

# DETERMINATION OF MERGER NOTIFICATION M/17/016 - PETROGAS GROUP LIMITED (APPLEGREEN PLC)/ CERTAIN ASSETS OF WESTMEATH MOTORS LIMITED

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Petrogas Group Limited of sole control of certain assets of Westmeath Motors Limited

Dated 28 April 2017

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#### Introduction

1. On 3 April 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Petrogas Group Limited (“Petrogas”), a wholly-owned indirect subsidiary of Applegreen plc (“Applegreen”), would acquire sole control of certain assets of Westmeath Motors Limited (“Westmeath Motors”), constituting a retail motor fuel service station and associated forecourt convenience store, located on Dublin Road, Mullingar, Co. Westmeath (“the Target Assets”).

#### The Proposed Transaction

2. The Target Assets are currently owned by Westmeath Motors, which is owned and controlled by Mr. Noel McIntyre and Mr. Raymond McIntyre.
3. On 24 March 2017, Petrogas and Westmeath Motors entered into an agreement for the lease of the Target Assets (the “Agreement”)<sup>1</sup> pursuant to which Petrogas will acquire a long-term leasehold interest in the Target Assets<sup>2</sup>. Following completion of the proposed transaction, Applegreen, through Petrogas, will acquire sole control of the Target Assets.

#### The Undertakings Involved

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<sup>1</sup> Noel McIntyre Limited is also party to the Agreement. Noel McIntyre Limited is a wholly-owned subsidiary of Westmeath Motors.

<sup>2</sup> The parties have informed the Commission that the lease granted to Petrogas is for a term of 25 years from the “Term Commencement Date” as defined in the Agreement.



### *Petrogas*

4. Petrogas, a private limited company registered in the State, is a wholly-owned indirect subsidiary of Applegreen and its main activity in the State is the operation of a network of retail motor fuel service stations and associated forecourt convenience stores in the State, mainly under the Applegreen brand.

### *Applegreen*

5. Applegreen is a public limited company registered in the State. In addition to operating retail motor fuel service stations in the State, Applegreen and its subsidiaries also operate retail motor fuel service stations in the United Kingdom and in the United States which trade predominantly under the Applegreen brand.<sup>3</sup>
6. As at 31 December 2015<sup>4</sup>, Applegreen had a network of 133 retail motor fuel service stations in the State, which can be divided into three categories:
  - a. 77 company-owned and company-operated (“CoCo”) sites, which sell retail motor fuel along with a forecourt convenience store and one or more food offerings;
  - b. 23 service area sites, which are larger than normal retail motor fuel service stations and located in areas where there is heavy traffic or in urban areas. They include a large area with ample parking and sell fuel (i.e., truck filling stations in addition to retail fuel for cars) along with a forecourt convenience store and three or four food offerings. Eight of these service area sites are motorway service areas, which are located either on or adjacent to a motorway;<sup>5</sup>
  - c. 33 dealer-owned and dealer-operated (“DoDo”) retail motor fuel service stations, whereby Applegreen supplies motor fuel to the independent dealers under solus supply agreements between Applegreen and the relevant dealer. At these stations, the Applegreen brand is used on the pumps and forecourt canopy, whilst

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<sup>3</sup> As at 31 December 2015, Applegreen operated 62 retail motor fuel service stations in the United Kingdom and 5 retail motor fuel service stations in the United States.

<sup>4</sup> Applegreen Annual Report 2015 (<http://investors.applegreenstores.com/results-and-presentations.aspx>).

<sup>5</sup> Six of these sites (such as, for example, on the M1 at Lusk, on the M1 at Castlebellingham and on the M4 at Enfield) are operated by Superstop Limited (“Superstop”) pursuant to a 25-year concession from the National Roads Authority. Superstop is indirectly owned by Petrogas, Tedcastles Oil Products Unlimited Company and Piers Group Unlimited Company, each of which has a 33.3% indirect shareholding in Superstop.



the forecourt convenience store offering and revenue remain under the control of the dealer.

7. All of Applegreen's CoCo retail motor fuel service stations within the State have forecourt convenience stores offering grocery goods, coffee and hot food. These include franchises operated by Applegreen under the following brands: *Burger King*, *Costa Coffee*, *Greggs*, *Chopstix* and *Subway*.
8. For the financial year ended 31 December 2015, Applegreen's worldwide turnover was approximately €1 billion, of which approximately €623 million was generated in the State.

#### *The Target Assets*

9. The proposed transaction involves the acquisition by Petrogas of a leasehold interest in the Target Assets, which consist of a single retail motor fuel service station, comprising a motor fuel (road diesel (DERV) and petrol) forecourt (which also sells automotive motor lubricants), which is operated under the Topaz brand, and an associated forecourt convenience store known as "McIntyre's Spar" as set out in Table 1 below.
10. The parties have informed the Commission that Applegreen proposes to operate the Target Assets on a CoCo basis following completion of the proposed transaction.

**Table 1 – Description of the Target Assets**

Name	Location	Owner	Turnover for the financial year ending 2015
Westmeath Motors	Dublin Road, Mullingar, Co. Westmeath.	Westmeath Motors, which is owned and controlled by Mr. Noel McIntyre and Mr. Raymond McIntyre.	Approximately € [...]

Source: The Commission, based on information provided by the notifying parties.

#### **Rationale for the Proposed Transaction**

11. The notification states:

*"The commercial rationale for the proposed transaction is to extend Applegreen's network of retail service stations in line with Applegreen's growth strategy."*



### Third Party Submissions

12. No submission was received.

### Competitive Analysis

#### Horizontal Overlap

13. There is a horizontal overlap between the activities of the parties with respect to the retail sale of motor fuels (diesel (DERV), petrol and automotive lubricants) and the operation of forecourt convenience stores in the State. For the reasons set out below, the Commission considers that the proposed transaction will not substantially lessen competition for the retail sale of motor fuels and the operation of forecourt convenience stores in the State.
14. The Target Assets consist of a retail motor fuel service station and associated forecourt convenience store located on Dublin Road, Mullingar, Co. Westmeath. Applegreen is the fifth largest supplier of motor fuel in the State, with an estimated share of supply of retail motor fuel in the State in 2015, by volume and by number of sites, of 8% and 5%, respectively<sup>6</sup>. Applegreen also has a network of retail convenience stores associated with its network of fuel forecourts in the State, with an estimated share of forecourt convenience stores in the State in 2015, by number of sites and by sales revenue, of 4% and 8%, respectively<sup>7</sup>.
15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case, the Commission considers that there are no strong reasons to depart from its previous approach to market definition in relation to the retail sale of motor fuels and the operation of forecourt convenience stores for the purpose of assessing the competitive effects of the proposed transaction<sup>8</sup>.
16. In previous determinations, the Commission has followed the approach to geographic market definition adopted by its predecessor, the Competition Authority (the “Authority”), which previously found that there are potential local markets in relation to the retail sale of motor fuels. The Authority analysed local markets, which vary in size depending on whether the retail motor fuel service station is located in an urban

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<sup>6</sup> Source: Experian Catalyst Fuel Report 2016.

<sup>7</sup> Source: Experian Catalyst Fuel Report 2016.

<sup>8</sup> In relation to the operation of forecourt convenience stores, the Commission has on a number of occasions considered the retail grocery sector, which is comprised of a wide spectrum of outlets. There is a large and varied (in size) number of competitors in the retail sector whose presence will constrain the activities of Applegreen as an operator of forecourt convenience stores. (See, for example, M/17/011 – Maxol/Melia’s Harold’s Cross. Please see <http://ccpc.ie/enforcement/mergers/merger-notices/m17011-maxolmelias-harolds-cross>). The Commission therefore decided not to focus further on this potential market in this determination.



or a rural location (i.e., a radius of 3.2km from a retail motor fuel service station in an urban location and a radius of 8km in a rural location). The Commission has followed the same approach in subsequent decisions and used isochrone analysis as a screening method to identify potential competition concerns, focusing on a radius of 8km from any target retail motor fuel service station.<sup>9</sup>

#### Dublin Road, Mullingar, Co. Westmeath area

17. The retail motor fuel service station located on Dublin Road, Mullingar, Co. Westmeath is in a rural setting. On this basis, the Commission has identified a potential local market comprising an 8km radius around the Target Assets for the purpose of analysing the likely competitive impact of the proposed transaction.
18. Neither Applegreen, nor any of its subsidiaries, owns or operates any retail motor fuel service station and/or forecourt convenience store within a radius of 8km of the Target Assets. Therefore, there is no horizontal overlap between Applegreen and the Target Assets within a radius of 8km from the Target Assets. As set out in Table 2 below, there are at least 16 other retail motor fuel service stations, consisting of eight competing brands, within a radius of 8km from the Target Assets.

**Table 2: Analysis of the retail motor fuel service stations which are located within a radius of 8km of the Target Assets.**

Brand	Service station location	Distance from the Target Assets
Topaz	Target Assets (Dublin Road, Mullingar)	--
	Patrick Street, Mullingar	2.4 km
	Lynn Industrial Estate	2.2 km
	Tullamore Road	2.6 km
	Westbound N4	2.3 km
	Eastbound N4	2.3 km
	Main St, Rathconnell	3.3 km
Tedcastles Oil Products ("TOP")	Milmount Road, Bellview, Mullingar	1.7 km
	Lough Owel, Longford Road	2.5 km
Maxol	Austin Friars Street	0.9 km
Tesco Petrol	Ashe Road	2.5 km
Jones Oil	Mullingar Business Park	2.1 km
Great Gas	Lynn Road	1.9 km
Texaco	Castlepollard, Robinstown, Mullingar	3.0 km

<sup>9</sup> See, for example, M/15/019 – TOP/The Ashbourne Oil Co. Please see <http://ccpc.ie/enforcement/mergers/merger-notices/m15019-tedcastles-oil-products-top-ashbourne-oil-company>



	Irishtown Service Station, Ashe Road, Mullingar	4.2 km
	Rathgowan	3.6 km
Inver Whelans Oil	Monilea	8.0 km

Source: The Commission based on own estimation and information provided by the parties.

19. From Table 2, it can be seen that, prior to the implementation of the proposed transaction, there are eight brands located within an 8km radius of the Target Assets.
20. The proposed transaction will result in an increase in the number of brands in the potential market for the retail sale of motor fuels within a radius of 8km from the Target Assets. The number of brands of retail motor fuel service stations, within an 8km radius of the Target Assets, will increase from eight to nine post-transaction. At the same time, there will be a reduction in the number of retail motor fuel service stations which operate under the Topaz brand. The introduction of a new brand, i.e., Applegreen, to the potential market for the retail sale of motor fuels within a radius of 8km from the Target Assets is likely to have a pro-competitive effect and thus is unlikely to give rise to a substantial lessening of competition in the relevant market. There will remain eight competing brands that will continue to exert a competitive constraint on Applegreen following completion of the proposed transaction.
21. The analysis in Table 2 above illustrates that there is a large and varied (in size) number of competitors operating within an 8km radius of the Target Assets whose presence will act as a competitive constraint on Applegreen post-transaction.
22. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition for the retail sale of motor fuels in the potential local market in which the Target Assets are active.

#### Vertical Relationship

23. Topaz Energy Group Limited is involved in the wholesale distribution of motor fuels to DoDo and CoCo retail motor fuel service stations in the State and currently supplies the Target Assets with motor fuel products. Post-transaction, Applegreen will supply the Target Assets with motor fuel products. There are currently a number of significant competitors, such as Valero (Texaco) and TOP, as well as Topaz, which are currently active in the supply of refined fuel products to other retailers located within a radius of 8km of the Target Assets. The Commission therefore considers that Applegreen will not have the ability to foreclose wholesale suppliers of refined fuel products who compete with Applegreen in the upstream market for the wholesale supply of motor fuels following completion of the proposed transaction. For this reason, the Commission considers that the proposed transaction will not result in any vertical foreclosure concerns.



24. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

**Ancillary Restraints**

25. No ancillary restraints were notified.



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Petrogas Group Limited would acquire sole control of certain assets of Westmeath Motors Limited, constituting one retail motor fuel service station and associated forecourt convenience store, situated on Dublin Road, Mullingar, Co. Westmeath, 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

**Pat Kenny**  
**Member**  
**Competition and Consumer Protection Commission**