



## DETERMINATION OF MERGER NOTIFICATION M/19/008– EAST CORK OIL/ RIMBROOK

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### Section 21 of the Competition Act 2002

### Proposed acquisition by East Cork Oil Company Unlimited Company of sole control of Rimbrook Limited.

Dated 30 May 2019

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#### Introduction

1. On 23 April 2019, 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 Carrigacotta Holding Company Unlimited Company (“Carrigacotta Holding”), through its wholly owned subsidiary, East Cork Oil Company Unlimited Company (“East Cork Oil”), would acquire sole control of Rimbrook Limited (“Rimbrook”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement between [...] (“the Seller”) and East Cork Oil, dated 1 April 2019 (the “SPA”). Pursuant to the SPA, East Cork Oil will acquire the entire issued share capital of and thereby sole control of Rimbrook.

#### The Undertakings Involved

##### *The Acquirer – Carrigacotta Holding*

3. Carrigacotta Holding, a private unlimited company registered in the State, is ultimately owned by [...] and [...]. Carrigacotta Holding is the holding company of East Cork Oil, which is a private unlimited company registered in the State. East Cork Oil’s principle



business activity is the distribution of fuel products primarily in the Munster and Connacht regions through a network of [...] company-owned depots.

4. East Cork Oil distributes refined fuel products, such as home heating oil, agricultural diesel, marine diesel, auto diesel and petrol. East Cork Oil's customers include domestic customers, farmers, agricultural contractors, haulage companies and large industrial users and service stations. East Cork Oil is vertically integrated with two service stations located in County Cork.
5. East Cork Oil jointly owns Atlantic Fuel Supply Company Limited, which is the ultimate owner of the oil terminal at Foynes, Co. Limerick ("the Foynes Terminal"). The product put through to the Foynes Terminal is brought in by Inver Energy Limited.
6. For the financial year ending 31 October 2018, East Cork Oil's worldwide turnover was approximately €[...] million, all of which was generated in the State.

#### *The Target – Rimbrook*

7. Rimbrook, a private limited company registered in the State, is ultimately owned by the Seller. Rimbrook is the holding company of Vale Oil Company Limited ("Vale Oil"), which is a private limited company registered in the State. Vale Oil's principle business activity is the distribution of refined fuel products primarily in South Leinster, County Tipperary and County Waterford through a network of [...] depots owned by Circle K Ireland Energy Group Limited ("Circle K").<sup>1</sup>
8. Vale Oil distributes refined fuel products such as, motor diesel ("DERV"), kerosene ("Kero"), sulphur free gas oil ("SFGO"), lubricants, and oil storage tanks to domestic customers, commercial customers, agricultural contractors, haulage companies and marine customers.
9. Vale Oil also offers Circle K fuel cards which can be used at all Circle K stations throughout the State.

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<sup>1</sup> Vale Oil is an authorised distributor for Circle K and as part of this distribution arrangement [...].



10. For the financial year ending 31 December 2018, Vale Oils' worldwide turnover was approximately €[...] million, all of which was generated in the State.

### Rationale for the Proposed Transaction

11. The parties state in the notification that:

*“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.*

*It will allow East Cork Oil to improve its purchasing power and expand the existing depot network to new locations.*

*In addition to the above objectives, the proposed transaction would allow East Cork Oil to achieve economies of scale with transportation costs and administration overheads.”*

### Third Party Submissions

12. No submission was received.

### Horizontal Overlap

13. There is a horizontal overlap in the activities of the parties, where both East Cork Oil and Vale Oil are active in the non-retail sale of refined fuel products in the State. In particular, East Cork Oil and Vale Oil are active in the non-retail sale of DERV, Kero, and SFGO in County Tipperary, County Kilkenny, County Wexford and County Waterford.<sup>23</sup>

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<sup>2</sup> SFGO is the main gas product for agricultural and commercial customers. Marked gas oil is mainly for marine customers and is generally only sold in coastal counties (e.g. Counties Cork, Kerry, Waterford and Wexford). The parties informed the Commission that Vale Oil does not supply marked gas oil to customers in Counties Tipperary, Kilkenny, Wexford and Waterford. Therefore, there is no overlap between parties' activities in respect of the supply of marked gas oil in the overlapping areas.

<sup>3</sup> The parties informed the Commission that it would be difficult to estimate their shares of the market for the sale of lubricants and oil storage tanks. However, the parties consider that their market share in lubricant and oil storage tank sales would be significantly lower than their product market shares in relation to DERV, Kero and SFGO. The parties also informed the Commission that there are a large number of independent suppliers in the lubricant market and oil storage tank sector. The parties informed the Commission that lubricant sales and oil storage tank sales are a very small part of the overall business of East Cork Oil, that they are very much complementary products and are not an integral part of East Cork Oil's business (representing [...] % of its total



## Market Definition

14. Regarding the market for the supply of refined fuel products, the European Commission has previously distinguished three different levels: ex-refinery sales, non-retail sales and retail sales.<sup>4</sup>
15. In its previous decisions, the European Commission considered that the non-retail sales of refined oil products consists of wholesale supply to independent resellers or retailers not integrated upstream as well as to large industrial and commercial end customers (hospitals, car rental fleets, factories, etc.).<sup>5</sup>

## *Product Market Definition*

16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
17. Regardless of whether the potential product market is narrower or boarder, the Proposed Transaction is unlikely to raise any competition concerns. Therefore, the Commission sees no reason to deviate from its approach in case *M/18/075 – Irving/Tedcastles*, in respect of the product market definition, and accordingly, does not need to come to a definitive view on the precise relevant product market.<sup>6</sup>
18. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the following narrower potential product markets: (i) non-retail sales of DERV; (ii) non-retail sales of Kero; and (iii) non-retail sales of SFGO.

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revenue). Based on the above information provided by the parties, the Commission will not analyse the overlap with respect to lubricants and oil storage tank sales any further.

<sup>4</sup>Please see paragraph 8, case COMP/M.8000-DCC/Dansk Fuels which can be assessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m8000\\_130\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8000_130_3.pdf)

<sup>5</sup> Please see paragraph 9, case COMP/M.8000-DCC/Dansk Fuels which can be assessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m8000\\_130\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8000_130_3.pdf)

<sup>6</sup> Please see paragraphs 38, *M/18/075-Irving/Tedcastles*, which can be assessed at <https://www.cccpc.ie/business/wp-content/uploads/sites/3/2018/09/M.18.075-Irving-Tedcastles-Public-Version.pdf>



### *Geographic Market Definition*

19. Regardless of whether the potential geographic market is narrower or boarder, the Proposed Transaction is unlikely to raise any competition concerns. Therefore, the Commission sees no reason to deviate from its approach in case *M/18/075 – Irving/Tedcastles* in respect of the geographic market definition, and accordingly, does not need to come to a definitive view on the precise relevant geographic market.<sup>7</sup>
20. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential geographic market, i.e. where both East Cork Oil and Vale Oil are active, namely: County Tipperary, County Kilkenny, County Wexford and County Waterford.

### **Competitive Analysis**

#### *Non-retail sale of DERV, Kero and SFGO in County Tipperary*

21. Table 1 below shows that following implementation of the Proposed Transaction, East Cork Oil will hold a [20-30]%, [20-30]% and [20-30]% share of the non-retail sales of DERV, Kero and SFGO, respectively, in County Tipperary, in 2018.

<b>Table 1: Estimated market shares of East Cork Oil and Vale Oil in respect of the potential market for non-retail sales of DERV, Kero and SFGO in County Tipperary in 2018<sup>8</sup></b>				
	<b>Fuel Type</b>	<b>Estimated Market East Cork Oil</b>	<b>Estimated Market Vale Oil</b>	<b>Estimated Combined Market Share</b>
	<b>DERV</b>	[10-20]%	[0-10]%	[20-30]%
	<b>Kero</b>	[10-20]%	[10-20]%	[20-30]%

<sup>7</sup> Please see paragraph 42, *M/18/075-Irving/Tedcastles*, which can be assessed at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/09/M.18.075-Irving-Tedcastles-Public-Version.pdf>

<sup>8</sup> The parties informed the Commission that volume information is not available in the marketplace, therefore, volumes are estimated based on number of trucks/drivers and local knowledge.



<b>County Tipperary</b>	<b>SFGO</b>	[10-20]%	[10-20]%	[20-30]%
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**Source: the Parties**

22. In addition, the Commission notes that East Cork Oil and Vale Oil currently face competitive constraint from competitors such as Doran Oil, MidWest Oil Co. Limited, Corrib Oil, Amber Oil, Clonmel Oil Company Limited, Jones Oil Limited, Morris Oil Company Limited, Young Oil Company Limited, Warm Oil Limited, McLoughlin Oil Limited, and Cahir Oil Limited, in respect of non-retail sales of DERV, Kero and SFGO in County Tipperary. These competitors will continue to exert competitive constraints on East Cork Oil in County Tipperary, following implementation of the Proposed Transaction.
23. The Commission therefore considers that the Proposed Transaction is unlikely to raise horizontal competition concerns in relation to non-retail sales of DERV, Kero and SFGO in County Tipperary.

*Non-retail sales of DERV, Kero and SFGO in County Kilkenny*

24. Table 2 below shows that following implementation of the Proposed Transaction, East Cork Oil will hold a [20-30]%, [20-30]% and [20-30]% share of the non-retail sales of DERV, Kero and SFGO, respectively, in County Kilkenny in 2018.

<b>Table 2: Estimated market shares of East Cork Oil and Vale Oil in respect of the potential market for non-retail sales of DERV, Kero and SFGO in County Kilkenny in 2018<sup>9</sup></b>				
	<b>Fuel Type</b>	<b>Estimated Market East Cork Oil</b>	<b>Estimated Market Vale Oil</b>	<b>Estimated Combined Market Share</b>
	<b>DERV</b>	[20-30]%	[0-10]%	[20-30]%

<sup>9</sup> The parties informed the Commission that volume information is not available in the marketplace, therefore, volumes are estimated based on number of trucks/drivers and local knowledge.



<b>County Kilkenny</b>	<b>Kero</b>	[10-20]%	[0-10]%	[20-30]%
	<b>SFGO</b>	[10-20]%	[10-20]%	[20-30]%

**Source: the Parties**

25. The Commission notes that East Cork Oil and Vale Oil currently face competitive constraints from competitors such as Jones Oil Limited, O'Reilly Oil, Morris Oil Company Limited, Oleum Oil Company Limited, Dunkeen Oil Limited, Mr. Oil, Emo Oil Limited, Corrib Oil, Texoil, Capital Oil Supplies Limited and Naas Oil Co. Limited, in respect of non-retail sales of DERV, Kero and SFGO in County Kilkenny. These competitors will continue to exert competitive constraints on East Cork Oil in County Kilkenny, following implementation of the Proposed Transaction.
26. The Commission therefore considers that the Proposed Transaction is unlikely to raise horizontal competition concerns in relation to non-retail sales of DERV, Kero and SFGO in County Kilkenny.

*Non-retail sales of DERV, Kero and SFGO in Counties Wexford and Waterford*

27. The parties provide in the notification that there is a minimal overlap between the parties' activities in County Wexford. Vale Oil is based in New Ross and the majority of its sales are in south and mid Wexford. East Cork Oil is based in Enniscorthy and would mainly cover north Wexford.<sup>10</sup> Given the proximity of County Wexford and County Waterford, and the minimal overlap between the parties in County Wexford, the Commission considers that it is reasonable to analyse the estimated market shares for counties Wexford and Waterford together.

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<sup>10</sup> The parties provide that in general, the bulk of volume of non-retail sale of refined fuel products will be located close to the depot or driver base. Customers also tend to deal with drivers they know which also keep the sales volumes local. Vale Oil is based in New Ross and the majority of its sales are in south and middle of County Wexford (based on the locations of its depots and drivers). East Cork Oil is based in Enniscorthy and have three delivery drivers, two who are based in Enniscorthy and the other in Gorey (both located in North Wexford). The drivers would deliver very little outside these areas. Therefore, the parties state that there is minimal overlap between the parties within Wexford.



28. Table 3 below shows that following implementation of the Proposed Transaction: East Cork Oil will hold a [20-30]%, [20-30]% and [10-20]% share of the non-retail sales of DERV, Kero and SFGO, respectively, in Counties Wexford and Waterford in 2018.

<b>Table 3: Estimated market shares of East Cork Oil and Vale Oil in respect of the potential market for non-retail sales of DERV, Kero and SFGO in Counties Wexford and Waterford in 2018<sup>11</sup></b>				
	<b>Fuel Type</b>	<b>Estimated Market East Cork Oil</b>	<b>Estimated Market Vale Oil</b>	<b>Estimated Combined Market Share</b>
<b>Counties Wexford and Waterford</b>	<b>DERV</b>	[20-30]%	[0-10]%	[20-30]%
	<b>Kero</b>	[10-20]%	[0-10]%	[20-30]%
	<b>SFGO</b>	[10-20]%	[0-10]%	[10-20]%

Source: the Parties

29. The Commission notes that East Cork Oil and Vale Oil currently face competitive constraints from competitors such as Campus Oil Limited, Glen Fuels, Bates Oil Limited, Mr. Oil, New Line Oil Company, Adamstown Oils Limited, Morris Oil Company Limited, Decie Fuel Limited, Jones Oil Limited, Coast 2 Coast Oil Limited, Texoil and, Tramore Oil, in respect of non-retail sales of DER, Kero and SFGO in County Wexford and Waterford. These competitors will continue to exert competitive constraints on East Cork Oil in Counties Wexford and Waterford, following implementation of the Proposed Transaction.
30. The Commission therefore considers that the Proposed Transaction is unlikely to result in horizontal competition concerns in relation to non-retail sales of DERV, Kero and SFGO in Counties Wexford and Waterford.

<sup>11</sup> The parties informed the Commission that volume information is not available in the marketplace, therefore, volumes are estimated based on number of trucks/drivers and local knowledge.





31. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of non-retail sales of DERV, Kero and SFGO in Counties Tipperary, Kilkenny, Wexford and Waterford.

### **Vertical Relationship**

32. The notifying parties state in the notification that there is no vertical relationship between East Cork Oil and Vale Oil. The Commission has not identified any vertical relationship between the parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### **Conclusion**

33. 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**

34. Clause 9 of the SPA contains non-compete obligations on the Seller. The duration of these non-compete obligations does not exceed the maximum duration acceptable to the Commission.<sup>12</sup> The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they do not prevent the Seller from purchasing or holding shares purely for financial investment purposes, without granting him/her, directly or indirectly, management functions or any material influence in the competing company.

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<sup>12</sup> In this respect, the CCPC 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] OJ C56/03 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>).



### **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 Carrigacotta Holding Company Unlimited Company, through its wholly owned subsidiary, East Cork Oil Company Unlimited Company, would acquire sole control of Rimbrook 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**