



## **DETERMINATION OF MERGER NOTIFICATION M/09/016 - TEDCASTLES/FATE PARK**

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### **Section 21 of the Competition Act 2002**

#### **Proposed acquisition by Tedcastles (Group) of Fate Park Limited**

**Dated 06 August 2009**

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### **Introduction**

1. On 27 July 2009, in accordance with section 18 of the Competition Act 2002 (the "Act") the Competition Authority (the "Authority") received a notification of a proposed transaction whereby Tedcastles (Group) ("TOP") would acquire sole control of Fate Park Limited ("Fate Park") through the acquisition of the entire issued share capital of Fate Park and its subsidiaries.
2. Fate Park is involved in the distribution of refined oil products in the State. Fate Park was placed under court protection by way of examinership on 27 April 2009.

### **The Undertakings Involved**

#### *The Acquirer*

3. TOP is an Irish company that imports and distributes refined oil products in the State. TOP owns a fuel terminal in Dublin port which is used to store refined oil products imported by TOP. It has a nationwide network of 109 franchised service stations, along with a network of 19 company-owned and 15 franchised oil distribution depots. These depots are primarily located in the midlands region, with some located in the west, south-west and east of the State.
4. TOP supplies motor fuels (unleaded petrol and derv) to motorists and commercial customers through its network of service stations. Its commercial customers include the agriculture sector, commercial institutions, hotels, the fishing and naval industries and the haulage sector. It also supplies home-heating oil to domestic users.

#### *The Target*

5. Fate Park is involved in the distribution of refined oil products primarily in the west of Ireland, with limited operations in Donegal and the midlands. Fate Park has two service stations and 14 oil distribution depots. It supplies motor fuels and lubricants to motorists through its two service stations. It supplies gas oil to domestic and commercial customers through its network oil distribution depots.

## **The Proposed Transaction**

6. On 27 April 2009, Fate Park was placed under the protection of the High Court on the presentation of a petition to the Central Office of the High Court pursuant to section 2 of the Companies (Amendment) Act 1990. An interim examiner was appointed ("Examiner"), with his appointment being confirmed by the High Court on 6 May 2009. The High Court extended the period of court protection until 4 August 2009.
7. The examinership process is designed to provide a mechanism for the rescue and return to health of ailing but viable companies. An examiner conducts an examination of a company's affairs in order to formulate proposals for a scheme of arrangement. He presents the scheme to meetings of the company's shareholders and creditors, and asks for court approval. Typically, the scheme will involve new investment being put in place. The parties informed the Authority that the Examiner had concluded that the proposed acquisition by TOP of the entire issued share capital of Fate Park was the most appropriate proposal to put before the Fate Park creditors and shareholders.
8. On 24 July 2009, TOP agreed, subject to court approval, to acquire the entire issued share capital of Fate Park and indirectly the entire issued share capital of the following subsidiaries of Fate Park:
  - Major Fuel Distributors Limited;
  - Flanagan's Oil Company Limited;
  - Castlebar Oil Company Limited;
  - Hughes & O'Boyle Fuel Oil Limited;
  - Moneen Spar Express Limited;
  - Finn Valley Oil (Lischooley) Limited;
  - High-Way Oil (Tuam) Limited; and
  - O'Grady Oil Limited.
9. The parties submit that the proposed transaction is intended to ensure the survival of Fate Park's business which is under court protection. TOP submits that the proposed transaction would enhance its presence and improve its oil distribution and retail reach in the western region of Ireland.

## **Waiving Third Party Submission Deadline**

10. Under section 20 of the Act, the Authority is required to cause a notice to be published in respect of a notification received by it within 7 days after the date of its receipt. The practice of the Authority as set out in its Merger Procedures is to give third parties 10 days from the date of

the notice to make submissions. The Authority can, however, change this time limit if circumstances so require.<sup>1</sup>

11. In the notification, the parties requested that the normal 10-day period for third party submissions be shortened to allow the Authority to make a determination by Friday, 31 July 2009. The parties submitted on 26 July 2009 that:

“...TOP’s banks [...]”.

This, according to the parties, was a significant difficulty, since:

“The Examiner [...]”.

12. The Authority requested information in relation to the above from the Examiner. In addition, TOP offered to provide information directly from its bankers to confirm that [...]. The Authority received information from the Examiner, but did not receive information from TOP’s bankers, before it made its decision. The Authority reviewed the information provided and came to the conclusion that there was no reason to depart from its normal practice of having a 10-day period for third party submissions. Accordingly, the parties were informed that a determination would not be made by Friday, 31 July 2009.

### **Third Party Submissions**

13. No submissions were received by the expiry of the 10-day notice period for third party submissions.

### **Analysis**

14. The parties submitted that the result of the proposed transaction will not be to substantially lessen competition in any market for goods or services in the State due to the minimal overlap in their activities and the existence of sufficiently strong competitors.
15. In order to determine whether the proposed transaction is likely to raise any competition concerns and therefore result in a substantial lessening of competition in any market for goods or services in the State, the Authority examined the degree of overlap between the activities of the parties in the State.
16. The parties submitted market share figures based on internal management estimates, actual sales volumes and data obtained from the Irish Petroleum Industry Association. On a national basis, the parties estimate the TOP and Fate Park market shares of all refined products to be approximately [0-10]% and [0-10]% respectively.<sup>2</sup> With respect to the west of Ireland, the parties estimate the TOP and Fate Park market shares to be approximately [0-10]% and [0-10]% respectively.

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<sup>1</sup> See Competition Authority’s *Revised Procedures for the Review of Mergers and Acquisitions*, paragraph 2.6, available at: <http://www.tca.ie/MergersAcquisitions/MergersAcquisitions.aspx>

<sup>2</sup> TOP and Fate Park supplied [100-1000] million litres and [100-1000] million litres respectively, out of an estimated national total of [5-10] billion litres based on the figures available in the Irish Petroleum Industry Association’s website.

17. The Authority has previously determined<sup>3</sup> that the Irish oil industry is structured as follows:

Stage 1: Product supply from refineries

Stage 2: Wholesaling

Stage 3: Inland distribution

Stage 4: Retailing

18. The activities of the parties overlap mainly in respect of Stage 3 and Stage 4. In particular, the parties' activities overlap mainly in the west of Ireland in respect of the supply of refined oil products to motorists, commercial and industrial customers.

19. The Authority considers that, for the purposes of examining the proposed transaction, it is not necessary to make a finding on the relevant product market(s). This is because the proposed transaction is unlikely to give rise to any competition concerns in any market in the State for the following reasons:

- The small increase in market share that is likely to result from the proposed transaction;
- The availability of alternative retailers who will constrain the ability of TOP to exercise market power post-acquisition. Table 1 below shows that there are sufficiently large numbers of competing oil distribution depots in areas where both TOP and Fate Park operate oil distribution depots within a 25 mile radius; and

**Table 1: Oil Distribution Depots of TOP, Fate Park and Competitors**

Fate Park Depot	TOP Depot	Competitor Depots
Ballina, Co. Mayo	Crossmolina Road, Ballina, Co. Mayo	Jones Oil (Esso)
		LMS Oil (Topaz)
		Mitchell Oil (Independent)
		Corcoran Oil (Independent)
		Hughes Oil (Independent)
		Texoil (Texaco)
Drumconlon, Moneen, Castlebar, Co. Mayo	Moneen Industrial Estate, Castlebar, Co. Mayo	Corrib Oil (Topaz)
		Emo Oil (Emo)
		Texoil (Texaco)
		Suttons Oil (Esso)
Galway	The Docks, Galway	Elite Oil

<sup>3</sup> Competition Authority Report of Investigation of the Proposal Whereby Maxol Energy Limited Would Acquire the Entire Issued Share Capital of Busselle Limited Pursuant to Section 8 of the Mergers, Take-overs and Monopolies (Control) Act, 1978 (paragraph 4.3); Competition Authority Decision of 30 January 1998 relating to a proceeding under section 4 of the Competition Act, 1991; Notification No. CA/16/97 – Statoil Ireland Limited/Rabbitt Oil Company Limited (paragraph 14); Competition Authority 2006 Annual Report at page 29 in relation to Topaz/Statoil (M/06/044).

Harbour Enterprise Park, Galway	(Independent)
	Corrib Oil (Topaz)
	Texoil (Texaco)
	Mor Oil (Texaco)
	Geoghan Oil (Independent)
	Emo Oil (Emo)
	Sutton Oil (Esso)

Source: Notification Form

- There is only one area where there is a TOP service station within a 5 mile radius of a Fate Park service station. There are four remaining competing service stations in this area.

**Determination**

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Tedcastles (Group) would acquire sole control of Fate Park Limited through the acquisition of the entire issued share capital of Fate Park and its subsidiaries Major Fuel Distributors Limited, Flanagan’s Oil Company Limited, Castlebar Oil Company Limited, Hughes & O’Boyle Fuel Oil Limited, Moneen Spar Express Limited, Finn Valley Oil (Lischooley) Limited, High-Way Oil (Tuam) Limited and O’Grady Oil 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 Authority

Dr Stanley Wong

Member of the Competition Authority