, and transport fuel, (which includes road diesel (DERV) and petrol). Tara Oil currently supplies [...] retail service station customers⁸ (excluding inter-group supplies to Tara 24/7)⁹.
11. In terms of the proposed asset acquisition, East Cork Oil will acquire sole control over Tara 24/7, a retail motor fuel service station, also located on Dock Road, Limerick

³ The two individual shareholders, and their respective shareholdings in Carrigacotta Holding Company are [...] and [...].

⁴ As well as in Callan (Kilkenny) and Enniscorthy (Wexford).

⁵ DERV stands for ‘Diesel Engine Road Vehicle’.

⁶ The M.W. Group consists of M.W. Ireland Limited, M.W. Fuels Company Limited t/a Tara Oil (+ Alpha Oil Products Limited t/a East Clare Oil) and Tara 24/7 Service Station.

⁷ [...].

⁸ Tara Oil’s retail service station customers are: [...].

⁹ As far as the retail customer in [...] is concerned, it currently acts as an agent on behalf of Tara Oil, whereby the current operator is paid a fee per litre sold.



(adjacent to the Tara Oil depot). It comprises an un-manned retail forecourt which operates 24/7 and includes all of the business assets and the goodwill in the business (including the use of the trading name). The automated fuel pumps supply road diesel (DERV) and petrol and accept cash, credit cards and fuel cards. The service station does not have any retail convenience store.

12. In the financial year ended 31 May 2015, Tara Oil generated turnover of approximately €[...], the entirety of which was generated in the State.¹⁰
13. Turnover attributable to the Target Assets for the financial year ended 31 May 2015, was €[...] and formed part of the turnover of Tara Oil as set out above.
14. The turnovers of the undertakings being acquired by East Cork Oil pursuant to the proposed transaction (i.e. Tara Oil, Alpha Oil Products and Tara 24/7) were generated entirely in the State.

Rationale for the Proposed Acquisition

15. The notification states:

“The commercial objectives sought to be achieved by the proposed transaction is to enable East Cork Oil to enter into new areas, both geographically and by sales offerings, and to continue its future growth strategy.

Specifically, the areas in which East Cork Oil currently does not operate but wishes as a result of this transaction to gain access are the following:

- *Wholesale distribution to the target’s existing customer base in the west of Ireland/Midlands (areas where East Cork Oil currently has little or no presence)*
- *Entry into the retail “un-manned” forecourt space where East Cork Oil currently has no operations*

In addition to the above objectives, the proposed transaction would allow East Cork Oil Company to consolidate its position in the Mid-West region of Ireland (i.e. Clare, Limerick and Tipperary).”

Third Party Submissions

16. One third party submission was received by the Commission and subsequently withdrawn. The Commission has, therefore, undertaken no analysis of this submission. It has, however, reviewed of its own initiative some issues outlined in the submission and the results of this review form part of the Commission’s analysis below.

¹⁰ Subsequent to the end of the abovementioned financial year, on 01 June 2015, Tara Oil acquired its direct subsidiary company, Alpha Oil Products Limited t/a East Clare Oil (“Alpha Oil Products”) and for purposes of the proposed transaction, the turnover of Alpha Oil Products for the financial year ended 31 May 2015 of approximately €[...] should be considered as part of Tara Oil’s turnover and added to such turnover.



Competitive Analysis

17. Tara Oil operates one fuel terminal (i.e. distribution depot) located on Dock Road in Limerick, from which it conducts wholesale (non-retail) fuel distribution of:
- transport fuel, mainly petrol and road diesel (DERV), to smaller independent forecourt operators or dealer-owned dealer-operated (DoDo) service stations. As such, Tara Oil currently supplies Tara 24/7 in Limerick and has five year supply agreements¹¹ in place with the [...] retail service station customers set out in paragraph 10 above. The aforementioned supply agreements provide that the particular retail customer shall purchase exclusively from Tara Oil for the duration of the agreement and Tara Oil is entitled to place and maintain its name or its supplier's name, as applicable, on the motor fuel pumps/canopy in the customer's retail service station.
 - heating oil, mainly marked gas oil (green diesel or agricultural diesel) and kerosene, which are used for heating homes and commercial, agricultural and industrial purposes, to independent fuel distributors.
18. Tara Oil's main suppliers include [...], together supplying 90.7%¹² of its products, mainly from Foynes, Galway and Dublin.
19. In the financial year ended 31 May 2015, Tara Oil had sales volumes of approximately [...] litres of fuel, broken down into main product types as follows:
- Road Diesel (DERV) – [...] %¹³ ([...] litres);
 - Kerosene – [...] % ([...] litres);
 - Petrol – [...] % ([...] litres); and
 - Marked Gas Oil – [...] % ([...] litres).
20. The Target Assets comprise one motor fuel retail filling station (i.e. a fuel forecourt)¹⁴ located on Dock Road in Limerick. Tara 24/7 is an unmanned service station which, as the name suggests, is open 24 hours per day for 365 days per year and is a high volume, low margin station. For the year ended 31 May 2015, Tara 24/7 procured 100% of its petroleum products from Tara Oil and it sold approximately [...] litres of fuel, with sales volume by product as follows:
- Road Diesel (DERV) – [...] litres;
 - Petrol – [...] litres;
 - Kerosene – [...] litres; and
 - Marked Gas Oil – [...] litres.
21. East Cork Oil has a network of 22 depots¹⁵, almost half of which are in County Cork, as set out in Table 1 below.

¹¹ Ranging in agreement dates starting from August 2012 to January 2015.

¹² Other suppliers include Emo, Esso and DCI.

¹³ Percentages rounded to nearest figure.

¹⁴ A forecourt consisting of nine pump islands (6x3 and 3x2 hose pumps) with six storage tanks with a total storage capacity of 121,000 litres (65,000 litres diesel, 38,000 litres unleaded and 18,000 litres kerosene and gas oil).

¹⁵ With an additional two 'virtual depots', i.e. former depots, being Marina Oil and South of Ireland Petroleum, where the trade names continue while the actual leases on the depots used by those businesses have lapsed and orders are fulfilled out of the Farnanes and Middleton Depots.



Table 1: East Cork Oil Fuel Depots

Trade Name	Address	County
East Cork Oil	Broomfield West, Midleton	Co Cork
East Cork Oil	Aglish, Cappoquin	Co Waterford
Comeragh Oil	Dungarvan Bus. Park, Dungarvan	Co Waterford
Shreelawn Oil	Kildorrery	Co Cork
Shreelawn Oil	Bansha	Co Tipperary
Shreelawn Oil	Newmarket	Co Cork
Mill Oils	Macroom Road, Millstreet	Co Cork
Shreelawn Oil	Dock Road	Limerick
Estuary Fuels	Main St, Foynes	Co Limerick
Ross Oil	Cashelmore, Enniskeane	Co Cork
Ross Oil	Farnanes	Co Cork
Feale Oil	Inchinapoagh, Brosna	Co Kerry
Clare Oil	Tiermaclane, Ennis	Co Clare
Unecol	Cork Road, Waterford	Waterford
Unecol	West Court Bus. Park, Callan	Co Kilkenny
Wexford Oil	Blackstoops, Enniscorthy	Co Wexford
CRL	Upper Lissivigeen, Killarney	Co Kerry
D Oil	Underhill, Dunmanway	Co Cork
John O'Neill Oil	Railway Road, Charleville	Co Cork
Kerry Petroleum	Clash Industrial Estate, Tralee	Co Kerry
South Of Ireland	Western Road, Clonakilty	Co Cork
South Of Ireland	Cork Road, Skibbereen	Co Cork
Virtual Depots		
Marina Oil		
South Of Ireland Petroleum		

Source: The Parties

22. East Cork Oil's suppliers are [...], together supplying 100% of its products, mainly from [Whitegate], Foynes and Dublin
23. In the financial year ended 31 July 2015, East Cork Oil had sales volumes of approximately [...]litres of fuel, broken down into main product types as follows:
 - Marked Gas Oil – [...] %¹⁶ ([...] litres);
 - Road Diesel (DERV) – [...] % ([...] litres);
 - Kerosene – [...] % ([...] litres); and
 - Petrol – [...] % ([...] litres).
24. [...] % of all of East Cork Oil's fuel sales were non-retail/wholesale sales, whereby East Cork Oil delivered the products to customers by truck, normally within a radius of 30-40 kilometres from one of its depots. The remaining [...] % of East Cork Oil's fuels sales were made as retail 'yard sales', whereby customers collect products at one of its depots. The majority of these sales were to commercial customers who have credit accounts with East Cork Oil and who fill trucks onsite. Only four of East Cork Oil's depots

¹⁶ The percentages in this paragraph have been rounded to the nearest figure.



sold petrol on a retail basis, namely the depots in Comeragh, Foynes, Callan and Dunmanway.

25. Consequently, there are a number of horizontal overlaps in the activities of the parties. While the Commission defines markets to the extent necessary depending on the particular circumstances of a given case, in this instance it is not necessary to define precise relevant markets since the Commission's review of the competitive effects of the proposed transaction would be the same irrespective of the precise product or geographic market definition. However, in order to examine the competitive impact of the proposed transaction, the Commission analysed its impact by reference to a number of possible product and geographic markets outlined below.

Retail fuel sales

26. Both Tara 24/7 and East Cork Oil's Shreelawn Limerick depot are located on Dock Road in Limerick and both make retail sales of fuels, including road diesel (DERV), kerosene and marked gas oil.
27. Tara 24/7 is a retail fuel forecourt in the true sense of the word, meaning that it focuses on retail motor fuel sales, and sold almost [...] litres of road diesel (DERV) and [...] litres of petrol in the 12 months ended 31 May 2015.
28. East Cork Oil's retail 'yard sales' at its Limerick depot of almost [...] litres for the year ended 31 July 2015 consisted mainly of road diesel (DERV) to commercial customers [...]. The depot did not sell any petrol in the year ended 31 July 2015.
29. There are a number of competitors operating in the forecourt service station sector who make retail sales in close proximity to (i.e., within [...] of) both Tara 24/7 and East Cork Oil's depot on Dock Road in Limerick. Table 2 below contains a list of such competing retail sites in the area, with locations and estimated sales volumes.

Table 2: Competing Forecourt Service Stations to the Merged Entity within an [...] Radius

Service Station	Location	Estimated [market shares ¹⁷]
Tara 24/7	Dock Road	[15.5%]
Shreelawn Oil (East Cork Oil)	Dock Road	[7%]
TOP	Dock Road	[6%]
Caseys/Topaz	Dock Road	[10%]
Topaz	Dock Road	[5%]
John O'Neill	Clarina	[6%]
Esso	Clarina	[4%]
TOP	Raheen	[7%]
Maxol	Dooradoyle	[9%]
Topaz	Dooradoyle	[5%]
Inver	Ballinacurra	[10%]
Topaz	Roxboro	[5%]
Bennetts/TOP	Roxboro	[9%]

[¹⁷] [The percentages have been rounded to the nearest figure.]



Great Gas	Clare Street	[4%]
Total		[100%]

Source: Estimates by the Parties

30. The Commission's analysis concludes that there is a sufficient number of competing fascia of forecourt service stations that will continue to act as a constraint on the merged entity following implementation of the proposed transaction.

Non-retail fuel distribution

31. Tara Oil operates a fuel depot on Dock Road in Limerick, from which it distributes fuel products, including motor fuels (road diesel (DERV) and petrol) and heating oil (kerosene and marked gas oil) into the greater Limerick and surrounding areas. Approximately 92% of Tara Oil's sales (excluding sales to Tara 24/7) occur north of its Dock Road depot.
32. East Cork Oil operates a network of 22 depots as set out in paragraph 25 above, distributing marked gas oil, road diesel (DERV), kerosene and petrol, mainly in Munster.
33. Table 3 below contains a comparison of fuel supplies by Tara Oil and East Cork Oil into various Counties within the State, with estimated annual sales volumes and percentages of total sales.

Table 3: Fuel supplies by Tara Oil and East Cork Oil by County, Annual Sales Volumes & Percentages of Total Sales, FY 15

County	Tara Oil		East Cork Oil	
	Estimated sales volume (litres)	Qty as % of total sales	Estimated sales volume (litres)	Qty as % of total sales
Limerick	[...]	10.65%	[...]	20%
Limerick (Tara 24/7)	[...]	10.63%		
Tipperary	[...]	13.46%		
Clare	[...]	6.67%		
[...]	[...]	[...]	-	-
[...]	[...]	[...]	-	-
[...]	[...]	[...]	-	-
[...]	[...]	[...]	-	-
Cork	[...]	[...]	[...]	[...]
[...]	[...]	[...]	-	-
[...]	[...]	[...]	-	-
Kerry	[...]	[...]	[...]	[...]
[...]	[...]	[...]	-	-
[...]	[...]	[...]	-	-
[...]	[...]	[...]	-	-
Waterford	[...]	[...]	[...]	[...]
[...]	[...]	[...]	-	-
[...]	-	-	[...]	[...]
Total	[...]	100%	[...]	100%

Source: Estimates by the Parties



34. The main areas of overlap between the non-retail distribution businesses of Tara Oil and East Cork Oil are in the Limerick, Tipperary and Clare areas.¹⁸ There are more than 10 distributors selling fuel products into the Limerick, Clare and Tipperary areas which will continue to constrain the merged entity following implementation of the proposed transaction. The notifying parties estimate that East Cork Oil and Tara Oil hold market shares of approximately 23% and 7% respectively of the market for non-retail distribution of fuel products within the overlap area (i.e. Limerick, Clare and Tipperary), as set out in Table 4 below.

Table 4: Fuel Distributor Market Shares for Limerick, Clare and Tipperary, Volumes & Percentages, FY 15

Fuel Distributor	Delivery Area	Estimated Sales Volumes (litres)	Estimated Market Share
Tara Oil	Limerick/Clare/Tipperary	[...] ¹⁹	7%
East Cork Oil	Limerick/Clare/Tipperary	[...]	23%
Dwyers Oil	Limerick/Clare/Tipperary	[...]	24%
Corrib Oil	Limerick/Clare/Tipperary	[...]	6%
Suttons Oil	Limerick	[...]	3%
MidWest Oil	Tipperary	[...]	4%
Cosgrove Oil	Limerick/Clare/Tipperary	[...]	2%
Feenagh Oil	Limerick	[...]	2%
Regional Oil	Limerick	[...]	2%
Vale Oil	Tipperary	[...]	6%
Doran Oil	Tipperary	[...]	3%
O'Keeffe Oil	Clare	[...]	3%
Others	Limerick/Clare/Tipperary	[...]	15%
Estimated Total for Limerick, Clare and Tipperary		[...]	100%

Source: Estimates by the Parties

35. In addition, some of the national players and suppliers of Tara Oil and East Cork Oil, such as Inver Energy, Philips 66 and Topaz, are involved in selling directly to a number of large key end users in the area.

¹⁸ There are minimal overlaps in Counties Cork, Kerry and Waterford. Tara Oil supplies only to one customer in each of Cork and Kerry and each such customer is located very close to the border with County Limerick. For Waterford, Tara Oil's supplies are effectively less than one large tanker load annually.

¹⁹ Excluding Tara Oil's inter group sales to Tara 24/7.



36. The Commission's analysis concludes that there is a sufficient number of competing fuel distributors that will continue to act as a constraint on the merged entity following implementation of the proposed transaction.

Vertical Issues

37. Tara Oil is vertically integrated, with one forecourt service station in the State (Tara 24/7 in Dock Road, Limerick) and with sales through an agent in [...]. Both outlets are part of the proposed transaction and are currently supplied by Tara Oil only. However, the Commission considers that foreclosure in either the upstream or downstream markets is unlikely to arise as a result of the proposed transaction. In both the upstream market for non-retail supply of petroleum products and the downstream market for retail supply of petroleum products, (particularly for road diesel (DERV), kerosene, marked gas oil and petrol) there are a number of large competitors whose presence will constrain the activities of the merged entity post-transaction. In the Commission's view, the merged entity will not have sufficient market power in any these segments to allow it to engage in a foreclosure strategy post-merger.
38. 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

39. The Share Purchase Agreement contains a number of non-compete and non-solicitation covenants²⁰. The duration of the covenants does not exceed the maximum duration acceptable to the Commission²¹ and, given the particular nature of the proposed transaction, the Commission considers the restrictions to be directly related and necessary to the implementation of the proposed transaction.

²⁰ The parties have also entered into a separate Non-Compete Agreement in respect of [...] (the 100% shareholder in the Vendor) in a personal capacity.

²¹ In this respect the Commission follows the approach adopted by the EU Commission in paragraph 20 of its "Notice on restrictions directly related and necessary to concentrations" (2005).

See [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=E](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=E).



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 East Cork Oil Company would acquire the entire issued share capital of M.W. Fuels Company Limited, trading as Tara Oil, and sole control over certain assets, constituting the Tara 24/7 Service Station with related trade and goodwill, 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

Gerald FitzGerald
Member
Competition and Consumer Protection Commission