



DETERMINATION OF MERGER NOTIFICATION M/17/021 - APPLEGREEN/50% INTEREST IN THE JOINT FUELS TERMINAL

Section 21 of the Competition Act 2002

Proposed acquisition by Applegreen Public Limited Company of 50% interest in the Joint Fuels Terminal in Dublin

Dated 30 June 2017

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), Applegreen Public Limited Company (“Applegreen”) has submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below relating to the proposed acquisition by Applegreen of 50% interest in the Joint Fuels Terminal (“JFT”) in Dublin, which was previously owned by Esso Ireland Limited and divested by Topaz Investments Limited (“Topaz”) pursuant to the Commission’s determination in M/15/020, for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on Applegreen.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Applegreen would acquire 50% interest in the JFT in Dublin divested by Topaz 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



PROPOSALS BY APPLGREEN TO THE COMMISSION RELATING TO THE PROPOSED ACQUISITION OF A 50% SHARE IN THE JOINT FUELS TERMINAL IN DUBLIN TO BE DIVESTED BY TOPAZ PURSUANT TO THE COMMISSION'S DETERMINATION IN M/15/020 ("Proposals")

RECITALS

- a) On 15 October 2015, the Commission cleared the acquisition by Topaz of sole control of Esso Ireland subject to binding divestment commitments¹. The commitments required Topaz to divest *inter alia* all of Esso Ireland's interest, rights and obligations in respect of the JFT, comprising a 50% interest in the JFT, as governed by the JOA.
- b) Following a sales process run by Topaz, Applegreen was selected as the preferred bidder for Esso Ireland's 50% interest in the JFT. In accordance with the terms of the commitments given by Topaz to the Commission and at the request of Topaz, following detailed assessment of potential buyers of Esso Ireland's 50% interest in the JFT, the Commission confirmed Applegreen's suitability as a prospective purchaser of Esso Ireland's 50% interest in the JFT on 27 January 2017.
- c) On 20 April 2017, the proposed acquisition by Applegreen of Esso Ireland's 50% interest in the JFT to be divested by Topaz was notified to the Commission as M/17/021.
- d) Pursuant to section 20(3) of the Competition Act 2002, as amended, Applegreen has submitted to the Commission the following Proposals relating to the proposed acquisition by Applegreen from Topaz of Esso Ireland's 50% interest in the JFT for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the Proposals becoming binding on Applegreen.
- e) Applegreen is replacing Esso Ireland in the JFT and is committed to making a significant investment in the business and growth of the JFT. In the context of its commercial rationale for the Proposed Transaction and the communications that Applegreen has had with the Commission in relation to the Proposed Transaction, Applegreen firmly intends to:
 - (i) import and/or supply Refined Fuel Products; and
 - (ii) further develop its third party supply business (both to non-retail and retail customers), which includes its fuel card business and the supply of petroleum products to dealer-owned and dealer-operated sites, to branded fuel companies which do not have direct access to fuel importation facilities and to independent third parties.
- f) Furthermore, Applegreen has agreed with the Commission, until expiry or termination of the Proposals, to use its share of the JFT facilities to develop and maintain an aviation fuel (Jet A1) supply business as set out in the Proposals.

¹ Pursuant to the Commission's determination in M/15/020 – Topaz / Esso Ireland.



A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**Applegreen**” means Applegreen Public Limited Company, a public limited company, incorporated under the laws of Ireland (Registration No. 491702), with its registered address at Block 17, Joyce Way, Park West, Dublin 12;

“**Aviation Supply Agreement**” means a supply agreement entered into between and by Applegreen and a Purchaser for the supply by Applegreen to the Purchaser of aviation fuel (Jet A1) from the JFT;

“**Aviation Throughput Agreement**” means a throughput agreement entered into between and by Applegreen and a third party for the throughput by such third party, subject to the terms and conditions of the JOA, of aviation fuel (Jet A1) at the JFT and which third party is not likely to raise prima facie competition concerns;

“**Commission**” means the Competition and Consumer Protection Commission and its successors;

“**Determination**” means the Determination of the Commission pursuant to Section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

“**Esso Ireland**” means Esso Ireland Limited;

“**Joint Fuels Terminal**” (“**JFT**”) means the terminal for the storage and handling of petroleum products at Alexandra Road, Dublin, which at the date of the Determination is (i) jointly owned by Topaz and Valero pursuant to the Lease, and (ii) operated by Valero pursuant to the JOA;

“**Joint Operating Agreement**” (“**JOA**”) means the Joint Operating Agreement governing the ownership and operation of the JFT, which agreement was originally entered into between Texaco and Esso Ireland on 24 December 1992 (the parties to the said agreement at the date of the Determination being Topaz and Valero);

“**Leases**” means the various leases in respect of the JFT granted originally to Esso Ireland by the Dublin Port and Docks Board, which said leases are, at the date of the Determination, jointly held by Topaz and Valero;

“**Proposed Transaction**” means the proposed acquisition by Applegreen from Topaz of Esso Ireland’s 50% interest in the JFT, as notified to the Commission on 20 April 2017;

“**Purchaser**” means a third party purchaser of aviation fuel (Jet A1) at the JFT, who is not likely to raise prima facie competition concerns;

“**Refined Fuel Products**” means various different refined fuel products imported and sold (to non-retail and retail customers) in the State, including heating oil (marked gasoil (green diesel)), transport fuel (road diesel (DERV) and petrol) and dual purpose kerosene (DPK)(including kerosene and aviation fuel (Jet A1));



“**Texaco**” means Texaco (Ireland) Limited;

“**Topaz**” means Topaz Investments Limited; and

“**Valero**” means Valero Energy (Ireland) Limited.

B. Undertakings by Applegreen

2. Applegreen undertakes to use the share of the facilities at the JFT to be acquired by Applegreen pursuant to the Proposed Transaction to develop an aviation fuel (Jet A1) supply business, which shall include Applegreen committing to seek to enter into an Aviation Supply Agreement with a Purchaser for the supply by Applegreen to such Purchaser of aviation fuel (Jet A1) through the share of the facilities at the JFT to be acquired by Applegreen pursuant to the Proposed Transaction. Specifically, Applegreen commits that any such Aviation Supply Agreement shall:
 - (a) be entered into for a minimum term of [...] and a maximum term of [...];
 - (b) be agreed on [...] basis, subject to the provisions of the JOA, and be on commercial terms as agreed between Applegreen and the Purchaser;
 - (c) provide for the supply by Applegreen to the Purchaser of up to [...] aviation fuel (Jet A1) per day subject to JFT capacity, operational and other constraints under the JOA; and
 - (d) be notified to the Commission by Applegreen in writing within thirty (30) days of the Aviation Supply Agreement being signed by Applegreen and the Purchaser.
3. If Applegreen has been unable to conclude and enter into an Aviation Supply Agreement within [...] of completion of the Proposed Transaction in accordance with paragraph 2 of these Proposals, Applegreen undertakes to seek to negotiate with a third party throughput rights for aviation fuel (Jet A1) through the share of the facilities at the JFT to be acquired by Applegreen pursuant to the Proposed Transaction and then to conclude an Aviation Throughput Agreement with such third party, in compliance with provisions of the JOA. In this regard, Applegreen undertakes to inform the Commission in writing of the entry into any such Aviation Throughput Agreement by Applegreen and a third party within thirty (30) days of the Aviation Throughput Agreement being signed by Applegreen and such third party.
4. To the extent that Applegreen has a right pursuant to the JOA [...] (including the facilities for aviation fuel (Jet A1) at the JFT), [...].
5. The undertakings given in paragraphs 2, 3 and 4 of these Proposals shall come into effect on the date of the Determination and shall continue to apply for a period of [...] after the date of the Determination or until such time as the Commission determines that the undertakings are no longer required (whichever is the earlier).
6. Applegreen shall submit to the Commission within six (6) months after the date of the Determination, and at intervals of twelve (12) months thereafter, a written certificate



in the form set out in the Schedule hereto (each, a “**Compliance Certificate**”), signed by the CEO of Applegreen, confirming Applegreen’s continued compliance with the undertakings given in these Proposals.

7. The Commission reserves the right to require Applegreen to provide to the Commission, at any time, such additional information as the Commission may require in order for the Commission to verify Applegreen’s compliance with the undertakings given in these Proposals.
8. The Commission may at its sole discretion vary any of the time periods provided for in these Proposals in response to a reasoned request from Applegreen. The Commission may further, at its sole discretion, in response to a reasoned request from Applegreen showing good cause waive, modify or substitute, any provision in these Proposals.



SCHEDULE TO THE PROPOSALS

[Applegreen Headed Paper]

[date]²

Ibrahim Bah
Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Merger Notification M/17/021 Applegreen Public Limited Company (“Applegreen”) / 50% interest in the Joint Fuels Terminal (“JFT”)

Dear Mr. Bah,

I refer to Merger Notification M/17/021 in relation to the acquisition by Applegreen of a 50% share in the JFT, which was approved by the Competition and Consumer Protection Commission (“Commission”) on [] June 2017 (“the Transaction”).

The Commission issued its Determination approving the Transaction on [] June 2017.

In accordance with the terms of the proposals given by Applegreen to the Commission on [] June 2017 in relation to the Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Applegreen (“the Commitments”), I hereby confirm Applegreen’s compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Applegreen] and ending on the date hereof.

Yours faithfully,

[Name]

CEO

Applegreen Public Limited Company

² This certificate should be dated and issued to the Competition and Consumer Protection Commission within six (6) months of the date of the Determination and, thereafter, within twelve (12) months after the date of submission of the first certificate issued to the Competition and Consumer Protection Commission and at intervals of twelve (12) months thereafter.