



DETERMINATION OF MERGER NOTIFICATION M/18/056 – TOP/GARRYCASTLE (SPAR) ATHLONE

Section 21 of the Competition Act 2002

Proposed acquisition by Tedcastles (Group) Unlimited Company, of Garrycastle Stores Limited.

Dated 20 August 2018

Introduction

1. On 25 July 2018, 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 acquisition whereby, Tedcastles (Group) Unlimited Company (“TOP”), would acquire the entire issued share capital of Garrycastle Stores Limited (the “Target Company”)(the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a sale purchase agreement (the “SPA”) between Joseph Donegan, Denise Donegan (the “Vendors”), TOP and the Target Company dated 16 July 2018. Pursuant to the SPA, TOP would acquire the entire issued share capital of the Target Company and, therefore, sole control of the Target Company within the meaning of section 16(1)(b) of the Act.

The Undertakings Involved

The Acquirer – TOP Group



3. TOP, a private unlimited company incorporated in the State, is ultimately owned by Hillingdon Investment Company Unlimited Company, which has various direct or indirect subsidiaries (collectively “TOP Group”) ¹. TOP Group’s main business activities in the State and the United Kingdom (“UK”), are:
 - fuel importation and distribution;
 - “into-plane” fuelling operation; and
 - property management.
4. In the State, TOP Group is involved in the fuel industry, with its main activity being the importation, distribution (to non-retail and retail customers) and retail sale of motor fuels and automotive lubricants. This includes the operation of a fuel terminal in Dublin Port. TOP’s subsidiary, Tedcastles Aviation Fuels Limited, operates the “into-plane” fuelling facilities at Shannon Airport, Co Clare.
5. At the date of notification, TOP Group has a network of 198 retail motor fuel service stations in the State, which can be divided into three categories:
 - [...] company-owned and company-operated (“CoCo”) retail motor fuel service stations;
 - [...] company-owned and dealer-operated (“CoDo”) retail motor fuel service stations; and,
 - [...] dealer-owned and dealer operated (“DoDo”) retail motor fuel service stations.
6. TOP Group is also active in the grocery goods market, through the operation of [...] convenience stores at TOP [CoCo] retail motor fuel service stations in the State.

¹ Which is ultimately owned by the Reihill family.



7. For the financial year ending 31 March 2018, TOP Group's worldwide turnover was approximately €[...] billion, of which approximately €[...] million was generated in the State.

The Target Company

8. The Target Company is a private limited company, with its registered office at Garrycastle, Athlone, Co. Westmeath. The Target Company operates a convenience store trading under the *Spar* brand located at Garrycastle, Athlone, Co. Westmeath.²
9. For the financial year ending 31 August 2017, the Target Company's worldwide turnover was approximately €[...] million, all of which was generated in the State.

Rationale for the Proposed Transaction

10. The parties state in the notification:

“TOP considers that the Proposed Transaction presents it with the opportunity to enhance its presence in the retail sale of grocery goods market in the Athlone area where the Target Company is active.”

Third Party Submissions

11. No submission was received.

² The parties state in the notification that the agreement between the Target Company and BWG Foods relating to supply of goods by BWG Foods to the Target Company and the operation of the Spar store will remain in place following completion of the Proposed Transaction, subject to BWG Foods not exercising its right to terminate for change of control.



Competitive Analysis

Horizontal Overlap

12. There is a horizontal overlap between the activities of the parties in the State as both the Target Company and TOP Group are involved in the retail sale of grocery goods.³
13. 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 grocery goods for the purpose of assessing the competitive effect of the Proposed Transaction.⁴ In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the narrowest potential geographic markets, i.e., the local area in which the Target Company's *Spar* store is located. The Commission has previously⁵ identified possible local markets based on a 10 kilometre or 10 minute drive time from any relevant target location.
14. TOP Group is not active in the market for the retail sale of grocery goods in Garrycastle, Athlone. In particular, TOP Group is not active in the retail sale of grocery goods within a 10 kilometre or 10 minute drive time of the Target Company's *Spar* store in Garrycastle, Athlone, Co. Westmeath. Therefore, The Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in the potential relevant market for the retail sale of grocery goods within a 10 kilometre or 10 minute drive time of the Target Company's *Spar* store in Garrycastle, Athlone, Co Westmeath.
15. Furthermore, TOP has confirmed to the Commission that [at present], it has no plans, currently or in the near future [...], to open up a retail motor fuel service station on or adjacent to the site where the Target Company's *Spar* store is located at Garrycastle,

³ TOP confirmed to the Commission that [at present], it does not have any plan to open up a retail motor fuel service station on or adjacent to the site where Garrycastle Stores Limited's *Spar* store located at Garrycastle, Athlone, Co Westmeath.

⁴ Please see paragraph 84 of the Competition Authority's determination in *M/11/022 - Musgrave/Superquinn, and M/17/050 - Joyces/Nestors* and *M/17/052 - Cedarglade (Musgrave) / Ballybrit Centra & Service Station*.

⁵ *M/17/050 - Joyces/Nestors* and *M/17/052 - Cedarglade (Musgrave) / Ballybrit Centra & Service Station*.



Athlone, Co Westmeath. Therefore, there is no potential horizontal overlap between the parties' activities in respect of the operation of retail motor fuel services station.

16. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

17. The parties informed the Commission that there is no vertical relationship between the parties. The Commission has not identified any vertical relationships between the parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

18. 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

19. The parties have informed the Commission that the SPA contains non-compete and non-solicitation obligations on the Vendors and its affiliates. The duration of those restrictive obligations does not exceed the maximum duration acceptable to the Commission.⁶ The Commission considers these non-compete and non-solicitation obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

⁶ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 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 (Group) Unlimited Company, would acquire the entire issued share capital of Garrycastle Stores 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

Brian McHugh

Member

Competition and Consumer Protection Commission