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***Case M.7518 - KENDRICK INVESTMENTS/
ESSO IRELAND***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 4(4)
Date: 27/03/2015



EUROPEAN COMMISSION

Brussels, 27.3.2015
C(2015) 2266 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party

To the Irish National Competition Authority

Dear Sirs,

**Subject: Case M.7518 – KENDRICK INVESTMENTS/ ESSO IRELAND
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to the Republic of Ireland and Article 57 of the Agreement on the European Economic Area².**

Date of filing: 20.02.2015

Legal deadline for response of Member States: 13.03.2015

Legal deadline for the Commission decision under Article 4(4): 27.03.2015

I. INTRODUCTION

1. On 20 February 2015, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 ("Merger Regulation") with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of the Republic of Ireland.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p. 3 ("the EEA Agreement").

2. According to the rules governing the referral system of the Merger Regulation, before a formal notification has been made to the Commission, the merging parties can request by means of a reasoned submission that their transaction is referred from the Commission to a Member State such that it can be examined in whole, or in part, by that Member State.
3. A copy of this Reasoned Submission was transmitted to all Member States on 20 February 2015.
4. By email of 27 February 2015, the Irish Competition and Consumer Protection Commission as the competent authority of the Republic of Ireland informed the Commission that it agrees with the proposed referral.

II. THE PARTIES

5. Kendrick Investments Limited (“Kendrick”) is a company incorporated in the Isle of Man. Topaz Energy Group Limited (“Topaz”) is a wholly owned subsidiary of Kendrick. Topaz is an Irish oil company active mainly in retail and non-retail sales of refined petroleum products such as motor fuels in the Republic of Ireland.
6. Esso Ireland Limited (“Esso Ireland”) is currently a wholly-owned subsidiary of Exxon Mobil Corporation (“ExxonMobil”). Esso Ireland is an Irish oil company active in the non-retail sale and retail sale of petroleum products in the Republic of Ireland.

III. THE OPERATION AND CONCENTRATION

7. The transaction in question involves a concentration pursuant to Article 3(1)(b) of Merger Regulation by which Kendrick intends to acquire all of the issued share capital – and thus the sole control – in Esso Ireland on the basis of an Agreement for the Sale and Purchase of Shares in Esso Ireland Limited signed on 12 December 2014.

IV. EU DIMENSION

8. This acquisition has an EU dimension within the meaning of Article 1(2) of the Merger Regulation as the combined worldwide aggregate turnover of the companies exceeds EUR 5 000 million and both parties to the transaction have an EU-wide turnover in excess of EUR 250 million, and one of them (Kendrick) achieves less than two-thirds of its aggregate EU-wide turnover within one and the same Member State – the Republic Ireland.

V. ASSESSMENT

9. On the basis of the information submitted in the Reasoned Submission, the transaction principally concerns the following products: 1) non-retail sale of different motor fuel products (i) gasoline; (ii) diesel; (iii) gasoil; and (iv) kerosene in the Republic of Ireland, 2) retail sales of motor fuels in the Republic of Ireland, and 3) retail sales of domestic heating oil in the Republic of Ireland.

A Relevant product markets

10. As to non-retail sales of motor fuels, in previous decisions, the Commission has previously stated that the non-retail sale of each motor fuel products constitutes a distinct relevant product market.³ The fuels where the Parties overlap in non-retail markets are (i) gasoline, (ii) diesel, (iii) gasoil and (iv) kerosene.
11. As to retail sales of motor fuels, the Commission has previously ruled that the relevant product market in the retail sales channel covers fuel retailing as a whole, including all types of motor fuel products.⁴

B Geographic market definition

12. For both non-retail and retail sales of motor fuels, the Commission in its previous decisions defined the market as mainly national or sub-national in scope.⁵

C Assessment

13. On the basis of the information provided by the Parties in the Reasoned Submission, dated 20 February 2015, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the Republic of Ireland in accordance with Article 4(4) of the Merger Regulation.

(1) Legal requirements

14. According to Article 4(4) of the Merger Regulation, the transaction may be referred to the Member State, if the concentration may significantly affect competition in a market within a Member State, which presents all the characteristics of a distinct market.
 - a. *The transaction may significantly affect competition in a market or markets.*
15. The Commission notice on case referral in respect of concentrations⁶ ("Notice on case referral"), point 17 indicates that, in seeking a referral under Article 4(4), "*the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*", and that "*such indications may be no more than preliminary in nature...*". Hence, the existence of an affected

³ See COMP/M.3291 *Preem/Skandinaviska Raffinaderi* (2003); COMP/M.3375 *Statoil / SDS* (2004); COMP/M.3543 *PKN Orlen / Unipetrol* (2005); COMP/M.3516 *Repsol / Shell Portugal*; COMP/M.4208 *Petroplus / European Petroleum Holdings* (2006); COMP/M.4545 *Statoil / Hydro* (2007); COMP/M.5005 *Galp Energia / Exxonmobil Iberia* (2008); COMP/M.5169 *Galp Energia Espana / Agip Espana* (2008).

⁴ COMP/M.5637 – *Motor Oil (Hellas) Corinth Refineries/Shell Overseas Holdings* (2010), COMP/M.5169 – *Galp Energia Espana/Agip Espana* (2008), COMP/M.4798 – *BP/Associated British Foods/JV* (2007), COMP/M. 3516 – *Repsol/Shell Portugal* (2004).

⁵ COMP M.7311 *Mol/Eni Ceska/Eni Romania/Eni Slovensko*; COMP/M.5005 *Galp Energia/ExxonMobil Iberia*; COMP/M. COMP/M.3664 *Repsol Butano/ Shell Gas*; COMP/M.5637 *Motor Oil (Hellas) Corinth Refineries /Shell Overseas Holdings*; COMP/M. 1628 *TotalFina/Elf Aquitaine*.

⁶ OJ C 56, 05.03.2005, p. 2.

market is generally considered sufficient to meet the first of the requirements set forth in Article 4(4) of the Merger Regulation.

16. On the basis of the information submitted in the Reasoned Submission, the transaction leads to the following affected product markets: 1) non-retail sale of motor fuel products (i) gasoline; (ii) diesel; (iii) gasoil; and (iv) kerosene in the Republic of Ireland, 2) retail sales of motor fuels in the Republic of Ireland, and 3) retail sales of domestic heating oil in the Republic of Ireland.

Horizontally affected markets

17. On the *upstream level* the combined markets share of the Parties in the Republic of Ireland are the following:
 - a) Non-retail sale of gasoline – [30-40] % (Kendrick [20-30] %; Esso Ireland [5-10] %);
 - b) Non-retail sale of diesel – [30-40] % (Kendrick [20-30] %; Esso Ireland [10-20] %);
 - c) Non-retail sale of gasoil - [40-50] % (Kendrick [30-40] %; Esso Ireland [10-20] %);
 - d) Non-retail kerosene – [30-40] % (Kendrick [20-30] %; Esso Ireland [5-10] %).

Vertically affected markets

18. On the *downstream level* [...] active on the markets for: 1) retail sale of motor fuels and 2) retail sale of domestic heating oil. Based on a high combined market share of the Parties on an upstream level (see above), retail sales of motor fuels (upstream - non-retail gasoline and diesel) and domestic heating oil (upstream - non-retail gasoil and kerosene) are considered to be vertically affected markets.

b. The market in question must be within a Member State and must present all the characteristics of a distinct market.

19. According to paragraph 18 of the Notice on case referral, the second requirement set forth by Article 4(4) of the Merger Regulation is satisfied if a geographic market where competition is affected is national or narrower than national in scope.
20. As indicated above, in previous decisions the non-retail and retail markets for motor fuels have been defined as national or sub-national in scope. On the basis of the information submitted in the Reasoned Submission the proposed transaction will have an impact in particular in the territory of the Republic of Ireland or a subset of such territory.
21. Therefore, the Commission considers that the second requirement set forth in Article 4(4) of the Merger Regulation is met.

(2) Additional factors

22. According to paragraphs 9 to 14 of the Notice on case referral, jurisdiction should only be re-attributed to another authority where the latter is more appropriate for dealing with

the concentration, taking into account the benefits of a 'one-stop-shop' system and the importance of legal certainty with regard to jurisdiction.

23. The Commission considers that the Irish Competition Authority ("Competition and Consumer Protection Commission") is the appropriate authority to deal with this case since it has issued several decisions with regard to these product markets in the past.⁷
24. Moreover, the Commission considers that the effects of the transaction are likely to have their main economic impact in a single Member State, namely the Republic of Ireland, since the Parties activities principally overlap in the Republic of Ireland in markets which are national or narrower in scope.⁸
25. In light of the the above, in the present case, and in particular taking into account its knowledge and its experience in cases in the sectors concerned, the Irish Competition and Consumer Protection Commission appears to be the most appropriate authority to assess the proposed transaction.

VI. REFERRAL

26. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the Republic of Ireland, and that the requested referral would be consistent with point 20 of the Notice on case referral.

VII. CONCLUSION

27. For the above reasons, and given that the Republic of Ireland has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Republic of Ireland. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission
(Signed)
Alexander ITALIANER
Director-General

⁷ For non-retail sale of refined oil products: Tedcastles/Fate Park M/09/016; Chevron/Texoil M/09/008, Topaz/Statoil M/06/044. For the retail sale of motor fuels: Topaz/Statoil M/06/044; Chevron/Texoil M/09/008; Tedcastles/Fate Park M/09/016. For retail sale of domestic heating oil: Tedcastle/Primo CA/5/96.

⁸ The target – Esso Ireland - does not have any activities in Northern Ireland. The acquirer - Topaz – has limited activities in Northern Ireland in the non-retail sale of refined oil products - less than 10% of total sales. Topaz also has limited retail sales activities with estimated share of supply below 1%.