

# DETERMINATION OF MERGER NOTIFICATION M/17/019 - PETROGAS GROUP LIMITED (APPLEGREEN PLC)/ CERTAIN ASSETS OF PR REILLY

---

## Section 21 of the Competition Act 2002

### Proposed acquisition by Petrogas Group Limited of sole control of certain assets of PR Reilly Limited

Dated 9 May 2017

---

#### Introduction

1. On 7 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 PR Reilly Limited (“PR Reilly”), constituting a retail motor fuel service station and associated forecourt convenience store, located at Howth Road, Killester, Dublin 5 (“the Target Assets”).

#### The Proposed Transaction

2. The Target Assets are currently owned by PR Reilly which is jointly owned and controlled by Mr. Patrick Reilly and Mr. Norbert Reilly.
3. The proposed transaction involves the acquisition by Petrogas of a long-term leasehold interest in the Target Assets.<sup>1</sup> Following completion of the proposed transaction, the Target Assets will be operated under the sole control of Applegreen, through Petrogas. At the date of notification, the parties had not executed a formal written agreement relating to the acquisition by Petrogas of a leasehold interest in the Target Assets<sup>2</sup>. Nonetheless, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purpose of section 18(1A)(b)(ii) of the Act.

---

<sup>1</sup> The parties have informed the Commission that the lease to be granted to Petrogas will be for a term of [...].

<sup>2</sup> The parties submitted to the Commission, together with the notification, a copy of a heads of terms dated [...] between Petrogas and PR Reilly.



## The Undertakings Involved

### *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<sup>5</sup> 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.

---

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

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

<sup>5</sup> This number has increased since 2015. The Commission is aware that Applegreen has made a number of retail motor fuel service station acquisitions since December 2015. In particular, on 4 October 2016, the Commission approved the acquisition by Applegreen of sole control over certain assets of M.K.M.H. Limited, constituting a retail motor fuel service station and associated retail convenience store situated on Sallins Road, Naas, Co. Kildare (please see <http://www.ccpc.ie/enforcement/mergers/merger-notices/m16043-petrogas-applegreen-certain-assets-mkmh-limited>); on 16 March 2017, the Commission approved the acquisition by Applegreen of sole control over certain assets of Excol Limited and Mr J. McCormack, constituting three retail motor fuel service stations and associated forecourt convenience stores situated in Co. Sligo and Co. Leitrim (please see <http://www.ccpc.ie/enforcement/mergers/merger-notices/m17007-petrogas-applegreen-certain-assets-excol-j-mccormack>); and on 28 April 2017, the Commission approved the acquisition by Applegreen of sole control of certain assets of Westmeath Motors Limited, constituting a retail motor fuel services station and associated forecourt convenience store located on Dublin Road, Mullingar, Co. Westmeath (please see <http://www.ccpc.ie/enforcement/mergers/merger-notices/m17016-petrogas-applegreen-certain-assets-westmeath-motors>).



Eight of these service area sites are motorway service areas, which are located either on or adjacent to a motorway;<sup>6</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 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 is operated under the *Topaz* brand, and an associated forecourt convenience store 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.

---

<sup>6</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.



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

Name	Location	Owner	Turnover for the financial year ending 2016
PR Reilly Topaz	Howth Road, Killester, Dublin 5.	PR Reilly Limited which is jointly owned and controlled by Mr. Patrick Reilly and Mr. Norbert Reilly.	Approximately [...] <sup>7</sup>

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 Howth Road, Killester, Dublin 5. 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%<sup>8</sup> and 5%, respectively.<sup>9</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

<sup>7</sup> The notification submitted to the Commission by the parties states that: [“...”]

<sup>8</sup> Experian Catalyst has recently published an update to its 2016 report, which estimates that Applegreen’s share by volume in 2016 was around 12%.

<sup>9</sup> Source: Experian Catalyst Fuel Report 2016.



forecourt convenience stores in the State in 2015, by number of sites and by sales revenue, of 4% and 8%, respectively.<sup>10</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>11</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 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). For purposes of assessing the proposed transaction, the Commission has followed the same approach in subsequent decisions and used isochrones analysis as a screening method to identify potential competition concerns.<sup>12</sup> Additionally, the Commission also conducted a straight road analysis to assess whether the parties are each other’s closest competitor since an *Applegreen* retail motor fuel service station and the Target Assets are located on the same straight road, i.e., Howth Road.

#### Isochrones Analysis

17. The retail motor fuel service station located on Howth Road, Killester, Dublin 5 is in an urban setting. On this basis, the Commission has identified a potential local market comprising a 3.2km radius around the Target Assets for the purpose of analysing the likely competitive impact of the proposed transaction.
18. Applegreen currently owns and operates one retail motor fuel service station and associated forecourt convenience store located within a radius of 3.2km of the Target Assets. Therefore, there is a competitive overlap between Applegreen and the Target

---

<sup>10</sup> Source: Experian Catalist Fuel Report 2016.

<sup>11</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.

<sup>12</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>

Assets within a radius of 3.2km from the Target Assets. As set out in Table 2 below, there are at least eight other retail motor fuel service stations within a radius of 3.2km from the Target Assets.

**Table 2: Analysis of the retail motor fuel service stations which are located within a radius of 3.2km of the Target Assets.**

Brand	Service station location	Distance from the Target Assets
Topaz	Target Assets (Howth Road, Killester, Dublin 5.)	--
	Malahide Road, Donnycarney, Dublin 5.	1.6km
	Howth Road, Raheny, Dublin 5.	2.8 km
Esso <sup>13</sup>	Malahide Road, Artane, Dublin 5.	1.7km
	Bull Service Station, 232 Clontarf Road, Clontarf, Dublin 3.	2.5km
	Richmond Road, Fairview, Dublin 3.	3.2km
Applegreen	54/56 Howth Road, Clontarf, Dublin 3.	1.9km
Maxol	Kilmore Road, Artane, Dublin 5.	2.1km
Tedcastles Oil Products ("TOP")	336 Howth Road, Raheny, Dublin 5.	600m

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

19. For the purposes of its competitive analysis, the Commission has assumed that the three retail motor fuel service stations listed in Table 2 above as being Esso-branded have been brought under the ownership of Topaz, in accordance with the Topaz/Esso 2015 merger<sup>14</sup>. On this basis, the Commission has considered that, prior to the implementation of the proposed transaction, there are four brands of retail motor fuel service stations located within a 3.2km radius of the Target Assets (i.e. Topaz, Maxol, TOP and Applegreen).

<sup>13</sup> On 15 October 2015, the Commission approved the acquisition of Esso Ireland Limited by Topaz Investments Limited, subject to binding divestment commitments (the "Topaz/Esso 2015 merger"): <http://ccpc.ie/enforcement/mergers/merger-notices/m15020-topaz-esso>. The three retail motor fuel service stations referred to in Table 2 are currently operating under the Esso brand and are operated on a CoCo basis. The three Esso retail motor fuel service stations listed in Table 2 above were part of the Topaz/Esso 2015 merger approved by the Commission on 15 October 2015, and thus will be brought under the ownership of Topaz.

<sup>14</sup> Please see footnote 12. Please see merger determination: <http://ccpc.ie/enforcement/mergers/merger-notices/m15020-topaz-esso>



20. The number of brands of retail motor fuel service stations, within a 3.2km radius of the Target Assets, will not change following implementation of the proposed transaction. There will be a reduction in the number of retail motor fuel service stations which operate under the Topaz brand/ownership within the potential local market post-transaction, i.e., from six to five. There will be an increase in the number of retail motor fuel service stations which operate under the *Applegreen* brand within the identified potential local market post-transaction, i.e., from one to two. There will remain three competing brands that will continue to exert a competitive constraint on Applegreen following completion of the proposed transaction.
21. In light of the above, the Commission considered that further analysis of the competitive effects of the proposed transaction was necessary in order to identify the closest competitors of the *Applegreen* retail motor fuel service station and the Target Assets on Howth Road. The Commission therefore conducted straight road analysis in order to examine whether the assessment of the likely competitive impact of the proposed transaction would change using a narrower potential local market.

#### Straight Road Analysis

22. As previously mentioned, the Target Assets are located on Howth Road, Killester, Dublin 5. The Commission has identified a narrower potential local market comprising a 3.2km straight road distance on either side of the Target Assets for the purpose of analysing the likely competitive impact of the proposed transaction.

**Table 3: Analysis of the retail motor fuel service stations which are located within a straight road distance of 3.2km from either side the Target Assets.**

Brand	Service station location	Distance from the Target Assets	Direction of Service Station
Topaz	Target Assets (Howth Road, Killester, Dublin 5.)	--	--
	Howth Road, Raheny, Dublin 5.	2.8km	Away from Dublin City
Esso <sup>15</sup>	Richmond Road, Fairview, Dublin 3.	3.2km	In the direction of Dublin City
Applegreen	54/56 Howth Road, Clontarf, Dublin 3.	1.9km	In the direction of Dublin City
TOP	336 Howth Road, Raheny, Dublin 5.	600m	Away from Dublin City

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

<sup>15</sup> See paragraph 19 and footnote 12 above.



22. The straight road analysis conducted by the Commission illustrates that there are four competing retail motor fuel service stations, consisting of three brands, within a 3.2km straight road distance from the Target Assets, as seen in Table 3 above. The retail motor fuel service station operated by Applegreen and the retail motor fuel service station on Richmond Road are located in the direction of Dublin city. The retail motor fuel service station operated by TOP and the retail motor fuel service station currently operated by Topaz are located in the direction of Raheny village.
24. The number of brands of retail motor fuel service stations, within a 3.2km straight road distance of the Target Assets, will not change following implementation of the proposed transaction. There will remain two competing brands, i.e., Topaz and TOP, which will continue to exert a competitive constraint on Applegreen following completion of the proposed transaction. There will be a reduction in the number of retail motor fuel service stations which operate under the Topaz brand/ownership within a 3.2 km straight road distance post-transaction, i.e., three to two. There will be an increase in the number of retail motor fuel service stations which operate under the *Applegreen* brand within a 3.2 km straight road distance post-transaction, i.e., from one to two.
24. In light of the above, the Commission considers that regardless of how the proposed transaction is analysed, i.e., using a straight road or an isochrones analysis, it is unlikely to substantially lessen competition for the retail sale of motor fuels in the potential local market in which the Target Assets are active.

#### Vertical Relationship

22. 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 of Applegreen, such as TOP and Topaz, which are currently active in the supply of refined fuel products to other retailers located within a radius of 3.2km 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 for the wholesale distribution of motor fuels to DoDo and Company Owned, Dealer Operated (“CoDo”) retail motor fuel services stations operating in the local area where the Target Assets are located. For this reason, the Commission considers that the proposed transaction will not result in any vertical foreclosure concerns.





### Conclusion

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

### **Ancillary Restraints**

24. No ancillary restraints were notified.



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Petrogas Group Limited would acquire sole control of certain assets of PR Reilly Limited, constituting one retail motor fuel service station and associated forecourt convenience store, situated on Howth Road, Killester, Dublin 5 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**