DETERMINATION OF MERGER NOTIFICATION

M/24/042 – Circle K Ireland/Pelco Holdings Ltd

8 JULY 2025

CCPC

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission

CCPC

Contents

1. INTRODUCTION

Introduction

1.1 On 18 July 2024, 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 (the "Merger Notification Form") of a proposed acquisition whereby Ard Services Limited, which is a subsidiary of Circle K Ireland Holding Limited ("Circle K"), would acquire sole control of Pelco Holdings Limited ("Pelco") (the "Proposed Transaction"). Circle K and Pelco are together referred to as the "Parties".

The Proposed Transaction

1.2 The Proposed Transaction is to be implemented pursuant to a share purchase agreement, dated 2 July 2024, between two private individuals (Paul Fitzgerald and Lynda Fitzgerald), Ard Services Limited and Circle K (the "SPA"). Following the implementation of the Proposed Transaction, Circle K, through Ard Services Limited, will acquire sole control of Pelco. As part of the Proposed Transaction, Circle K proposed to acquire nine service stations and the attached forecourt convenience stores currently operated by Pelco.

The Undertakings Involved

The Acquirer – Circle K

1.3 Ard Services Limited is a subsidiary of Circle K, which is ultimately owned by Alimentation Couche-Tard Inc, a company whose shares are publicly traded on the Toronto Stock Exchange and which forms part of the Alimentation Couche-Tard group of companies ("ACT"). ACT is involved in the convenience store and motor fuel industry in several countries. Circle K owns and operates service stations and attached forecourt convenience stores in the State. Circle K also owns general convenience stores in the State.

1.4 There are approximately 401 *Circle K*-branded service stations in the State, of which Circle K owns, operates and supplies 159 stations (referred to as company-owned, company-operated (“CoCo”) stations). A further 9 stations are owned and supplied by Circle K but operated by an independent dealer under the *Circle K* brand (e.g. under licence agreement) (referred to as company-owned, dealer-operated (“CoDo”) stations). The remaining 233 *Circle K*-branded service stations are owned and operated by third parties and supplied motor fuels by Circle K (referred to as dealer-owned, dealer-operated (“DoDo”) stations).

1.5 For the financial year ending 30 April 2023, the total worldwide consolidated turnover of ACT was approximately €48.5 billion,[1] of which approximately [redacted] was generated in the State.

The Target – Pelco

1.6 Pelco is owned by two private individuals, Paul Fitzgerald and Lynda Fitzgerald. Pelco currently operates thirteen service stations and the attached forecourt convenience stores in the State. Each of Pelco’s service stations operates under the *Texaco* brand and each forecourt convenience store operates under the *Centra* brand. Of Pelco’s thirteen service stations, it is proposed that nine service stations (and the attached forecourt convenience stores) will transfer to Circle K as part of the Proposed Transaction (each a “Target Station” and collectively the “Target Stations”).[2]

Table 1: The Target Stations

No	Target Station	Address
1	Airside Service Station	Airside, Nevinstown, Swords, Co. Dublin, K64 F3X4
2	Artane Service Station	Artane, Butterly Business Park, Kilmore Rd, Beaumont, Dublin 5, D05 C5X7
3	Balbriggan Service Station	Dublin Street, Balbriggan, Dublin, K32 WD93

[1] The figure of $71,856,700,000 Canadian dollars has been converted to the euro using the average conversion rate of April 2023, $1 = €0.6760, as provided by the European Central Bank at: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-cad.en.html

[2] [redacted]

4	Batterstown Service Station	Batterstown, Co. Meath, A86 V329
5	Mullingar Service Station	Robinstown Road, Mullingar, Co. Westmeath, N91 KV6P
6	Newtown Service Station	Newtown, Malahide Road, Dublin 17, Co. Dublin, D17 XY29
7	Rathfarnham Service Station	Rathfarnham Road, Rathfarnham, Dublin 14, Co. Dublin, D14 V2P4
8	Rolestown Service Station	R125, Rolestown East, Co. Dublin K67 Y8W6
9	Skerries Service Station	Dublin Road, Townparks, Skerries, Co. Dublin, K34 V202

Source: The Parties

1.7 For the financial year ending 31 December 2023, Pelco's worldwide turnover was approximately €59,061,970, all of which was generated in the State. Of Pelco's total turnover, approximately [redacted] was attributable to the Target Stations.

Rationale for the Proposed Transaction

1.8 The Parties stated the following in the Merger Notification Form:

> "[Circle K] *views the Proposed Transaction as representing a good opportunity to expand and effect synergies within a competitive market.*"
>
> "*From the perspective of the sellers of* [Pelco], *the Proposed Transaction represents* [redacted]."[3]

Preliminary Investigation ("Phase 1")

Contact with the Parties

1.9 On 26 August 2024, the Commission served a Requirement for Further Information ("RFI") on each of Circle K and Pelco (the "Circle K Phase 1 RFI" and the "Pelco Phase 1

[3] Merger Notification Form, paragraphs 31 and 32.

RFI", respectively, and together, the "Phase 1 RFIs"). The issuance of the Phase 1 RFIs adjusted the timeframe within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.

1.10 Pelco provided a response to the Pelco Phase 1 RFI on 3 October 2024 (the "Pelco Phase 1 RFI Response").

1.11 Circle K provided a response to the Circle K Phase 1 RFI on 29 October 2024 (the "Circle K Phase 1 RFI Response").

1.12 Upon receipt of a response to each of the Phase 1 RFIs the "appropriate date" (as defined in section 19(6)(b)(i) of the Act) became 29 October 2024.

Third party submissions

1.13 One third-party submission was received during the Phase 1 investigation. This submission was fully considered by the Commission insofar as it related to the potential effects of the Proposed Transaction on competition in markets for goods or services in the State.

Market enquiries

1.14 The Commission also engaged with other third parties during the Phase 1 investigation in relation to its review of the likely competitive effects of the Proposed Transaction. This third-party engagement consisted of market enquiries, including the issuing of information requests to and conducting calls with third party service station operators. The Commission engaged with the following third parties:

- Applegreen Limited ("Applegreen");
- Maxol Limited ("Maxol");
- Certa Ireland Limited ("Certa");
- Tedcastles Oil Products Unlimited Company ("Top Oil");

- BWG Foods Unlimited Company ("BWG");
- LCC Group Limited ("Go");
- Valero Energy (Ireland) Limited ("Texaco"); and
- Individual service station operators and owners.[4]

The Phase 1 Investigation

1.15 Having considered all of the relevant available information in its possession at the time, the Commission was unable to form the view, at the conclusion of its Phase 1 investigation, that the Proposed Transaction would not result in a substantial lessening of competition (an "SLC") in any market for goods or services in the State.

1.16 Therefore, on 5 December 2024, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

Full Investigation ("Phase 2")

Contact with the Parties

RFIs

1.17 On 23 December 2024, the Commission served an RFI on each of Circle K and Pelco (the "Circle K Phase 2 RFI (A)" and the "Pelco Phase 2 RFI", respectively, and together the "Phase 2 RFIs"). The issuance of the Phase 2 RFIs had the effect of adjusting the deadline by which the Commission was required to issue its assessment of the Proposed Transaction in Phase 2.

1.18 The Commission served additional Phase 2 RFIs on Circle K on 9 January 2025 and 17 February 2025, respectively (the "Circle K Phase 2 RFI (B)" and "Circle K Phase 2 RFI (C)").

[4] Airport Motors Holdings Limited, Spawell Auto Stop (Templeogue) Limited and Conways (Ratoath) Limited.

1.19 Circle K provided a full response to the Circle K Phase 2 RFI (A) and the Circle K Phase 2 RFI (B) on 20 February 2025; Circle K provided a full response to the Circle K Phase 2 RFI (C) on 24 February 2025 (collectively, the "Circle K Phase 2 RFI Response").

1.20 Pelco provided a full response to the Pelco Phase 2 RFI on 19 February 2025 (the "Pelco Phase 2 RFI Response").

Market share information

1.21 On 24 December 2024, the Commission provided a document to the Parties which outlined the estimated market shares that had been calculated by the Commission ("Estimated Market Share Note"). The Estimated Market Share Note:

- outlined the Commission's preliminary approach to estimating market shares;
- outlined the preliminary market shares estimated by the Commission;
- provided the Parties with an opportunity to provide their views on the preliminary estimated market shares.

1.22 The information contained in the Estimated Market Share Note was preliminary in nature and subject to change as the Commission continued to gather information and conduct further analysis.

1.23 The Parties provided their comments on the Estimated Market Share Note on 16 January 2025.

1.24 The Commission provided the Parties with an updated document which outlined the estimated market shares that had been calculated by the Commission ("Updated Market Share Note") on 30 January 2025. The Updated Market Share Note accounted for further information that had been received by the Commission since it had sent the Estimated Market Share Note as well as the comments provided by the Parties.

Meeting with the Parties

1.25 On 22 January 2025, the Parties met with the Commission's case team (the "Case Team") to outline their views with respect to the Proposed Transaction. Specifically, the Parties outlined their views with respect to: (i) the rationale for the Proposed Transaction; (ii) competition within certain local areas; (iii) market definition; and (iv) customer behaviour.

1.26 On 14 March 2025, the Case Team held a call with the Parties. During this call, the Case Team outlined that it continued to have preliminary competition concerns in relation to several of the geographic areas within which the Parties are active.

Economic Reports

1.27 On 25 February 2025, Circle K submitted an economic report by Compecon (the "First Economic Report"),[5] which was considered by the Commission.

1.28 On 31 March 2025, Circle K submitted a second economic report by Compecon (the "Second Economic Report"), which was considered by the Commission.

1.29 On 6 May 2025, Circle K submitted Compecon's written response to the Assessment (the "Compecon Written Response"). The First Economic Report, the Second Economic Report and the Compecon Written Response are collectively referred to as the "Economic Reports".

First Proposals

1.30 On 20 March 2025, pursuant to section 20(3) of the Act, Circle K submitted proposals to the Commission aimed at ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State (the "First Proposals"). The submission of the First Proposals extended the timeframe within which the Commission was required to make its determination in respect of the Proposed Transaction in Phase 2. The extension added 15 working days to the Phase 2 period, bringing the review period to a total of 135 working days, in accordance with section 22(4B) of the Act.

[5] Circle K originally provided a report by Compecon on 21 February 2024. However, Circle K provided an updated report, the First Economic Report, on 25 February 2025.

Second Proposals

1.31 On 26 March 2025, pursuant to section 20(3) of the Act, Circle K submitted revised proposals to the Commission aimed at ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State (the "Second Proposals").

Third Proposals

1.32 On 6 June 2025, pursuant to section 20(3) of the Act, Circle K submitted further revised proposals to the Commission aimed at ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State (the "Third Proposals").

Final Proposals

1.33 On 8 July 2025, pursuant to section 20(3) of the Act, Circle K submitted a fourth set of proposals to the Commission aimed at ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State (the "Final Proposals"). The Commission's views on the First, Second, Third and Final Proposals (collectively, the "Proposals") are outlined in Section 6 below.

1.34 The Commission engaged extensively with Circle K on the Proposals.[6]

Assessment

1.35 The Commission issued its preliminary assessment of the Proposed Transaction (the "Assessment") to the Parties on 7 April 2025 in accordance with paragraph 3.13 of the Commission's Mergers and Acquisitions Procedures.[7] In accordance with paragraph 3.3 of the Commission's Access to the File Procedures, the Commission also provided the Parties with a schedule of all of the Parties' documents and all of the third-party documents included in the file on 7 April 2025.

Parties' response to the Assessment

[6] The Commission's engagement with the Parties with respect to the Proposals is outlined in more detail in Section 6.

[7] Competition and Consumer Protection Commission (2023) Mergers and Acquisitions Procedures, dated 1 August 2023 (the "Mergers and Acquisitions Procedures"), paragraph 3.13. Available at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/07/CCPC-Mergers-and-Acquisitions-Procedures-2023.pdf

1.36 According to paragraph 3.19 of the Mergers and Acquisitions Procedures, within five working days of the furnishing of the Assessment, any undertaking involved in the merger who wishes to make oral submissions shall notify the Commission in writing that it intends to do so, and the Commission will fix a date to hear the submissions. The Parties requested an oral submission on 10 April 2025.

Written response to the Assessment and Oral Submissions

1.37 Within 15 working days of the delivery of an assessment, the undertakings involved in the merger may respond in writing to the assessment. Following a request by the Parties, the Commission extended the deadline for responses to the Assessment to 6 May 2025.

1.38 Circle K and Pelco provided their respective written responses to the Assessment to the Commission on 6 May 2025 (the "Circle K Written Response" and the "Pelco Written Response", together the "Parties' Written Responses"). As noted above, the Parties also submitted the Compecon Written Response.

1.39 Circle K and Pelco made oral submissions to the Commission on 20 May 2025; Compecon, on behalf of Circle K, also made oral submissions to the Commission (together referred to as the "Oral Submission").

1.40 The Commission continued to request and receive further information and clarifications from the Parties throughout the Phase 2 investigation.

Engagement with the Parties in relation to potential conditions

1.41 On completion of a Phase 2 investigation, the Commission may, pursuant to section 22(3)(c) of the Act, determine that a merger or acquisition may be put into effect subject to conditions specified by it being complied with, on the ground that the result of the merger or acquisition will not be to substantially lessen such competition, if the specified conditions are complied with.

1.42 On 27 June 2025, the Commission sent draft conditions to the Parties.

1.43 On 2 July 2025, the Parties responded to the Commission in relation to the draft conditions. The Commission's engagement with the Parties with respect to the Proposals and draft conditions is outlined in more detail in Section 6.

Third Party submissions

1.44 No third-party submission was received during the Phase 2 investigation.

Market enquiries

1.45 During the Phase 2 investigation, the Commission continued the process initiated during the Phase 1 investigation of seeking information from and engaging with third parties in relation to the potential competitive effects of the Proposed Transaction.

Market testing of potential remedies

1.46 The Commission engaged with a range of third parties as part of its consideration of potential remedies to ameliorate its competition concerns.[8]

Overview of the Legislative Framework and Relevant Case Law and Guidelines

Introduction

1.47 The legislative framework within which the Commission conducts its review of mergers and acquisitions notified pursuant to section 18 of the Act is set out below and includes a summary of relevant guidelines published by the Commission and relevant case law. All statutory references in this section are to the Act, unless otherwise stated.

Legislative Framework

1.48 When a merger or acquisition within the meaning of section 16 is notified to the Commission pursuant to section 18 (a "Notified Transaction") the Commission is required to assess the effect of the Notified Transaction on competition in the State, pursuant to section 20. The applicable legal test at that stage is set out in section 20(1)(c) which provides that the Commission:

[8] Market testing is outlined in more detail in Section 6.

"shall form a view as to whether the result of the merger or acquisition would be to substantially lessen competition in markets for goods or services in the State."

1.49 Following notification, the Commission has 30 working days after the appropriate date within which to decide whether it can clear a Notified Transaction without having to carry out a full investigation under section 22, known as a "Phase 2 Investigation".[9] This decision is taken on the basis of the evidence available to it, including the submissions of the parties to the Notified Transaction and third parties.[10] If the Commission has been unable, on the basis of the information before it, to form the view that the result of the Notified Transaction will not be to substantially lessen competition in markets for goods or services in the State, it must carry out a Phase 2 Investigation under section 22.

1.50 Where the Commission has decided to carry out a Phase 2 Investigation, it must make a determination within 120 working days of the appropriate date.[11] Upon completion of a Phase 2 Investigation, the Commission must make a determination that the merger:

"(a) may be put into effect;

(b) may not be put into effect; or

(c) may be put into effect subject to conditions specified by it being complied with,

on the ground that <u>the result of the merger or acquisition will or will not, as the case may be, be to substantially lessen competition in markets for goods or</u>

[9] The appropriate date may be reset pursuant to section 19(6)(b); and it may be extended pursuant to section 21(4).

[10] Section 21(2)(b) of the Act and paragraph 3.1 of the Mergers and Acquisitions Procedures.

[11] The term "appropriate date" is defined in section 19 of the Act. Section 22(4A) of the Act suspends the 120 working day timeframe referred to in section 22 where the Commission has issued a requirement to provide information pursuant to section 20(2) of the Act. Section 22(4B) provides that the Commission shall furnish a copy of the written determination to the notifying parties within 135 working days after the appropriate date where the notifying parties submit proposals to the Commission in accordance with section 20(3) of the Act.

services in the State, or, as appropriate, will not be to substantially lessen such competition if conditions so specified are complied with."[12] (emphasis added)

The Commission's Approach to the SLC Test

1.51 Under the Act, the Oireachtas has entrusted to the Commission the task of investigating competition issues raised by Notified Transactions. The Act imposes on the Commission a duty to act but has set the terms upon which the Commission must act in such a way as to afford the Commission a wide latitude in its assessment of the competition issues upon which it is required to decide as well as in relation to the remedial decisions it must take.

1.52 Each stage in the Commission's decision-making process (i.e., whether there is a merger or acquisition within the meaning of section 16; whether the merger will or will not result in a substantial lessening of competition ("SLC") under section 22(3); and whether remedies will ameliorate any effects of the merger on competition in markets for goods or services under section 20) necessarily involves a predictive exercise and involves an important element of judgement. Thus, in carrying out its duties to assess whether there is a merger, to identify any SLC and to assess potential remedies, the Commission has a wide margin of appreciation which is recognised both in the Irish and EU courts.[13]

1.53 In this regard, the Commission refers to *Rye Investments Ltd. v The Competition Authority* [2009] IEHC 140 ("Rye Investments"). This case concerned the Commission's predecessor the Competition Authority. In his judgment, Cooke J held:

> *"in a case such as the present, where primary findings of fact have not been put in issue, the Court considers that a determination by the Authority that a merger or acquisition will result in a substantial lessening of competition ought not to be set aside by this Court unless:-*

[12] Section 22(3).

[13] See, for example, *Rye Investments Ltd. v The Competition Authority* [2009] IEHC 140, paragraph 5.18; and Case T-5/02 *Tetra Laval v Commission* [2002] ECR II-4389 upheld on appeal by the Court of Justice in Case C-12/03P *Commission v Tetra Laval* [2005] ECR I-1047.

(a) The Authority is shown to have committed a serious error in drawing inferences or conclusions from facts, such that the inferences or conclusions become untenable or unsound by reason of the error having been made; or

(b) It is demonstrated that the Authority has failed to take into consideration or adequately to consider, relevant information or data such that an inference or conclusion material to the determination is unsupported by or is rendered inconsistent with the clear force and effect of the available evidence taken as a whole; or

(c) A significant appraisal of economic or technical factors material to the functioning of competition in the relevant market is shown to be so inconsistent with the available evidence as to be manifestly unreasonable and unsound; or

(d) The Authority's statement of its reasons for reaching conclusions material to the basis of the determination is lacking in cogency or coherence or is contradicted by the evidence which was available to it; or

(e) The Authority has made a material error of law either in the construction and application of the Act or by otherwise infringing some applicable principle of constitutional or natural justice.

…

"…where the Authority has, without committing significant error, exercised its specialist expertise in making judgments as to the prospective consequences of the economic and commercial factors which govern or influence competition in the relevant market, this Court should not intervene even if it is demonstrated that an opposite conclusion might plausibly have been reached by placing weight on different aspects of the available evidence or data or by attributing different or greater significance to other pertinent factors in the economic assessment."

…

"Accordingly, the Court considers that even if it might be said that the Authority is taking the most favourable view of the information at its disposal, the Court does not consider that it has gone beyond the margin of judgment which it is accorded in such matters and has not committed any obvious or significant error of assessment in respect of the material before it."[14]

1.54 The Commission considers that, in the test set out in section 22(3) quoted above, the relevant standard of proof is the ordinary civil standard, i.e., the balance of probabilities. In other words, in order to decide whether the result of the merger or acquisition will (or will not) be an SLC, the Commission must decide that it is more likely than not that an SLC will occur.[15]

1.55 The application of the balance of probabilities test is also recognised in the Commission's Merger Guidelines.[16] For example, paragraph 1.16 explains that in applying the SLC test, the Commission investigates the likely effect of a merger not only by reference to current competitors, but also by reference to potential competitors. Similarly, paragraph 1.19 provides that the Commission requires sufficient reliable evidence from the merging parties regarding the likely competitive effects of the merger.

1.56 Furthermore, it is important to recognise that the concept of a standard of proof provides a framework within which, for example, the Commission conducts its assessment of the effects of a merger. Such an assessment is, however, a matter of judgement and evaluation and an unduly technical or rigid approach to the application of the standard of proof is not helpful or appropriate.

1.57 Where the range of ways in which an SLC could be made manifest is wide and, indeed, necessarily unpredictable, the Commission's assessment must be carried out in the round by looking at all the relevant factual material, including the incentives which

[14] *Rye Investments*, paragraphs 5.20, 5.21 and 8.21.

[15] In this regard, and for the avoidance of doubt, where the Commission refers to the "likely" results of the Proposed Transaction in this Determination, this should be understood as meaning that it is more likely than not that result will occur.

[16] Competition and Consumer Protection Commission (2014) Guidelines for Merger Analysis dated 31 October 2014 (the "Commission's Merger Guidelines"). Available at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines-1.pdf.

those involved might have to act to reduce competition, and then making an overall assessment of the likelihood of the merger resulting in an SLC.

1.58 Accordingly, any Commission finding in relation to the presence or absence of an SLC will be based on all information available to the Commission "*considered in the light of all credible theories of consumer harm arising from possible adverse competition effects*".[17]

1.59 As set out in this Determination, the Commission has in mind the relevant civil standard in considering the statutory question of whether, in its view, the result of the merger will be an SLC, and it applies that standard in reaching its conclusion as to the likelihood of possible outcomes. While the Commission may use quantitative measures to assist in analysing whether a merger is likely to result in an SLC, the Commission will assess each merger on its merits. Paragraph 1.8 of the Commission's Merger Guidelines states as follows:

> *"While certain quantitative measures can be used to assist in analysing whether a merger is likely to result in an SLC there are no standard measures of competitive effects that can determine definitively, on their own, whether a given merger is likely to have such an effect. Each proposed merger needs to be assessed on its merits and in its own particular circumstances."*

1.60 Paragraph 1.9 of the Commission's Merger Guidelines goes on to make the important point that, in applying the SLC test, the Commission analyses not only the effect on the price of affected products but also other effects that can impact on consumers, such as changes to output (quantity), quality, consumer choice and innovation (e.g., development of new products or enhancements to existing products).

1.61 Chapters 2 to 9 of the Commission's Merger Guidelines set out the Commission's approach to the key elements of merger review, such as an analysis of market definition, horizontal merger effects, barriers to entry and expansion, countervailing buyer power, efficiencies and failing firm arguments. The remainder of this

[17] The Commission's Merger Guidelines, paragraph 1.7.

Determination will summarise the applicable principles which the Commission considers relevant to its analysis of the Proposed Transaction.

Information Sources Relied Upon

1.62 In forming its views on the Proposed Transaction, as set out in this Determination, the Commission has considered the relevant information available to it at the time of making the Determination and this included information provided by the Parties (including the Economic Reports), information provided in response to the Commission's RFIs and information requests, information provided in the Parties' Written Responses and Oral Submission, information obtained from third parties, and other information available in the public domain.

2. INDUSTRY BACKGROUND

2.1 The purpose of this section is to provide context for the identification of the relevant product and geographic markets and for the Commission's assessment of the competitive effects of the Proposed Transaction set out later in the Determination.

2.2 This section provides information on the retail sale of motor fuels and the operation of forecourt convenience stores in the State, with a specific focus on:

(i) The wholesale supply of motor fuels to service stations;

(ii) The retail sale of motor fuels;

(iii) Forecourt convenience stores; and

(iv) Circle K's acquisition strategy and activity.

The Wholesale Supply of Motor Fuels to Service Stations

2.3 The Commission has issued several determinations in relation to transactions involving service stations in recent years. *M/23/068 - McMullan Bros./Naas Fuels Limited* is the Commission's most recent Phase 2 determination in the motor fuels sector. In that determination, the Commission noted that motor fuels (namely, diesel and petrol) that are supplied to service stations enter the market through terminals that are located throughout the State. A terminal is a fuel storage and distribution facility. Motor fuels can be supplied to service stations directly from these terminals or through supplier-owned depots.

Motor fuel deliveries to service stations

2.4 Fuel companies may supply their own service stations as well as independently owned service stations. Motor fuels are supplied to service stations throughout the State by fuel companies including Circle K, Applegreen, Irving Oil Whitegate Holdings Limited ("Irving"), Texaco, DCC Public Limited Company ("DCC") and Inver Energy Limited ("Inver").

2.5 Motor fuels are typically supplied from fuel companies' distribution depots or terminals to service stations. Service stations generally have underground storage tanks from which motor fuels are sold to customers. The frequency with which motor fuels are delivered to service stations varies based on a range of factors, including storage capacity, fuel tanker capacity and customer demand.[18] Therefore, service stations with higher sales volumes will typically receive more deliveries than smaller service stations.

The Retail Sale of Motor Fuels

Service station ownership models

2.6 There are two main service station ownership models in the State:

- **Company-owned, company-operated**: Service stations may be owned and operated by a fuel company such as Circle K, Applegreen or Maxol. These service stations are generally known as company-owned, company-operated service stations or "CoCo service stations". CoCo service stations are supplied with motor fuels by their parent fuel company on a consignment basis.[19] In this way, the fuel company sells motor fuel to motorists directly; and

- **Dealer-owned, dealer-operated**: Service stations can also be owned and operated by an independent dealer. These service stations are generally owned by smaller, locally based businesses which do not import fuel into the State. These service stations are known as dealer-owned, dealer-operated (commonly referred to as "DoDo service stations")[20]. Owners of DoDo service stations may enter into a supply agreement with a fuel company. Under such an agreement, DoDo service stations source motor fuels from the fuel company. Depending on the terms of these supply agreements, the DoDo service station may also adopt the branding of the

[18] Applegreen Call Note, dated 5 February, page 3. Certa Call Note, dated 6 February, page 3.

[19] Under a consignment model, the wholesaler retains ownership of the motor fuel until it is purchased by the customer.

[20] CCPC (2022), *Analysis of the Irish Retail Motor Fuel Market,* pg. 4, accessible at Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf.

fuel company. The retail price of motor fuels sold at the DoDo service station is set by the independent dealer.

2.7 DoDo service stations typically enter into five-year agreements with suppliers, but it is common for a dealer to stay with a fuel company and use the fuel company's brand for ten years.[21] Circle K stated that while dealers may enter into arrangements for up to five years, many also contract for three to four years.[22] One industry stakeholder informed the Commission that ten years is the typical time-period that a dealer may stay with a supplier in order for the investment that went into branding a site to be recouped.[23] If there is a change of ownership of the fuel supplier, dealers would usually be given the opportunity to switch to an alternative fuel supplier and brand.[24]

2.8 In addition to the CoCo and DoDo service station ownership models, a smaller number of service stations in the State operate under a different arrangement:

- **Company-owned, dealer-operated**: Service stations may be owned by a fuel company but operated by an independent dealer. These service stations are commonly referred to as "CoDo service stations". Circle K stated in the Merger Notification Form that the dealer is free to set the retail price of motor fuels at its CoDo service stations.[25] CoDo services stations are supplied fuel by the fuel company that owns the service station.

Retail price of motor fuels

2.9 The retail price of motor fuels is influenced by a variety of factors, as shown in Figure 1 below:

[21] Industry Expert Call Note, dated 28 November 2024, page 5.

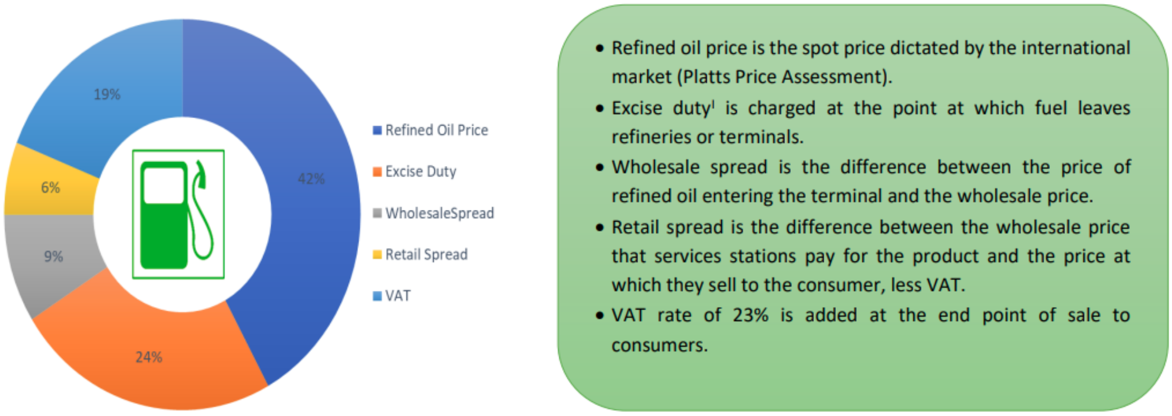
[22] Circle K Written Response, paragraph 5.1.1.

[23] Industry Expert Call Note, dated 28 November 2024, page 5.

[24] Industry Expert Call Note, dated 28 November 2024, page 5.

[25] Merger Notification Form, paragraph 117(e).

Figure 1: Retail Price* components of a litre of petrol



*based on average price as at the end of March 2022 (Image source: CCPC)

Source: The CCPC[26]

2.10 Factors that influence pricing decisions across service stations in the State include:

- the wholesale price paid for fuel currently in stock;
- variable overheads;
- daily/weekly volumes sold compared to target volumes; and
- margins realised compared to target margins.[27]

2.11 The Parties also stated that the retail price of motor fuels is influenced by a variety factors, including "*retailer costs (such as staffing and utilities), supply costs, competitors' prices as well as desired margins*."[28]

2.12 Prices are also influenced by the prices charged by other service stations in the local area. The Commission has previously noted that:

> "*retailers also set prices based on what other service stations in the local area are charging, with some choosing to price similar or undercut their competitors.*

[26] CCPC (2022), *Analysis of the Irish Retail Motor Fuel Market,* pg. 5, accessible at Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf.

[27] CCPC (2022), *Analysis of the Irish Retail Motor Fuel Market,* pg. 6, accessible at Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf.

[28] Merger Notification Form, paragraph 72.

Lower prices are generally seen in areas where there are a higher number of competitors."[29]

2.13 Therefore, even if prices are set by a national fuel company, the price of motor fuel at each service station in the fuel company's network is typically calculated on an individual basis, having regard to local competitive conditions.

Service station networks in the State

2.14 In light of the different ownership and supply models referred to at paragraphs 2.6 to 2.8, a fuel company's network of branded service stations may be comprised of CoCo, DoDo and CoDo service stations which operate under the fuel company's brand.

2.15 Circle K has the largest service station network in the State, with 401 *Circle K*-branded service stations. Applegreen and Maxol are the next largest service networks, with 193[30] and 143[31] branded stations respectively. Other service station networks include those operating under the *Certa* and *Texaco* brands.

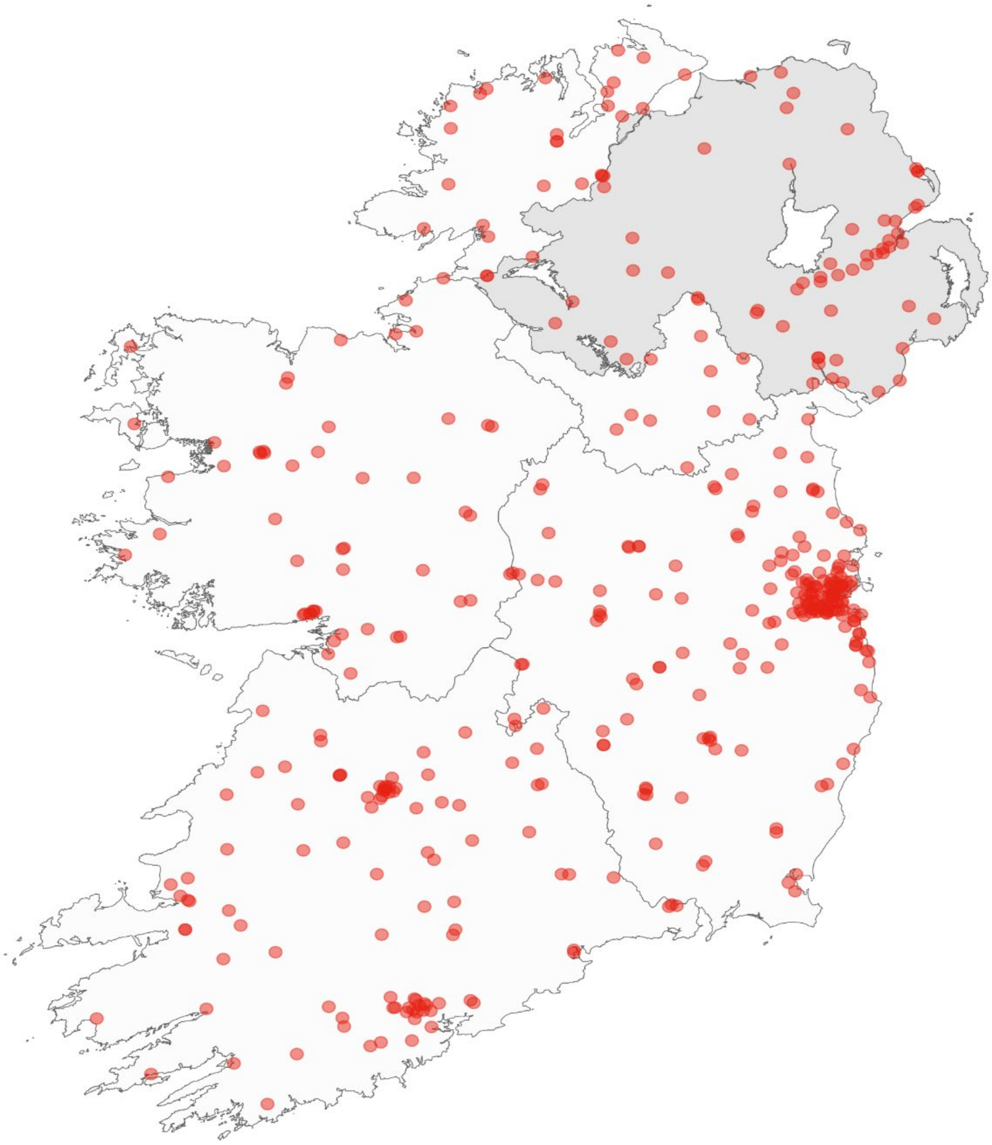
2.16 The locations of service stations in Circle K's service network are listed in Figure 2 below.

Figure 2: Circle K-branded service stations

[29] CCPC (2022), *Analysis of the Irish Retail Motor Fuel Market,* pg. 6, accessible at Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf.

[30] See Applegreen's website: https://applegreenstores.com/about-us/

[31] *M/23/068 - McMullan Bros/Naas Fuels Limited*, paragraph 1.5.

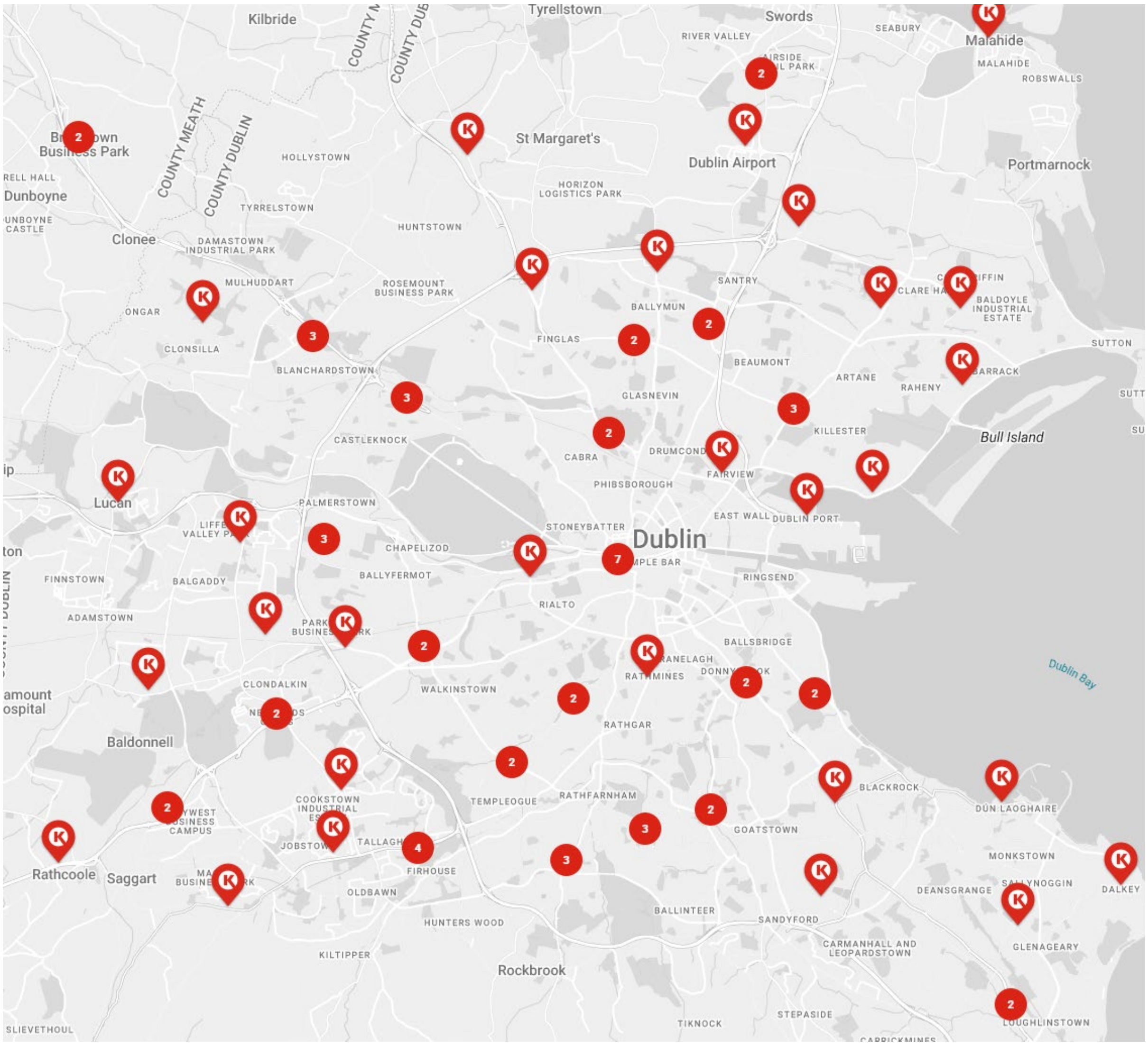


Source: The Commission[32]

2.17 Circle K's network has a significant presence across the State, as well as within Dublin city, as shown in Figure 3 below.

[32] The Commission used information available on Circle K's website to produce Figure 3.

Figure 3: Circle K's service stations in Dublin city



Source: Circle K's website[33]

2.18 There are Circle K-branded stations across Dublin city. In Figure 3 above, each Circle K logo represents a single service station, while the red circles represent groups of Circle K-branded stations in the local area. There are approximately 98 Circle K-branded stations in county Dublin.[34]

[33] https://www.circlek.ie/station-search

[34] Based on the list of Circle K stations available on Circle K's website: https://www.circlek.ie/station-search

Local factors of competition in the retail sale of motor fuels

2.19 Competition in the retail sale of motor fuels is influenced by a range of factors, including (i) price; (ii) location; (iii) the non-fuel offering of a service station; and (iv) fuel cards offering. The Commission considers each of these factors in turn below.

Price as a factor of competition

2.20 The Commission notes that the retail price of motor fuels is a key factor of competition between service stations. Prices are prominently displayed outside each service station, as shown in Figure 4.

Figure 4: Pricing display in the sale of motor fuels

Source: The Commission

2.21 As motor fuels are highly homogeneous products, the Commission considers that price is likely to be a key factor of competition between service stations. Similarly, the Parties and third parties also view price as an important factor which influences where customers purchase motor fuel.

2.22 The Parties stated in the Merger Notification Form that categories of customers can include:

"(a) price-driven customers: customers who choose fuel stations based on price; and/or

(b) convenience-seeking customers: customers who opt for nearby stations that are easy to access."[35]

2.23 Circle K stated the following with respect to pricing in response to the Circle K Phase 2 RFI:

"Competitive fuel prices are the primary determinant of fuel volumes sold. Due to the roadside visibility, fuel prices are highly visible to all consumers and customers decide where to purchase their fuel prior to arriving at a service station."[36]

2.24 Pelco also identified price as a key factor, while noting that location and distance are also important:

"In our experience, most consumers will [redacted]*. However, consumers are becoming increasingly* [redacted] *is the main driver."*[37]

2.25 The Commission also engaged with a range of suppliers about what drives competition at a local level. These suppliers expressed the following views:

- **Applegreen**: When asked were the key factors in competition in the retail supply of motor fuels at a local level, Applegreen stated "***the main drivers of competition in these areas is*** [sic] [redacted] (emphasis added), [redacted]. *Applegreen stated that fluctuations in the price of crude oil affects the price that Applegreen pays for fuel. Applegreen also stated that* [redacted] *also play a role in*

[35] Merger Notification Form, paragraph 70.

[36] Circle K Phase 2 RFI Response, Question 17.

[37] Pelco Phase 1 RFI Response, question 1(c).

determining the price it sets for fuel. Applegreen stated that [redacted]*."*[38]

- **Maxol**: When asked what factors drive competition in the retail sale of motor fuels at a local level, for example, in areas such as Artane and Rathfarnham in Dublin, Maxol stated: "***competition in these areas is driven by the price of fuel*** (emphasis added). *Maxol stated that there are high levels of competition in the retail sale of motor fuels and that consumers are price sensitive. Maxol stated that consumers are much more sophisticated and that they want good coffee, good food and good services, as well as loyalty apps and schemes. Maxol noted that the experience and level of customer service at a site, as well as ancillary services available at a site, are all factors which affect how consumers decide where to spend their money."*[39]

- **Certa**: When asked what the key factors for competition in the retail supply of motor fuels at a local level are, Certa stated "***that price is the biggest factor as customers' choices are price driven*** (emphasis added)*. Certa stated that a brand's relationship with its customers, convenience and brand reputation are also other important factors of competition."*[40]

- **Top Oil**: When asked about the key factors for competition in the retail supply of motor fuels at a local level, Top Oil stated, "*that promotional offers, customer amenities such as food offerings like a fast-food restaurant or a deli, and other amenities such as car washes are a factor. Top Oil stated that ease of access to a site is also a factor. Top Oil stated* ***that price is also a key factor, with price competitiveness being important***."[41]

2.26 Therefore, the Commission's market enquiries clearly indicate that price is a key factor of competition at a local level. Moreover, in a 2022 Market Study, the Commission

[38] Applegreen Call Note, dated 5 February 2025, page 1.

[39] Maxol Call Note, dated 5 February 2025, pages 1-2.

[40] Certa Call Note, dated 6 February 2025, page 1.

[41] Top Oil Call Note, dated 27 March 2025, page 1.

found that "*service stations which have higher prices will see consumers switch their business away if there are alternative options within a reasonable distance.*"[42]

Monitoring of competing service stations

Circle K's price monitoring activities

2.27 Circle K stated in the Circle K Phase 1 RFI Response that it monitors its competitors using a fuel pricing system called 'Kalibrate'. Circle K explained how it monitors its competitors' prices as follows:

> "*The 'Kalibrate' system* [redacted] *and* [redacted], *and then uses* [redacted] *to help manage Circle K's competitive pricing program. To illustrate the process, the 'Kalibrate' system firstly considers the* [redacted]. *Secondly,* ***Circle K's retail service management teams*** [redacted] ***'Kalibrate' system*** (emphasis added)***.*** *Finally, the 'Kalibrate' system considers* [redacted], *the* [redacted], *and* [redacted], *and then* [redacted]."[43]

> "[Circle K-owned] *service stations in the Catchment Areas report* [redacted] *As a rule,* [redacted]. [redacted] *are then inputted into the software tool 'Kalibrate'. 'Kalibrate' is a fuel pricing*

[42] CCPC (2022), *Analysis of the Irish Retail Motor Fuel Market,* pg. 7, accessible at Analysis-of-the-Irish-Retail-Motor-Fuel-Market.pdf.

[43] Circle K Phase 1 RFI Response, question 5.

system used by Circle K in respect of its company operated retail service stations to ensure that its prices remain competitive."[44]

2.28 When asked whether Kalibrate attaches different weights to different competitors' prices, Circle K stated:

"In its use of Kalibrate, [Circle K] *may afford more weight to* [redacted]*. Certain* [redacted] *(as noted in our response to question 6 in* [Circle K]*'s response to its Phase 1 RFI) based on factors such as* [redacted] *(a secondary factor). Less weight may be afforded to* [redacted] *'secondary marker.'"*[45]

2.29 The First Economic Report provided the following table, which outlines which service stations Circle K monitors within the relevant local areas where the Parties overlap.

Table 2: Service stations monitored by Circle K in the local areas of overlap (stations monitored by Circle K highlighted in bold)

[redacted]

[44] Circle K Phase 1 RFI Response, question 8.

[45] Circle K Phase 2 RFI, question 5.

Source: The First Economic Report[46]

2.30 Circle K monitors certain service stations in relation to specific Circle K service stations.[47] For example, Circle K monitors the following service stations with respect to its own service stations in Airside in north Dublin, as shown in Figure 5.

Figure 5: Circle K monitoring activity in relation to its stations in Airside

[redacted]

Source: Circle K[48]

Pelco's price monitoring activities

2.31 Pelco also monitors its competitors' prices. Pelco explained its price monitoring process as follows in its response to its Phase 1 RFI:

> *"As a company we have* [redacted]. ***At senior level we have identified*** [redacted] (emphasis added). *See document submitted in response to Q1 (d) 'Q1 (d) Our Competitors' which lists* [redacted]. ***On a*** [redacted] (emphasis added). *See document submitted in response to Q1 (d) entitled 'Q1 (d) Competitor Pricing 2023 2024'.* [redacted]

[46] The First Economic Report, table 3.4.

[47] Circle K email to the Commission, dated 10 June 2025, excel titled "Catchment Area Sites - Competitors 09062025".

[48] Circle K email to the Commission, dated 10 June 2025, excel titled "Catchment Area Sites - Competitors 09062025".

[redacted].”[49]

“For practical and logistical reasons, [redacted] *We refer to Document ‘Q1 (d) Competitor Pricing 2023 2024’ that was submitted in response to RFI-1 in October 2024.* [redacted]”[50]

2.32 Pelco provided several price trackers which demonstrate which stations it monitors. An example of such a price tracker, in relation to the Newtown Target Station in north Dublin city, can be seen in Figure 6.

Figure 6: Pelco price tracker

[49] Pelco Phase 1 RFI response, question 8.

[50] Pelco Phase 2 RFI Response, question 7.

[redacted]

Source: Pelco[51]

2.33 Following the Assessment, Pelco stated that it [redacted].[52] In this respect, the Compecon Written Response stated that [redacted]"[53]

2.34 The Commission notes that the Parties do not monitor every service station in a local area. The Parties track the prices of certain service stations based on criteria including those service stations' proximity, brand and/or pricing. The First Economic Report submitted by Circle K listed each service station (shaded in red or black) Circle K and Pelco monitor within the catchment areas assessed by the Commission (as detailed in section 3).[54]

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[51] Pelco Phase 1 RFI Response, question 1(d), document: "*Q1 (d) Competitor Pricing 2023 2024*", MD5 hash 36402a192b3c7329b31c1f8e15831274.

[52] Pelco Written Response, paragraph 5.53.

[53] Compecon Written Response, paragraph 3.22.

[54] The Commission notes that there are certain differences between the service stations which Pelco is said to monitor in the First Economic Report and the service stations Pelco monitors as listed in its own price trackers, namely in document *Q1 (d) Competitor Pricing 2023 2024,* which Pelco provided to the Commission as part of its response to the Phase 1 RFI (question 1(d).

Figure 7: Service Stations which Circle K and Pelco monitor in the catchment areas

[redacted]

[redacted]

Source: The First Economic Report

2.35 The Commission assesses the Parties' monitoring activity in further detail in Section 5 of this Determination, particularly in regard to the specific local areas of focus and the views raised by the Parties.

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2.36 The Commission also engaged with third party service station operators to understand whether and how they monitor their competitors' prices in the retail sale of motor fuels. These suppliers expressed the following views:

- **Applegreen:** When asked what determines which stations it monitors, Applegreen stated "***that proximity is the main factor that determines which service stations it monitors. Applegreen stated that it monitors service stations that are typically within a*** [redacted] ***depending on the area*** (emphasis added). *Applegreen stated that urban areas tend to have higher concentrations of service stations, whereas a rural area may have fewer service stations to monitor. Applegreen stated that they are aware of the* [redacted].*"*[55] Applegreen also stated that "*in Swords, as it is an urban area, it monitors competitors within* [redacted] *of its stations, but also further afield. Applegreen stated that it monitors service stations* [redacted]. *Applegreen stated that it primarily monitors the* [redacted] *and* [redacted]. *Applegreen stated that the* [redacted] *also be monitored by Applegreen."*[56]

- **Maxol:** Maxol stated that "*it monitors* [redacted]. *Maxol stated prices are determined by Maxol's own commercial decisions*".[57] When asked what determines which stations it monitors, Maxol stated "*that it considers a range of factors when it decides which competitor service stations to monitor. Maxol stated that its decision as to which service stations it monitor* [sic] *is* [redacted]. *Maxol stated that it also* [redacted]

[55] Applegreen Call Note, dated 5 February, page 2.

[56] Applegreen Call Note, dated 5 February, page 2.

[57] Maxol Call Note, dated 5 February, page 2.

[redacted]. *Maxol stated, because of this,* [redacted].”[58]

2.37 **Certa:** Certa stated that it monitors its competitors’ prices. Certa stated that “*with respect to its* [redacted]*, it monitors the* [redacted] *which is located* [redacted]*. Certa stated that because the* [redacted] *is within a reasonable distance to* [redacted] *and as such this plays a factor in determining pricing at this site. Certa stated that it monitors pricing* [redacted] *Certa also stated that it also receives feedback from customers on the prices charged by competitors.*”[59] When asked what determines which third party service stations it monitors, Certa stated “*that proximity to its own service stations is the main factor which determines which service stations it monitors and that this varies on a site-to-site basis.*”[60]

- **Top Oil:** Top Oil stated that it takes its competitors’ prices into consideration and that it “[redacted].”[61]

2.38 The Commission, therefore, considers that price is a key factor of competition in the retail sale of motor fuels in local areas and suppliers regularly monitor their competitors’ prices. Price monitoring is used by service station operators as an input to price setting.[62]

Location as a factor of competition

2.39 Alongside price, the Commission notes that a service station’s location appears to be, based on the evidence outlined below, another key factor which influences competition between service stations in the retail sale of motor fuels on a local basis.

[58] Maxol Call Note, dated 5 February 2025, page 2.

[59] Certa Call Note, dated 6 February 2025, page 2.

[60] Certa Call Note, dated 6 February 2025, page 2.

[61] Top Oil Call Note, dated 26 March 2025, page 2.

[62] Third party call notes, Pelco RFI responses and Circle K RFI responses.

2.40 The Parties stated the following in the Merger Notification Form with respect to the role of location in competition between service stations:

> "*Competition among fuel retailers is intense, with companies vying for market share based on location, convenience, pricing, and additional services offered.*"[63]

> *"Categories of customers can include: (a) price-driven customers: customers who choose fuel stations based on price; and/or (b) convenience-seeking customers: customers who opt for nearby stations that are easy to access."*[64]

2.41 When asked over what distance Circle K considers that other service stations compete with its own service stations, Circle K stated that it:

> ***"believes that the distances used by the CCPC in past Determinations relating to the retail sale of motor fuel sector (for both urban and rural areas) are broadly accurate when considering how far a customer may be prepared to travel between competing service stations within a Catchment Area to purchase motor fuel (being the primary rationale behind such distances)*** (emphasis added). *In addition to distance,* [Circle K] *also considers other factors when considering whether a service stations* [sic] *may be considered as competing service stations within a particular Catchment Area, including: · brand; · geographical location; · pricing; · fuel grade offering; and · forecourt size."*[65]

> "*Aligned with pricing is location and the convenience of a service station on a travel route is also relevant to where consumers choose to buy fuel.*"[66]

2.42 Circle K also noted that traffic flows affect competition between service stations:

[63] Meger Notification Form, section 4.4, paragraph 61.

[64] Merger Notification Form, section 4.4, paragraph 70.

[65] Circle K Phase 1 RFI Response, question 7.

[66] Circle K Phase 2 RFI Response, question 17.

"It is also important to note that service stations within Catchment Areas do not always exert the same level of influence over each other, as some sites are on different traffic flows, while others on the same routeway but slightly outside the Catchment Area do."[67]

"Customers can be influenced in their choice of filling station by the following factors: (a) traffic flows: • easy access to the forecourt • proximity to home or work (b) range of non-fuel products and services offered by service stations in the Catchment Areas, for example: • fast and easy payment options • quality of customer service • food and coffee offer • opening hours. (c) In the Purchaser's view, the size of service station is not a determining factor in influencing the ability to increase fuel volume in sites across the Catchment Areas and the individual sites in the Catchment Areas."[68]

2.43 Pelco also recognised the importance of location on competition between service stations in the retail sale of motor fuels:

"In our experience, most consumers will [redacted]*"*[69]

"Consumers are increasingly [redacted] *In our experience, customers are* [redacted]*. In the last 20 years with the expansion of the road networks, and increased cost of house prices in the greater Dublin area,* [redacted] *This means that* [redacted] *We would give the example of* [redacted] *where we believe our local competitors* [redacted]

[67] Circle K Phase 2 RFI Response, question 20.

[68] Circle K Phase 2 RFI Response, question 16.

[69] Pelco Phase 1 RFI Response, question 1 (c).

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[redacted]."[70]

2.44 The Commission also engaged with third parties with respect to the role that location plays in competition between service stations:

- **Industry Expert**: Industry Expert stated "*that in micro markets traffic flows are important in determining how customers travel and how traffic flows to certain filling stations.* [Industry Expert] *stated that how competition works within these micro or local markets is important.* [Industry Expert] *stated that a filling station's location and price are key factors determining which filling stations customers buy from*. [Industry Expert] *stated that Pelco's station close to Darndale in Dublin is in a micro market and listed various filling stations that customer* [sic] *pass as they travel from Dublin city centre towards Malahide.* [Industry Expert] *stated that there are numerous Circle K sites located on this route alone.* [Industry Expert] *stated that such a route would be considered a micro market and that it is important to understand competition between filing* [sic] *stations at such a local level."*[71]

  When asked, with respect to "micro markets", whether there is a distance within which service stations compete with other service stations and whether suppliers consider service stations beyond a certain distance as not competing with their own service stations, Industry Expert stated "*that a general rule of thumb for station in an urban area is that it competes with filling stations within a 3-mile-radius.* [Industry Expert] *stated that this distance would be between 10-15 miles for filling stations located in rural areas*."[72]

- **Applegreen:** When asked how far, in its experience, customers typically travel to purchase fuel, Applegreen stated "*that that it could not definitely*

[70] Pelco Phase 2 RFI Response, question 12.

[71] Industry Expert Call Note, dated 28 November 2024, page 3.

[72] Industry Expert Call Note, dated 28 November 2024, page 3.

say how far customers travel for fuel, as there are various variables. Applegreen stated that in an urban area customers will travel shorter distances, such as it could be up to [redacted]*, while in rural areas the distance may be up to* [redacted]*, but that it would be dependent on the customer, including their preferred routes and when they need fuel."*[73]

- **Maxol:** When asked to give an example of how it monitors its competitors, Maxol stated "*for example, if a consumer is coming from a commuter town, Maxol's competitors are those stations* [redacted]*. Maxol stated that the* [redacted]*. Maxol stated that, for example, if its site is on a* [redacted]*. Maxol stated that some consumers will travel further for cheaper fuel. Maxol stated that consumers around the border with Northern Ireland will travel into Northern Ireland to buy fuel as it is cheaper than in the State, as there are differences in excise duties which has an impact on prices."*[74]

- **Certa:** When asked how far customers generally travel to purchase fuel, Certa stated it is "*dependent on the customer. Certa stated that some customers are loyal to a particular service station whereas others are more conscious of price. Certa stated that some commuters do not generally consider these factors and pull in when they require fuel."*[75]

- **Top Oil**: When asked if there was a set distance that Top Oil uses when determining which competitors to monitor, Top Oil stated "*that since Covid consumers have changed their commuting patterns and are generally more willing to drive longer distances. Top Oil stated that for example a commuter may live in Limerick but works in Dublin twice a week, and as such the service stations on that route would be considered by that*

[73] Applegreen Call Note, dated 5 February 2025, page 2.

[74] Maxol Call Note, dated 5 February 2025, page 2.

[75] Certa Call Note, dated 6 February 2025, page 4.

consumer."[76] Top Oil also stated that "*consumers may travel further distances to use amenities of a service station if they happen to have a preference for these amenities."*[77] Top Oil also stated that "*for example, if it notices a* [redacted] *volume of traffic in a competitor site, it raises the question for Top Oil as* [redacted]."[78]

2.45 The third-party evidence suggests that the convenience of a service station's location in relation to customers' travel routes can influence a customer's choice of where to purchase motor fuel. The Commission's view is that location is a key factor of competition in the retail sale of motor fuels in local areas.

Non-fuel Offering as a factor of competition

2.46 Most service stations in the State also sell non-fuel products and services. These non-fuel offerings can include food, drinks, groceries and car washing. Food, drinks and groceries are typically sold from forecourt convenience stores.[79] Forecourt convenience stores can operate directly under the motor fuel supplier's brand, such as Circle K, or under a different retailer's brand, such as *Centra* or *Spar.*

2.47 Circle K noted that a service station's non-fuel offering can influence customers' choice of service station, and identified the following factors:

> "*….. (b) range of non-fuel products and services offered by service stations in the Catchment Areas, for example:*
>
> - *fast and easy payment options*
> - *quality of customer service*
> - *food and coffee*

[76] Top Oil Call Note, dated 27 March 2025, page 2.

[77] Top Oil Call Note, dated 27 March 2025, page 2.

[78] Top Oil Call Note, dated 27 March 2025, page 2.

[79] Car washing facilities are typically located close to the forecourt convenience store.

- *opening hours*".[80]

2.48 Furthermore, with respect to the importance of the size of a service station's non-fuel offering and forecourt convenience store, Circle K stated:

> "*As far as* [Circle K] *is aware, there is no evidence to suggest that large forecourt convenience stores compete more closely with each other in the retail sale of motor fuels, as all stores compete very visibly from a fuel pricing perspective. Notwithstanding this, forecourts with wider offerings in convenience and food can enhance the customer experience, but they still need to be competitive on price. For example, in the Airside Catchment Area, the two Applegreen stores (located in Montgorry and Swords), have significantly larger forecourts and convenience offerings than* [Circle K's] *stores in the same Catchment Areas. Although these stores can provide more in respect of their food and convenience offerings, they still need to be competitive in respect of fuel pricing.*"[81]

2.49 When asked about the factors which influence each service station's ability to increase the volume of motor fuels it sells to the public, Pelco identified its in-store offering and good quality coffee as an indirect factor.[82] Pelco expanded on the role of its non-fuel offering in response to its Phase 2 RFI:

> *"Consumers are* [redacted].
>
> *As a company, our strategy has always been to offer our customers* [redacted]

[80] Circle K Phase 2 RFI, response to question 16(b).

[81] Circle K Phase 2 RFI Response, question 17.

[82] Pelco Phase 1 RFI, question 11.

This has enabled us to [redacted].

In order to [redacted]

Our appearance – [redacted]

With many of our customers [redacted]

We have drawn up the attached document, [redacted]."[83]

2.50 Pelco expanded further on its non-fuel offering in its Oral Submission to the Commission:

"With many of our customers [redacted]

[83] Pelco Phase 2 RFI Response, question 8(b).

[redacted]"[84]

2.51 The Commission considers Pelco's non-fuel offering in further detail in Section 5.

2.52 The Commission also engaged with third party suppliers in relation to the role that service stations' non-fuel offerings play in the retail sale of motor fuels.

2.53 **Industry Expert**: During a call with the Commission, Industry Expert stated that "*there has been a change in the motor fuel market, with motor fuel now usually representing about 30% of the revenue generated by a filling station, with food offerings and non-fuel offerings becoming the main drivers of revenue now.*"[85] Industry Expert expanded on this point, stating that "*more customers enter a filling station to buy food or a non-fuel product than to purchase motor fuel.* [Industry Expert] *stated that as the time between refills for vehicles is increasing, customers are purchasing fuel from filing stations less regularly.* [Industry Expert] *stated that while the volume of motor fuel sold is not in absolute decline, this does not account for an increasing population.* [Industry Expert] *stated that in light of a*

[84] Oral Submission, page 27, line 15-32.

[85] Industry Expert Call Note, dated 28 November 2024, page 2.

growing population, fuel consumption is in decline and more customers come to filling stations to buy food and drink than purchase fuel."[86] Finally, Industry Expert also highlighted a growing number of partnerships between service station operators and food and retail providers, and stated that "*Applegreen and Marks and Spencer's have partnered and there is a proliferation of fast-food restaurants setting up in filling stations*."[87]

- **Applegreen**: When asked whether its non-fuel offering impacts a service station's fuel sales, Applegreen stated "***that it depends. Applegreen stated that*** [redacted] (emphasis added). *Applegreen stated that, on the other hand, if there is a* [redacted]."[88]

- **Maxol**: When asked what factors drive competition in the retail sale of motor fuels at a local level, Maxol stated that "*competition in these areas is driven by the price of fuel. Maxol stated that there are high levels of competition in the retail sale of motor fuels and that consumers are price sensitive.* ***Maxol stated that consumers are much more sophisticated and that they want good coffee, good food and good services, as well as loyalty apps and schemes. Maxol noted that the experience and level of customer service at a site, as well as ancillary services available at a site, are all factors which affect how consumers decide where to spend their money*** (emphasis added)."[89]

- **Certa**: During a call with the Commission, Certa stated that "*service stations are also partnering with fast food chains and other food brands more often. Certa stated that there is a greater push in the market for delis, coffee and*

[86] Industry Expert Call Note, dated 28 November 2024, page 4.

[87] Industry Expert Call Note, dated 28 November 2004, page 4.

[88] Applegreen Call Note, dated 5 February 2025, page 5.

[89] Maxol Call Note, dated 5 February 2025, pages 1-2.

fast food. Certa stated this is an area of the market which it does not cater to. Certa stated that bigger brands have more of a margin to take the hit in declining fuel revenue as they can increase their food sales to account for the difference."[90]

- **Top Oil**: When asked about the factors that drive competition in a local area for the retail sale of motor fuel, Top Oil stated that "*promotional offers, customer amenities such as food offerings like a fast-food restaurant or a deli, and other amenities such as car washes are a factor*."[91]

2.54 The Commission considers that a service station's non-fuel offerings can also influence customers' decisions as to where they purchase motor fuel, albeit to a lesser extent than price and location.

Fuel Cards as a factor of competition

2.55 Several motor fuel suppliers sell fuel cards to commercial customers.[92] Commercial customers, such as businesses that operate a fleet of vehicles, may purchase motor fuels at service stations using fuel cards. Fuel cards are payment cards issued by fuel companies (including Maxol, Circle K and Applegreen) and independent operators (including Diesel Card Ireland Limited ("DCI") and Morgan Fuels Ireland Limited) which enable commercial customers to purchase motor fuels at participating service stations without the driver paying at the time of the purchase. Service stations typically accept a range of fuel cards, although certain suppliers will not accept fuel cards of other motor fuel suppliers.[93] Circle K's website includes the following page in relation to its fuel card offering:

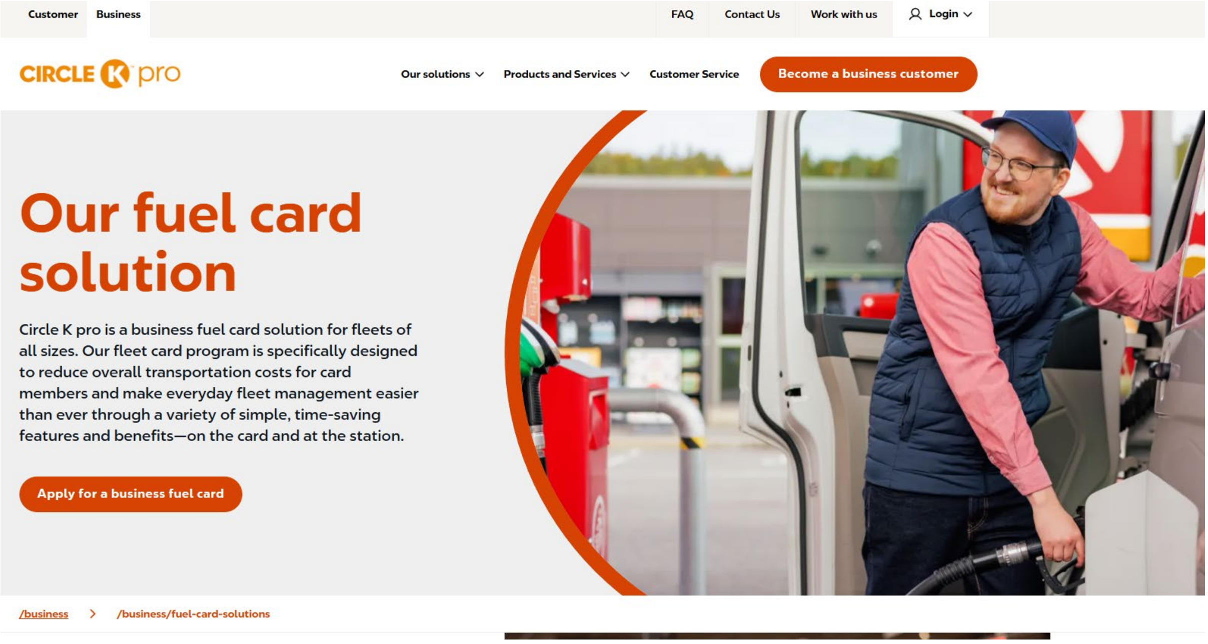
[90] Certa Call Note, dated 6 February 2025, page 5.

[91] Top Oil Call Note, dated 27 March 2025, page 1.

[92] Applegreen Call Note, dated 5 February 2025, page 4. Certa Call Note, dated 6 February 2025, page 4. Maxol Call Noted, dated 5 February 2025, page 3.

[93] For clarity, certain service station operators (such as Circle K) also operate loyalty card programmes. Unlike fuel fuels, loyalty cards are not specifically aimed at corporate customers. Loyalty cards allow customers to obtain benefits such as discounted fuel and free coffees based on their purchasing activity. More information about Circle K's loyalty card programme can be found on its website: https://www.circlek.ie/extra

Figure 8: Circle K's website in relation to fuel cards



Source: Circle K's website[94]

2.56 Approximately [redacted]% of Circle K's total fuel sales (by volume) between 1 January 2024 and 31 August 2024 in the State were accounted for by sales to fuel card customers.[95]

2.57 The Commission also engaged with third party motor fuel suppliers in relation to the role fuel cards play in the retail sale of motor fuels.

2.58 **Applegreen:** During a call with the Commission, Applegreen stated that fuel cards "*are primarily used by commercial customers that operate fleets of vehicles. Applegreen noted that customers which use its fuel cards* [redacted]"[96] Applegreen stated that its fuel cards are only offered to and used by commercial customers.[97] When asked what proportion of its sales are attributable to fuel cards, Applegreen stated that it can vary between sites, and stated that "*if there is a* [redacted]

[94] See https://www.circlek.ie/business/fuel-card-solutions

[95] Circle K Phase 2 RFI Response, question 24.

[96] Applegreen Call Note, dated 5 February 2025, page 4.

[97] Applegreen Call Note, dated 5 February 2025, page 4.

[redacted] *Applegreen stated that for other stations* [redacted]*, but that it can vary on average* [redacted].*"*[98] Applegreen noted that it accepts a range of different fuel cards, "[redacted]".[99] Applegreen explained that "*when it accepts fuel cards which are not its own that it invoices the issuer of the fuel card for the fuel sold from the Applegreen site and that the issuer then deals with the customer based on their own pricing*."[100]

- **Maxol**: When asked what role fuel cards have in Maxol's business, and whether it accepts the fuel cards of other companies, Maxol stated "*its fuel card business is business to business and that Maxol has a service station network which fuel card users can avail of. Maxol stated that the pricing offered to fuel card users is different to the price which is displayed to regular retail consumers. Maxol stated that it partners with* [redacted] *and Texaco in a certain number of locations and can accept both brands' fuel cards at these locations. Maxol stated that it does not accept Circle K branded fuel cards as Circle K does not allow anyone else to use its own network.*[101] *Maxol stated that Circle K currently has the largest network. Maxol stated that it has arrangements in place with DCI and* [redacted] *to accept these fuel cards at its service stations*."[102]

  When asked if it had any views on the Proposed Transaction, Maxol stated that "*an important aspect of this transaction and Circle K's market position arises in the fuel card segment. In Maxol's view, the acquisition may further strengthen Circle K's position with regard to the Irish fuel cards sector.*"[103] Expanding on its view, Maxol stated that "[redacted]

[98] Applegreen Call Note, dated 5 February 2025, page 4.

[99] Applegreen Call Note, dated 5 February 2025, page 4.

[100] Applegreen Call Note, dated 5 February 2025, page 4.

[101] Circle K stated that it accepts seven non-Circle K fuel cards, such as DCI, Commercial Shipping, Morgan and DKV (paragraph 5.1.3 of the Circle K Written Response).

[102] Maxol Call Note, dated 5 February 2025, page 3.

[103] Maxol response to the Commission's information request, dated 6 September 2024, question 8.

CCPC

[redacted]."[104]

2.59 **Certa:** During a call with the Commission, Certa stated "*that it accepts fuel cards"* and that *"it sells fuel cards and that it is for business-to-business customers."[105]* Certa stated *"that it accepts DCI fuel cards and the vast majority of brands of fuel cards with the exception of Circle K and Applegreen*."[106]

- **Top Oil:** When asked about the role that fuel cards play in its business, Top Oil stated, "*that it has several partners it works with. Top Oil stated that one of the primary partners would be DCI which is a leading fuel card provider in the State. Top Oil stated that it partners with a few fuel card providers and would accept their fuel cards at its sites and charge a fee to the fuel card provider*."[107]

2.60 The Commission considers fuel cards to be a factor of competition for the retail sale of motor fuels in local areas, particularly for commercial customers which avail of fuel cards and operate a fleet of vehicles.

Forecourt convenience stores

2.61 Forecourt convenience stores are attached to service stations and typically sell groceries, confectionery, snacks, drinks, hot food and other non-fuel products. In

[104] Maxol response to the Commission's information request, dated 6 September 2024, question 8.

[105] Certa Call Note, dated 6 February 2025, page 4.

[106] Certa Call Note, dated 6 February 2025, page 4.

[107] Top Oil Call Note, dated 27 March 2025, page 3.

recent years, convenience retailing has formed an increasingly important aspect of service stations' business.[108] The Irish Petrol Retailers Association has stated the following in relation to the forecourt convenience store aspect of the service station sector:

> *"Due to changing demographics with people having to travel further but with less time to eat, forecourt and convenience retailing has become one of the fastest growing sectors of the Irish retail market."*[109]

2.62 Forecourt convenience retailers are investing more in their convenience retail offerings in response to the increasing importance of convenience retailing. As noted above, certain service station operators are entering into partnerships with food and retail providers with respect to their non-fuel offerings. Convenience retailing, therefore, represents a significant market trend for service station operators.

Circle K's acquisition strategy and activity

2.63 The Commission has considered Circle K's acquisition strategy and recent acquisition activity as part of its review of the Proposed Transaction.

Circle K's approach to acquisitions

2.64 In response to the Phase 2 RFI, Circle K stated that it identifies potential service station acquisition targets in several ways.[110] First, Circle K stated that it may be [redacted].[111] Alternatively, Circle K may make [redacted] as Circle K explained as follows:

- *"assessing the* [redacted]

[108] Industry Expert Call Note, dated 28 November 2024, page 4.

[109] Irish Petrol Retailers Association (2022), *Forecourt & Retail News October 2022,* pg.12, available at https://ipra.ie/forecourt-retail-news-october-2022/

[110] Circle K Phase 2 RFI Response, dated 23 December 2024, question 12.

[111] Circle K Phase 2 RFI Response, dated 23 December 2024, question 12.

[redacted];

- *assessing the* [redacted];
- *reviewing the* [redacted];
- *assessing if the* [redacted];
- *establishing if the* [redacted];
- *determining if the service station is in* [redacted]".[112]

[112] Circle K Phase 2 RFI Response, dated 23 December 2024, question 12.

2.65 With respect to the Proposed Transaction, Circle K stated that "[t]*he Pelco group was identified due to the presence of sites in* [redacted] *in a* [redacted] *for* [Circle K] *and the* [redacted]."[113]

Circle K's recent acquisitions

2.66 Circle K provided information in relation to each service station that it acquired between January 2020 to December 2024.[114] During this time period, Circle K acquired four service stations, as outlined in Table 3.

Table 3: Circle K's service station acquisitions between January 2020 to December 2024

Service Station	Date of Acquisition	Formerly branded as	Current Status
Kilrush Roundabout, Dungarvan, Co. Waterford, X35 VX06	11 March 2020	Campus Fuel	Circle K CoCo site
Battery Road, Longford, N39 X9C5	21 July 2021	Circle K[115]	Circle K CoCo site
Callinagh, Newcastle West,	15 November 2021	Circle K	Circle K CoCo site

[113] Circle K Phase 2 RFI Response, question 12.

[114] Circle K Phase 2 RFI Response, dated 23 December 2024, question 10 and Circle K Phase 2 RFI Response, dated 17 February 2025, question 6.

[115] Circle K stated that prior to this service station being acquired as a CoCo site, it was a licensee service station at which Circle K set prices (Circle K Written Response, paragraph 5.1.3).

Co. Limerick, V42 AD72			
Main Street, Grange, Co. Sligo, F91 E6DX	1 June 2022	Circle K	Circle K CoCo site

Source: Circle K[116]

[116] Circle K Phase 2 RFI Response, question 10.

2.67 Circle K also provided information to the Commission in relation to service stations Circle K considered or is considering as potential acquisition targets. Between January 2023 and December 2024, Circle K assessed [redacted] service stations as potential acquisition targets, with Circle K categorising its potential acquisition of [redacted] specific service stations as [redacted] as of February 2025.[117]

[117] Circle K Phase 2 RFI Response, dated 23 December 2024, question 11, document "11.1 RFI Question 11

3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

3.1 In this section, the Commission identifies the product and geographic markets that are relevant for the assessment of the likely effects of the Proposed Transaction. The structure of this section is as follows:

(i) **Principles of market definition**: The Commission sets out the general principles that apply to market definition based on the Commission's Merger Guidelines;[118]

(ii) **The horizontal and vertical overlaps between the Parties**: The Commission outlines the overlapping activities of the Parties;

(iii) **The relevant product markets:** The Commission considers the principles of product market definition, previous decisions, the views of the Parties and third parties before setting out the Commission's assessment of relevant product markets in relation to the Proposed Transaction;

(iv) **The relevant geographic markets:** The Commission considers the principles of geographic market definition, previous decisions, the views of the Parties and third parties before setting out the Commission's assessment of relevant geographic markets in relation to the Proposed Transaction;

(v) **Conclusion**: The Commission identifies the potential relevant markets that it has assessed for the purposes of its competitive assessment of the Proposed Transaction.

Relevant Principles

[118] Guidelines for Merger Analysis, adopted by the Competition and Consumer Protection Commission on 31 October 2014: Microsoft Word - Merger Guidelines CCPC ("Commission's Merger Guidelines").

3.2 The role of market definition is explained in the Commission's Merger Guidelines. Market definition is a conceptual framework within which relevant information can be organised for the purpose of assessing the competitive effects of a merger.[119]

3.3 As outlined in the Commission's Merger Guidelines, market definition provides a framework for assessing the competitive effects of a merger; it is a means to an end. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of the merger, as there can be constraints on the merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints will be more significant than others. The Commission expects to take such factors into account in its assessment of competitive effects.[120]

3.4 According to the Commission's Merger Guidelines:

> *"The relevant product market is defined in terms of products rather than producers. It is the set of products that customers consider to be close substitutes. In identifying the relevant product market, the Commission will pay particular attention to the behaviour of customers, i.e., demand-side substitution. Supply-side substitution (i.e., the behaviour of existing and/or potential suppliers in the short term) may also be considered".*[121]

3.5 The relevant market typically contains the most significant alternatives available to the customers of the merging parties. Identifying the precise relevant market involves an element of judgement, with appropriate weight being given to factors on both the demand and supply side.

3.6 The Commission's Merger Guidelines note that:

> *"Whether or not a product is a close substitute of a product supplied by one or more of the merging parties will depend on the willingness of customers to switch from one product to the other in response to a small but significant and*

[119] Commission's Merger Guidelines, paragraph 2.3.

[120] The Commission's Merger Guidelines, paragraphs 2.1 to 2.6

[121] The Commission's Merger Guidelines, paragraph 2.8.

non-transitory increase in price (or an equivalent decrease in quality). This will involve an assessment of the characteristics and functions of the products in question".[122]

3.7 The Commission may apply the small but significant non-transitory increase in price ("SSNIP") test as a tool to assist with market definition. [123] The SSNIP test seeks to identify the smallest group of products and geographic areas within which a hypothetical monopolist could profitably impose a SSNIP without a sufficient number of consumers switching to alternative products to render the price increase non-profitable. However, the Commission notes that the SSNIP test is just one of the tools used in defining the relevant product market, and its applicability varies depending on pricing practices in the market. A substantial emphasis should also be placed on product characteristics, price and intended use as well as observed substitution patterns between various products that can potentially be included in the same product market.

3.8 It may not always be possible to draw a clear line around the fields of rivalry. That being so, it is a mistake to regard as relevant to the competition analysis only those products defined as falling within the relevant market and to disregard any competitive pressure from those products defined as falling outside it. The Commission may therefore consider segmentation within the relevant market or factors outside the relevant market that impose competitive constraints on firms in the relevant market, where appropriate.

3.9 Ultimately, the Commission's definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the merger under investigation.[124]

Horizontal and Vertical Overlaps

3.10 In the Merger Notification Form, the Parties identified the following horizontal and vertical overlaps:

[122] The Commission's Merger Guidelines, paragraph 2.9.

[123] The Commission's Merger Guidelines, paragraph 2.10.

[124] Commission's Merger Guidelines, paragraph 2.6.

"The Proposed Transaction gives rise to a horizontal overlap between [Circle K] *and* [Pelco] *in the State in: (a) the retail sale of motor fuels; and (b) the operation of forecourt convenience stores adjacent to the forecourts from which motor fuels are sold by the Parties"*[125]

"Applying this same rationale, arguably, there is a horizontal overlap between the activities of [Circle K] *and* [Pelco]*:*

(a) in respect of the retail sale of motor fuels:

i) within a 3.2 km radius of the six Target Service Stations located in designated urban areas (being: Artane, Balbriggan, Mullingar, Newton (sic), Rathfarnham and Skerries); and

ii) within an 8 km radius of the three Target Service Stations located in designated rural areas (being: Airside, Batterstown and Rolestown); and

(b) in respect of the operation of forecourt convenience stores adjacent to the forecourts from which motor fuels are sold:

i) within a 3.2 km radius of the six Target Service Stations located in designated urban areas (being (Artane, Balbriggan, Mullingar, Newton (sic), Rathfarnham and Skerries); and

ii) within an 8 km radius of the three Target Service Stations located in designated rural areas (being, Airside, Batterstown and Rolestown)."[126]

"There is a vertical overlap between the Parties as [Circle K] *is active in the wholesale supply and distribution of motor fuel and* [Pelco] *operates service stations selling motor fuel."*[127]

3.11 The Commission has identified the following horizontal and vertical overlaps between the Parties:

- The retail sale of motor fuels;
- The operation of forecourt convenience stores;

[125] Merger Notification Form, paragraph 45.

[126] Merger Notification Form, paragraph 48.

[127] Merger Notification Form, paragraph 49.

- The provision of fuel cards; and
- The wholesale supply and distribution of motor fuels.

Relevant Product Markets

Previous Decisions of the Commission

3.12 The Commission has considered the retail sale of motor fuels and the operation of forecourt convenience stores in several previous merger decisions.[128] These decisions provide context for the consideration of the relevant markets in relation to the Proposed Transaction.

3.13 In its most recent Phase 2 determination in this sector, *M/23/068 – McMullan Bros/Naas Fuels Limited*, the Commission considered the following four potential product markets:

- The retail sale of motor fuels;
- The operation of forecourt convenience stores;
- The sale of fuel cards; and,
- The wholesale supply and distribution of motor fuels.

Previous Decisions of the European Commission

3.14 The European Commission has also considered the motor fuels sector in its previous merger decisions. These decisions provide context for the consideration of the relevant markets in relation to the Proposed Transaction.

3.15 In *Case M.9014 - PKN Orlen/Grupa Lotos*, the European Commission considered that the market for the retail supply of motor fuels could be further segmented between sales to business to business ("B2B") customers and sales to business-to-consumer

[128] See, for example, *M/24/068 McMullan Bros./Naas Fuels Limited*, *M/23/018 – Maxol/Kinsella's Fuel Services*, *M/20/029 – Brookfield (Greenergy)/Amber Oil*, *M/18/004– Maxol/Brennans*, *M/17/020– Maxol/Great Gas (Turvey)*, *M/17/011– Maxol/Melia's Harold's Cross*, and *M/15/020 – Topaz/Esso Ireland*.

("B2C") customers, where sales using of fuel cards constituted B2B sales and sales without the use of fuel cards constituted B2C (business-to-consumer) sales.[129]

3.16 In Case *M.10438 - MOL / OMV SLOVENIJA,* the European Commission considered that, in line with its previous decisional practice, the retail supply of motor fuels is a distinct market and concluded that the relevant product markets to assess for the purpose of that decision were the retail supply of motor fuels (i) to B2C customers and (ii) to B2B customers.[130]

3.17 In *Case M.7603 - Statoil Fuel and Retail / Dansk Fuels*, the European Commission considered the segmentation of the market between (i) sales via fuel cards to business/public customers (B2B customers) and (ii) sales without fuel cards to private customers (B2C customers).[131] In that case, the Commission analysed separately the impact of the transaction on the markets for the retail sale of motor fuels to B2B customers and to B2C customers. Ultimately, the European Commission left the market definition open as the transaction raised serious doubts as to its compatibility with the internal market, regardless of whether a distinction was made between retail sales to B2B customers and retail sales to B2C customers.[132]

3.18 The European Commission has also previously considered whether the retail supply of motor fuels should be segmented by fuel type and/or by type of fuel station. In Case *M.10438 - MOL / OMV SLOVENIJA,* the European Commission stated that "*there are no elements in the case at hand that would justify departing from its previous decisional practice, i.e. while diesel and gasoline are not substitutable for consumers, they are generally both sold at fuel stations and indeed all of the Parties' regular fuel stations in Slovenia offering diesel or gasoline offer both*".[133]

3.19 With respect to segmenting the retail sale of motor fuels by type of service station (for example, between motorway and non-motorway service stations), the European

[129] *Case M.9014 - PKN Orlen/Grupa Lotos*, paragraph 627.

[130] Case *M.10438 – MOL /OMV SLOVENIA,* paragraph 50.

[131] *Case M.7603 - Statoil Fuel and Retail / Dansk Fuels*, paragraph 26.

[132] *Case M.7603 - Statoil Fuel and Retail / Dansk Fuels*, paragraph 40.

[133] Case M.10438 – MOL/OMV SLOVENIA, paragraph 40.

Commission has in certain cases decided in favour of such a segmentation,[134] while in other cases it did not apply such a distinction.[135]

Views of the Parties

3.20 In the Merger Notification Form, the Parties identified the following potential product markets:

> *"The CCPC defines markets to the extent necessary depending on the circumstances of a given case.* ***Based on previous decisional practices of the CCPC, the Parties consider that there is a relevant product market for the retail sale of motor fuels (diesel (DERV), petrol, and automotive lubricants)*** (emphasis added)*. … The Proposed Transaction is similar to the transactions which were the subject of the Determinations in M/15/020 and M/23/018 (and similar Determinations relating to the sale of service stations with associated forecourt convenience stores). As such,* ***the Parties are of the view, and would suggest, that there is no reason to depart from the approach previously taken by the CCPC and that the first relevant product market is the market for the retail sale of motor fuels*** (emphasis added)*."*[136]

> *"In its Determination M/23/018 – Maxol/Kinsella's Fuel Services, the CCPC assessed the potential substantial lessening of competition for the operation of forecourt convenience stores by defining the relevant product market as the operation of forecourt convenience stores and analysing the impact of the Proposed Transaction in the potential market for the operation of forecourt convenience stores.* ***The Parties are of the view, and would suggest, that there is no reason to depart from the approach previously taken by the CCPC and that there is a second relevant product market for the operation of forecourt convenience stores*** (emphasis added)*."*[137]

[134] Cases M.10134 – *EG Group/OMV Germany Business*, paragraph 40 and M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 626.

[135] Cases M.7603 – *Statoil Fuel and Retail/Dansk Fuels*, paragraph 28; M.7849 – *MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija*, paragraph 21.

[136] Merger Notification Form, paragraph 106-109.

[137] Merger Notification Form, paragraph 110-111.

3.21 The First Economic Report provided by Circle K reiterated the Parties' view with respect to the appropriate product market: "*In the present case there appears to be no issue in relation to the relevant product markets being those for motor fuels and grocery goods as the Target outlets all comprise filling stations with forecourt convenience stores.*"[138]

3.22 In the Pelco Written Response, Pelco stated that it agreed with the Assessment's preliminary conclusion that there the appropriate product markets were: (i) the retail sale of motor fuels; (ii) the operation of forecourt convenience stores; (iii) the sale of fuel cards; and (iv) the wholesale supply and distribution of motor fuels.[139]

Views of third parties

3.23 The Commission engaged with several third parties during the course of its review of the Proposed Transaction. These third parties did not express any specific views with respect to the potential product markets.[140]

Commission's Analysis of the Relevant Product Markets

3.24 As noted above, the Commission has identified the following four core horizontal and vertical overlaps between the activities of the Parties in the State. These are:

- The retail sale of motor fuels;
- The operation of forecourt convenience stores;
- The sale of fuel cards; and
- The wholesale supply and distribution of motor fuels.

3.25 The Commission has taken each of the core overlaps between the Parties as the starting point for identifying the scope of the relevant product markets for the purposes of its assessment of the competitive effects of the Proposed Transaction.

[138] First Economic Report, paragraph 2.1.

[139] Pelco Written Response, paragraphs 3.8 to 3.11. For clarity, the Commission identified four potential product markets in the Assessment.

[140] For example, calls with Applegreen; Certa; Top Oil; and Maxol.

The retail sale of motor fuels

3.26 Circle K and Pelco both sell motor fuels from their respective service stations. As noted above, the Commission has assessed the retail sale of motor fuels in previous determinations, including in M/23/068 – *McMullan Bros/Naas Fuels Limited.*

3.27 In that determination, the Commission considered various potential segmentations within the retail sale of motor fuels. These included potential segmentations by fuel type (diesel, petrol, etc.) and type of service station (for example, motorway and non-motorway service stations).

Segmentation by fuel type

3.28 In *M/23/068 – McMullan Bros/Naas Fuels Limited*, the Commission noted that different types of motor fuels are generally not substitutable from the customer's perspective, as specific vehicles will require a specific type of fuel. However, the Commission noted that different fuel types are generally sold from the same service stations.[141] Different fuel types are subject to similar competitive factors and wholesale prices are highly correlated, so that treating them as separate product markets would not add value. In any case, the Commission's assessment of the competitive impact of the Proposed Transaction is not affected by whether the retail sale of motor fuels is considered as a single overall potential market or segmented by fuel type.

3.29 In the present case, the Commission's assessment of the competitive impact of the Proposed Transaction is not affected by whether the retail sale of motor fuels is considered as a single overall potential market or segmented by fuel type. Furthermore, the Commission has not seen any reason to depart from its previous approach.

Segmentation of type of service station

3.30 In *M/23/068 – McMullan Bros/Naas Fuels Limited*, the Commission noted that its assessment of the competitive impact of that transaction was not affected by whether

[141] The European Commission has also noted that all fuel types are generally sold from the same point of sale and are therefore substitutable from a supply-side perspective. See Case M.9014 - *PKN Orlen/Grupa Lotos*, paragraph 598.

the retail sale of motor fuels was considered as a single overall potential market or segmented by type of service station (for example, motorway and non-motorway service stations).

3.31 Similarly, in the case of the Proposed Transaction, the Commission's assessment of the competitive impact of the Proposed Transaction is not materially affected by whether the retail sale of motor fuels is considered as a single overall market or segmented by type of service station. Furthermore, the Commission has not seen any reason to depart from its previous approach.

Segmentation by customer type

3.32 The Commission notes that the retail sale of motor fuels could potentially be segmented by customer type, such as between B2C customers and B2B customers.

3.33 In the present case, the Commission's assessment of the competitive impact of the Proposed Transaction is not affected by whether the retail sale of motor fuels is segmented by customer type. One potential segmentation considered was the use of fuel cards, which are primarily used by commercial customers. As outlined below, the Commission has separately assessed the sale of fuel cards in Section 5. Therefore, in this case, the Commission has not segmented the potential market for the retail sale of motor fuels by customer type.

Commission's conclusion with respect to the retail sale of motor fuels

3.34 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market as doing so will not materially alter the Commission's assessment of the competitive effects of the Proposed Transaction. Having considered the relevant information available to it, and having considered the views of the Parties, the Commission has found no reason to depart from the general approach taken in its previous merger determinations regarding the retail sale of motor fuels. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the potential product market for the retail sale of motor fuels.

The operation of forecourt convenience stores

3.35 Circle K and Pelco both operate forecourt convenience stores at their respective service stations. As noted above, the Commission has recently assessed the operation of forecourt convenience stores in M*/23/068 – McMullan Bros/Naas Fuels Limited.*

Commission's conclusion with respect to the operation of forecourt convenience stores

3.36 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market as doing so will not materially alter the Commission's assessment of the competitive effects of the Proposed Transaction. Having considered the relevant information available to it, and having considered the views of the Parties, the Commission has found no reason to depart from the general approach taken in its previous merger determinations regarding the operation of forecourt convenience stores. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the potential product market for the operation of forecourt convenience stores.

The sale of fuel cards

3.37 Circle K and Pelco sell fuel cards. The Commission has previously assessed the potential market for the sale of fuel cards in *M/23/068 – McMullan Bros/Naas Fuels Limited*.

Commission's conclusion with respect to the sale of fuel cards

3.38 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market as doing so will not materially alter the Commission's assessment of the competitive effects of the Proposed Transaction. Having considered the relevant information available to it, and having considered the views of the Parties, the Commission has found no reason to depart from the general approach taken in its previous merger determinations regarding the sale of fuel cards. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the potential product market for the sale of fuel cards.

The wholesale supply and distribution of motor fuels

3.39 Circle K is active in the wholesale supply and distribution of motor fuels, as it supplies motor fuels to service stations across the State. Pelco operates service stations and sources motor fuels from wholesale suppliers and distributors. Therefore, there is a potential vertical relationship between the Parties. The Commission has previously assessed the potential market for the wholesale supply and distribution of motor fuels in *M/23/068 – McMullan Bros/Naas Fuels Limited.*

Commission's conclusion with respect to the wholesale supply and distribution of motor fuels

3.40 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market as doing so will not materially alter the Commission's assessment of the competitive effects of the Proposed Transaction. Having considered the relevant information available to it, and having considered the views of the Parties, the Commission has found no reason to depart from the general approach taken in its previous merger determinations regarding the wholesale supply and distribution of motor fuels. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the potential product market for the wholesale supply and distribution of motor fuels to service stations.

Commission's conclusion on the relevant product markets

3.41 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission has, in the course of its assessment of the Proposed Transaction, found no reason to depart from the general approach as set out in previous merger determinations. The Commission has, therefore, identified the following potential relevant product markets for the purposes of assessing the Proposed Transaction:

- The retail sale of motor fuels.
- The operation of forecourt convenience stores;
- The sale of fuel cards; and

- The wholesale supply and distribution of motor fuels.

Relevant Geographic Markets

Relevant principles

3.42 Geographic market definition is explained in the Commission's Merger Guidelines as follows:

> *"The product market(s) affected by a merger may be geographically bounded if geography limits some customers' willingness or ability to switch products or some suppliers' willingness or ability to supply to customers. The relevant geographic market is usually defined in terms of the location of suppliers and it includes those suppliers that customers consider to be feasible substitutes. The relevant geographic market may be local, regional, national or wider."*[142]

> *"The approach to defining the relevant geographic market is similar to that of product market definition. Both can use the SSNIP test as an analytical tool."*[143]

3.43 According to the Commission's Merger Guidelines:

> *"The relevant geographic market consists of all supply locations that would have to be included for the hypothetical monopolist to find it profitable to impose a small but significant non-transitory increase in price. Beginning with the location of each of the merging parties, the SSNIP test is applied by considering what would happen if a hypothetical monopolist of the relevant product at that location imposed a small but significant non-transitory increase in price. If enough customers switch to suppliers in other locations, the next closest location where customers can purchase the relevant product is included. The SSNIP test is thus iteratively applied until a hypothetical monopolist could profitably increase the price of the relevant product in a location or group of*

[142] Commission's Merger Guidelines, paragraph 2.19.

[143] Commission's Merger Guidelines, paragraph 2.20.

locations by a small but significant non-transitory amount. This location or group of locations is thus defined as the relevant geographic market."[144]

3.44 According to the European Commission Notice on the definition of the relevant market for the purposes of European Union competition law:[145]

"In some markets, the competitive positions of suppliers may depend on the distance between each supplier and the customer. For example, transport costs may represent an important fraction of costs for certain products, which may put suppliers that are located at a greater distance from the customer at a significant competitive disadvantage relative to suppliers that are located closer to the customer. … Moreover, in consumer markets, travel distance or time to the supplier may be an important consideration. This is typically the case, for example, for airports, supermarkets or petrol stations."[146]

3.45 In the following sections, the Commission examines the geographic boundaries of each of the four product markets identified above.

Retail sale of motor fuels

Previous decisions of the Commission

3.46 The Commission has assessed the retail sale of motor fuels in previous merger determinations.[147] These decisions provide context for its consideration of the relevant geographic markets in relation to the Proposed Transaction.

3.47 In these previous determinations, the Commission assessed the retail sale of motor fuels on a national basis,[148] as well as by reference to various local catchment areas.[149] In respect of local catchment areas, the Commission assessed the retail sale of motor

[144] Commission's Merger Guidelines, paragraph 2.21.

[145] Commission Notice on the definition of the relevant market for the purposes of Union competition law, (C/2024/1645): Communication from the Commission – Commission Notice on the definition of the relevant market for the purposes of Union competition law.

[146] Paragraph 72.

[147] See M/23/068 – McMullen Bros/Naas Fuels Limited; M/23/018 – Maxol/Kinsella's Fuel Services; M/20/029 – Brookfield (Greenergy)/Amber Oil; M/18/004 – Maxol/Brennans; M/17/020 – Maxol/Great Gas (Turnvey); and M/17/011 – Maxol/Melia's Harold's Cross.

[148] M/23/068 – McMullen Bros/Naas Fuels Limited, paragraph 3.42.

[149] M/23/068 – McMullen Bros/Naas Fuels Limited, paragraph 3.42; M/23/018 – Maxol/Kinsella's Fuel Services, paragraph 15; M/20/029 – Brookfield (Greenergy)/Amber Oil, paragraph 38; M/18/004 – Maxol/Brennans, paragraph 16; M/17/020 – Maxol/Great Gas (Turnvey), paragraph 16; and M/17/011 – Maxol/Melia's Harold's Cross, paragraph 15.

fuels (i) within a 3.2km radius of the relevant target station in urban areas; and (ii) within an 8km radius of the relevant target station in rural areas.[150]

3.48 Regarding the definition of a rural or urban area, in *M/23/068 – McMullen Bros/Naas Fuels Limited*, the Commission applied the census definitions from the Central Statistics Office ("CSO").[151] According to the CSO, the census definition of an urban area is a town with a total population of 1,500 or more, while towns with population of less than 1,500 are considered rural.[152]

Previous decisions of the European Commission

3.49 The European Commission has previously considered the retail sale of motor fuels in its merger decisions.[153] In its decisions, the European Commission has considered the market for the retail supply of motor fuels to be either national in scope,[154] or national with local elements.[155]

3.50 When assessing local catchment areas, the European Commission, in *Case M.10652 – MOL / LOTOS PALIWA* and *Case M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija*, assessed the retail sale of motor fuels by reference to catchment areas of 2.5km, 5km and 20km in cities, suburban areas and rural areas respectively.[156] In C*ase M.10652 – MOL / LOTOS PALIWA*, the European Commission, having decided to assess the retail sale of motor fuels using isochrones based on driving distances of 2.5km, 5km and 20km in cities, suburban areas and rural areas

[150] M/23/068 – McMullen Bros/Naas Fuels Limited, paragraph 3.42; M/23/018 – Maxol/Kinsella's Fuel Services, paragraph 15; M/20/029 – Brookfield (Greenergy)/Amber Oil, paragraph 38; M/18/004 – Maxol/Brennans, paragraph 17; M/17/020 – Maxol/Great Gas (Turnvey), paragraph 17; and M/17/011 – Maxol/Melia's Harold's Cross, paragraph 16.

[151] M/23/068 – McMullen Bros/Naas Fuels Limited, paragraph 3.43.

[152] See, CSO, Urban and Rural Life in Ireland, available at Introduction Urban and Rural Life in Ireland, 2019 - Central Statistics Office.

[153] See, for example, *Case M.7311 - MOL / ENI CESKA / ENI ROMANIA / ENI SLOVENSKO; Case M.5796 - ENI/Mobil Oil Austria, Case M.9014 - PKN Orlen/Grupa Lotos; Case M.7603 - Statoil Fuel and Retail / Dansk Fuels; Case M.10652 – MOL / LOTOS PALIWA; Case M.4919 - STATOILHYDRO/ CONOCOPHILLIPS; Case No COMP/M.4532 – Lukoil / ConocoPhillips; Case M.3516 - Repsol / Shell Portugal; and Case M.10438 - MOL / OMV SLOVENIJA.*

[154] *Case M.7311 - MOL / ENI CESKA / ENI ROMANIA / ENI SLOVENSKO, paragraph 40; Case M.5796 - ENI/Mobil Oil Austria*, paragraph 13; and *Case M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija*, paragraph 41.

[155] *Case M.9014 - PKN Orlen/Grupa Lotos*, paragraph 653; *Case M.7603 - Statoil Fuel and Retail / Dansk Fuels*, paragraph 62*; Case M.10652 – MOL / LOTOS PALIWA*, paragraph 31; *Case M.4919 - STATOILHYDRO/ CONOCOPHILLIPS*, paragraph 29; *Case M.3516 - Repsol / Shell Portugal*, paragraph 10*;* and *Case M.10438 - MOL / OMV SLOVENIJA,* paragraph 89.

[156] *Case M.10652 – MOL / LOTOS PALIWA*, paragraph 34; and *Case M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija*, paragraph 82.

respectively, also had regard to 6-minute, 10-minute and 13-minute drivetimes in its analysis to emphasise the absence of competition concerns in that particular case.[157]

3.51 In *Case M.10438 - MOL / OMV SLOVENIJA*, the European Commission concluded that the market for the retail sale of motor fuels was national in scope but assessed local elements of competition on the basis of 15-minute drivetime catchment areas.[158]

Previous decisions of the UK Competition and Markets Authority (the "CMA")

3.52 The Parties referenced the CMA's approach in various submissions and particularly referenced the CMA's approach to market definition. The CMA has also previously considered the retail sale of motor fuels in its merger decisions. The Commission has considered the CMA's approach, where appropriate, in its assessment of the Proposed Transaction.

3.53 In its decisions, the CMA considered the market for the retail supply of motor fuels at a national level as well as on a local basis. When considering local markets in this sector, the CMA has applied catchment areas of (i) up to a 10-minute drive-time for non-supermarket petrol filling stations; and (ii) up to a 20-minute drive-time for supermarket petrol filling stations.[159]

3.54 In *CD&R / Morrisons*, the CMA considered the retail sale of motor fuels at both a national level and within local areas where the merging parties were both active. With respect to local markets, the CMA adopted catchment areas of (i) up to a 10-minute drive-time for non-supermarket petrol filling stations; and (ii) up to a 20-minute drive-time for supermarket petrol filling stations.[160]

Views of the Parties

Merger Notification Form

[157] Case M.10652 – MOL / LOTOS PALIWA, paragraph 44.

[158] *Case M.10438 - MOL / OMV SLOVENIJA,* paragraph 89.

[159] See *CD&R / Morrisons, Asda/Belis* and *Asda/Sainsbury.*

[160] Paragraph 5.

3.55 In the Merger Notification Form, the Parties stated that there was no reason to depart from the Commission's previous approach to considering geographic markets in the motor fuels sector:

> *"The Parties are of the view, and would suggest, that there is no reason to depart from the approach previously taken by the CCPC, namely that: (a) the relevant geographic market for the retail sale of motor fuels encompasses a radius of 3.2km in relation to a retail motor fuel service station in an urban area, and a radius of 8km in relation to a retail motor fuel service station in a rural area: and (b) the relevant geographic market for the operation of associated forecourt convenience stores is within a radius of 3.2km of a target station in an urban area and a radius of 8km in relation to a rural area."*[161]

Phase 1 RFIs

3.56 In responding to the Phase 1 RFI, Circle K stated it *"believes that the distances used by the CCPC in past Determinations relating to the retail sale of motor fuel sector (for both urban and rural areas) are broadly accurate when considering how far a customer may be prepared to travel between competing service stations within a Catchment Area to purchase motor fuel (being the primary rationale behind such distances)".*[162]

3.57 When asked over what distance it considers that other service stations compete with its own service stations in the certain local areas, Pelco stated that "[redacted]." (emphasis added)[163]

Phase 2 RFIs

3.58 In the Phase 2 RFIs, the Parties stated that service stations face competitive constraints beyond the relevant catchment area and that customers are travelling further distances than they have in the past.[164]

[161] Merger Notification Form, paragraph 114.

[162] Circle K Phase 1 RFI Response, question 7.

[163] Pelco Phase 1 RFI Response, question 7.

[164] Circle K Phase 2 RFI, dated 23 December 2025, question 19, question 20 and Pelco Phase 2 RFI, question 12.

3.59 Circle K stated, "[i]*t is also important to note that service stations within Catchment Areas do not always exert the same level of influence over each other, as some sites are on different traffic flows, while others on the same routeway but slightly outside the Catchment Area do.*"[165]

3.60 Pelco further stated that: "*In our experience, customers are* [redacted] *In the last 20 years with the expansion of the road networks, and increased cost of house prices in the greater Dublin area,* [redacted]."[166]

The Economic Reports

3.61 While the Parties initially agreed with the Commission's previous approach to geographic market definition in the motor fuel sector, the Economic Reports outlined that, in their view, (i) the Commission's previous approach to defining geographic markets in the motor fuel sector was a "rule of thumb" and incorrect;[167] and (ii) that the specific geographic markets the Commission was assessing in this case were defined too narrowly.

3.62 The First Economic Report submitted that:

- The geographic markets defined by the Commission are too narrow;[168]

[165] Circle K Phase 2 RFI Response, dated 23 December 2024, question 20.

[166] Pelco Phase 2 RFI Response, question 12.

[167] First Economic Report, paragraph 2.13.

[168] Second Economic Report, paragraph 7, and Compecon Written Response, paragraph 2.4, 2.20.

- Geographic catchment areas should be considered by [redacted];[169]

- Geographic markets should be based on consumers' commuting paths rather than isochrones;[170] and

- The loyalty card analysis it conducted demonstrates that that Commission's catchment areas fall below the 80% threshold often used to define geographic markets.[171]

3.63 The Second Economic Report, submitted on 31 March 2025, introduced a new point, stating that acquirer-centred (Circle K) catchment areas should be applied in addition to target-centred (Pelco) catchment areas.[172]

3.64 The third economic report, the Compecon Written Response, is considered alongside the Parties' Written Responses below.

The Parties' Written Responses

3.65 The Parties also outlined their views with respect to geographic market definition in their respective responses to the Assessment.

3.66 Circle K did not expressly refer to the Commission's approach to defining geographic markets in the Circle K Written Response but submitted the Compecon Written Response as part of its overall response to the Assessment.

3.67 Pelco stated in the Pelco Written Response that the Commission's approach of applying 3.2km and 8km radii does "*not reflect the commercial reality of the retail motor fuel market as it operates today in the State and local catchment areas in particular reflecting fundamental changes with the development of the motorways, wider and longer commuting and social developments post-Covid*."[173]

[169] First Economic Report, paragraph 2.12-2.15, and Compecon Written Response, paragraph 2.9 - 2.12.

[170] First Economic Report, paragraph 2.5, and Compecon Written Response, paragraph 2.5 -2.10

[171] First Economic Report, paragraph 2.21 – 2.22, and Compecon Written Response, paragraph 2.34 – 2.35.

[172] Second Economic Report, paragraph 5-6, and Compecon Written Response, paragraph 5 -6.

[173] Pelco Written Response, paragraph 3.17

CCPC

3.68 Pelco also stated that the Commission approach to defining geographic markets does not align with the approach taken by the European Commission or the CMA, which Pelco stated applied wider catchment areas.[174] Pelco also stated that it "*believes that the appropriate CSO definition to use in classifying whether areas are urban or rural is that of a "Built up Area" rather than the CSO's census definition as suggested*".[175] The Pelco Written Response also makes multiple referrals to the Compecon Written Response.

3.69 The Compecon Written Response reiterated the views outlined in the First and Second Economic Reports that the Commission's geographic markets were too narrowly defined and that the Commission approach to defining geographic markets was incorrect.

3.70 Pelco stated the following during the Oral Submission:

> *"In the last 20 years with the expansion of the road networks and increased costs of house prices in the greater Dublin area significant numbers have now moved into satellite towns. This means that while a consumer may reside in a rural area, they cross into an urban area on their daily commute. This opens up a wider choice to the consumer as to where they refuel. In these circumstances, catchment areas of 3.2 kilometres and 8 kilometres are outdated and not reflective of the commercial realities of the motor fuel market today."*[176]

3.71 Compecon raised several points in the Economic Reports during the Oral Submission, namely that (i) the Commission has not followed the approach of the European Commission and the CMA; (ii) the Commission has never conducted an empirical analysis to produce catchment areas in relation to service stations; (iii) the Commission did not establish the area within which 80% of service stations' customers are

[174] Pelco Written Response, paragraph 3.25-3.27, paragraph 3.27,

[175] Pelco Written Response, paragraph 2.28.

[176] Pelco, Oral Submission, page 28-29, line 30 - 2.

located/sales are drawn from; and (iv) catchment areas should be centred around both Parties' service stations simultaneously.[177]

3.72 Furthermore, during the Oral Submission, Compecon was asked to confirm its view on the appropriateness of using a 10-minute drivetime.

> *"ÚNA BUTLER: And do you think that a 10 minute drive time is broadly appropriate?*
>
> *PAT MASSEY:* [redacted]*."*[178]

3.73 The Commission considers the views outlined by the Parties and expressed in the Economic Reports in more detail at paragraph 3.76 to 3.146 below, as well as in Section 5.

Views of third parties

3.74 The Commission engaged with a range of third parties with respect to the potential geographic market in relation to the retail sale of motor fuels:

- **Applegreen:** Applegreen stated *"that proximity is the main factor that determines which service stations it monitors. Applegreen stated that it monitors service stations that are typically* [redacted] *depending on the area. Applegreen stated that urban areas tend to have higher concentrations of service stations, whereas a rural area may have fewer service stations to monitor. Applegreen stated that they are aware of the* [redacted]*.""*[179]

- **Maxol:** Maxol stated that *"it considers a range of factors when it decides which competitor service stations to monitor. Maxol stated that its decision as to which service stations it monitors is* [redacted] *Maxol stated that it also* [redacted]

[177] Compecon, Oral Submission, page 37.

[178] Oral Submission transcript, page 62

[179] Applegreen Call Note, dated 5 February 2025, page 2.

[redacted]. *Maxol stated, because of this,* [redacted]"[180]

Maxol also stated that, as an example, "*if a consumer is coming from a commuter town, Maxol's competitors are those stations* [redacted]. *Maxol stated that the* [redacted]. *Maxol stated that, for example, if its site is on* [redacted]. *Maxol stated that some consumers will travel further for cheaper fuel. Maxol stated that consumers around the border with Northern Ireland will travel into Northern Ireland to buy fuel as it is cheaper than in the State, as there are differences in excise duties which has an impact on prices.*"[181]

- **Certa:** Certa stated that "*proximity to its own service stations is the main factor which determines which service stations it monitors and that this varies on a site-to-site basis.*"[182] When asked if Certa used a set distance when considering which competitors to monitor, Certa stated "*that it does not have a standard distance. Certa stated that in Dublin it is more likely for there to be a higher concentration of competitors in an area, in comparison to a rural area in which competitors could be more spread out.*"[183]

- **Industry Expert:** Industry Expert stated that "*a general rule of thumb for stations in an urban area is that it competes with filling stations within a 3-mile-radius. Industry Expert stated that this distance could be between 10-15 miles for filling stations located in rural areas.*"[184] Industry Expert stated that "*in micro markets traffic flows are important in determining how customers travel and how traffic flows to certain filling stations.* [Industry

[180] Maxol Call Note, dated 5 February 2025, page 2.

[181] Maxol Call Note, dated 5 February 2025, page 3.

[182] Certa Call Note, dated 6 February 2025, page 2.

[183] Certa Call Note, dated 6 February 2025, page 2.

[184] Industry Expert Call Note, dated 28 November 2024, page 3.

Expert] *stated that how competition works within these micro or local markets is important.* [Industry Expert] *stated that a filling station's location and price are key factors determining which filling stations customers buy from.* [Industry Expert] *stated that Pelco's station close to Darndale in Dublin is in a micro market and listed various filling stations that customer* [sic] *pass as they travel from Dublin city centre towards Malahide.* [Industry Expert] *stated that there are numerous Circle K sites located on this route alone.* [Industry Expert] *stated that such a route would be considered a micro market and that it is important to understand competition between filing stations at such a local level."*[185]

- **Top Oil:** Top Oil stated, in relation to its monitoring activity, "*that* [redacted]."[186]

Commission's analysis of the relevant geographic market for the retail sale of motor fuels

3.75 As noted above, the Commission has assessed the retail sale of motor fuels in several determinations. In its determination in M*/23/068 – McMullan Bros/Naas Fuels Limited,* the Commission assessed the retail sale of motor fuels on a national basis as well as on a local basis. Specifically, the Commission assessed the competitive effects of that transaction on a local basis by reference to the following geographic frames of reference:

- The retail sale of motor fuels within a 3.2km radius of each urban target station; and,

- The retail sale of motor fuels within an 8km radius of each rural target station.

3.76 In relation to the Proposed Transaction, the Commission considered a number of points in its consideration of the appropriate geographic market, including the views

[185] Industry Expert Call Note, dated 28 November 2024, page 3.

[186] Top Oil Call Note, dated 27 March 2025. Page2.

expressed by the Parties and third parties. In particular, the Commission has considered the following points raised by the Parties as part of its consideration of the appropriate geographic market:

- **Point 1**: The definition of urban and rural areas;
- **Point 2**: Distance-based catchment areas and drivetime-based catchment areas;
- **Point 3**: Target-centred and acquirer-centred catchment areas;
- **Point 4**: "Commute" based catchment areas;
- **Point 5**: The loyalty card analysis outlined in the Economic Reports; and
- **Point 6:** "Type 1" errors.

3.77 The definition of a specific geographic market does not restrict the Commission's assessment of the Proposed Transaction's likely competitive effects. As noted in the Commission's Merger Guidelines, market definition is a conceptual framework within which relevant information can be organised for assessing the competitive effects of a merger; is not an exercise in drawing a definitive line and then ignoring market realities on either side of that line.[187] As outlined in Section 5, the Commission assesses competitive constraints exerted both within and outside of the defined geographic market. Market definition is a starting point to the Commission's competitive assessment.[188]

Point 1: Urban and rural classification

3.78 In M/*23/068 – McMullan Bros/Naas Fuels Limited*, the Commission applied the CSO's census definition when classifying a station as being located in an urban or rural area.

[187] Commission's Merger Guidelines, paragraph 2.3 and paragraph 2.1.

[188] See paragraphs 2.1 to 2.7 of the Commission's Merger Guidelines for a description of the role of market definition in the Commission's competitive assessment.

According to this definition, an urban area is a town with a total population of 1,500 or more, while towns with a population of less than 1,500 are considered rural.[189]

3.79 In the Merger Notification Form, which was submitted to the Commission before the Commission's determination in M/*23/068 – McMullan Bros/Naas Fuels Limited* was published, the Parties applied an alternative CSO classification.[190] The Parties applied the CSO's urban area definition known as a "Built Up Area" ("BUA") when classifying areas as either urban or rural. BUAs are defined by designated land use, whereas the CSO definition applied by the Commission is based on population.

3.80 The main effect of applying the BUA classification rather than the CSO definition applied by the Commission is that Airside (one of the areas where both Circle K and Pelco operate service stations) would be classified as a rural area.[191] Using the CSO definition previously applied in M/*23/068 – McMullan Bros/Naas Fuels Limited*, the Commission classifies Airside as urban. The Parties and the Commission are in agreement with the classification of all other Target Stations. The effect of applying the Parties' classification would be that the catchment area for Airside would be the area within an 8km radius (rather than 3.2km radius) from Pelco's service station in this area.

3.81 When applying the BUA definition utilised by the Parties, as seen in Figure 9 below, Pelco's service station in Airside (red square) is located on the margin between areas classified as urban (shaded in blue), and areas classified as rural.

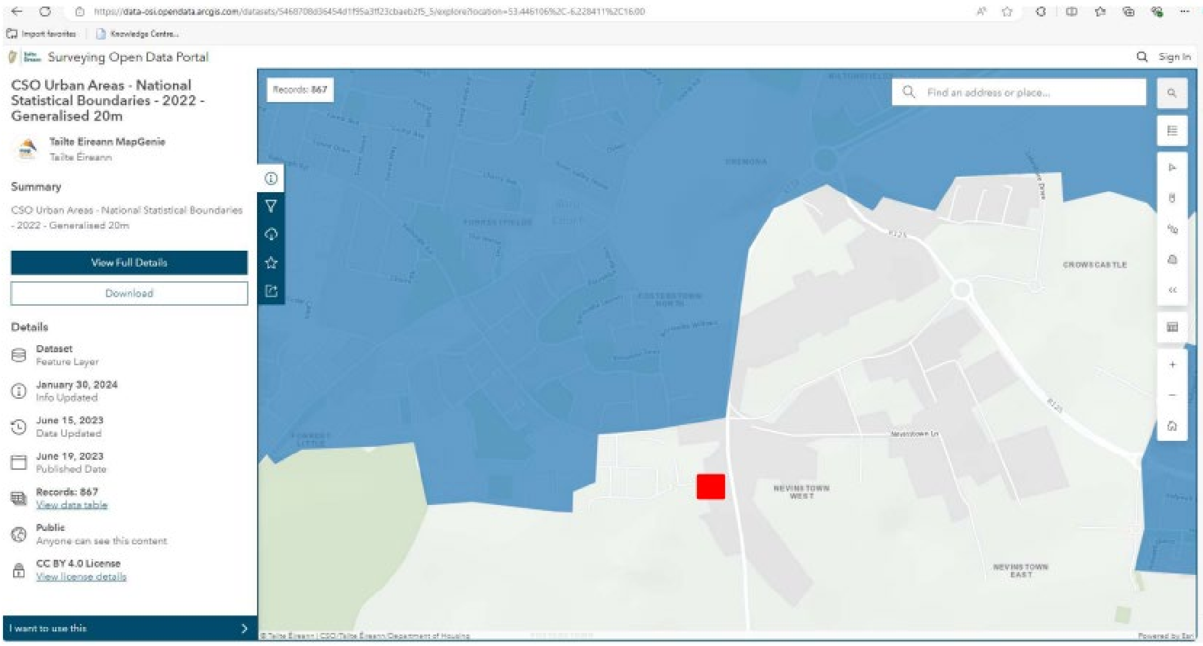
Figure 9: BUA classification, Airside

[189] See, CSO, Urban and Rural Life in Ireland, available at: Census 2022 Urban Boundaries and Built Up Areas FAQ - CSO - Central Statistics Office.

[190] The Parties applied the CSO's definition of a 'Built Up Area' when classifying areas.

[191] Merger Notification Form, Table 1.1.

1. Airside



Source: The Parties

3.82 Pelco stated in the Pelco Written Response that it "*believes that the appropriate CSO definition to use in classifying whether areas are urban or rural is that of a "Built up Area" rather than the CSO's census definition as suggested in the Assessment. On that basis, Airside is a rural rather than an urban catchment area.*"[192] Pelco did not explain why it considered the CSO's "Built Up Area" definition to be more appropriate than the CSO definition applied by the Commission.

3.83 In the Commission's view, a classification that is based on a customer base for service stations by considering population density is more appropriate than a classification based on the designated land use of the surrounding areas. Urban areas, owing to their higher populations, generally have more service stations than rural areas. By applying a definition of urban or rural that is based on population density, the Commission can capture the competitive realities faced by suppliers in the areas where the Parties operate. In urban areas with larger populations, there are generally more service stations and customers will typically need to travel shorter distances to reach an alternative service station than customers in rural areas.

[192] Pelco Written Response, paragraph 3.28.

3.84 Furthermore, the Commission does not consider it accurate to classify Airside as rural for several reasons. First, as shown in Figure 9 above, the Pelco service station is marginally outside the BUA's urban area border on the southern edge of Swords. It is unlikely that the competitive realities faced by the Pelco station in this area are materially different to service stations located within the BUA urban area in Swords, which are within approximately 1km (in the case of Circle K) from Pelco's Airside service station. In this regard, the Commission notes that Pelco monitors service stations located within the BUA urban area and does not monitor any service stations outside of the general Swords area.[193] Therefore, the Commission considers that classifying Airside as rural (and thereby applying the 8km radius) would overstate the competitive constraints on Pelco in this area. Second, the Commission notes that Pelco's service station in Airside is located in the south of Swords, Co. Dublin, one of the largest towns in the State. Pelco's service station in this area is located just to the north of Dublin city and Dublin Airport. The Commission does not consider it accurate to consider such an area to be rural. Indeed, during a call with the Commission, Applegreen stated that it identified Swords as an urban area.[194] For these reasons, the Commission does not consider Airside to be a rural area.

3.85 In any case, the Commission notes that it has conducted a sensitivity analysis with respect to the estimated market shares in Section 5. As part of this analysis, the Commission has assessed the extent to which the Parties' estimated shares in the retail sale of motor fuels would change if different geographic parameters are applied. The Commission considers that this sensitivity analysis demonstrates that its assessment of competitive effects of the Proposed Transaction is not dependent on the application of the 3.2km radius.

Point 2: Physical distance and drivetime-based catchment areas

3.86 In considering geographic market definition from the demand side, the key question is whether a customer buying motor fuels from one supplier would be likely to switch to

[193] The Parties' monitoring activity is outlined in more detail in Section 5.

[194] Applegreen Call Note, dated 5 February 2025, page 2.

buying motor fuels from a supplier in a different location in response to a SSNIP in the price of motor fuels by the original supplier.

3.87 As noted above, the Commission's previous approach when assessing transactions in the motor fuel sector has been to apply distance-based catchment areas in local areas where the merging parties are both active. While a customer's decision of where to buy motor fuels will not be determined solely by distance from an alternative service station, the Commission is of the view that distance is a useful lens through which to consider the Proposed Transaction. The Commission considers that distance (either from a fixed point, or from a planned travel route, as relevant) is likely a key parameter in a customer's choice of service station.

Views of the Parties

3.88 The Commission notes that the Parties supported the use of distance-based catchment areas based on physical distance in the Merger Notification Form and responses to the Phase 1 RFIs (see paragraphs 3.55 to 3.57). However, the Economic Reports differed from the Parties' previous views in relation to the use of distance-based catchment areas.

3.89 Specifically, the Compecon Written Response noted the use of drivetime by other competition authorities, stating that:

> "*Our original economic report pointed out that the CA/CCPC approach contrasts with that of the Competition and Markets Authority (CMA) and its predecessors which have defined catchment areas for filling stations based on drive times rather than distances. The UK competition agencies have applied drive times of ten minutes in urban areas and twenty minutes in rural areas to define catchment areas for non-motorway filling stations. Such drive times imply significantly wider catchment areas than those applied by the CA/CCPC in this case*."[195]

[195] Compecon Written Response, paragraph 2.9.

3.90 The First Economic Report stated that the Commission has, in the case of service stations, defined catchment areas based only on distance, whereas in other retail categories, such as grocery stores, it has used distance and drivetime as alternative measures.[196]

Views of Third Parties

3.91 As set out in paragraph 3.74 above, third parties generally noted that proximity was a key factor for customers in choosing where to buy fuel, and this is reflected in the third parties' consideration for their competitors – for example, in choosing which service stations to monitor for the purposes of setting prices. Third parties identified other factors that may be taken into account, including the range of services on offer or location on commuter routes. There was no consensus amongst third parties as to how proximity may best be measured.

Commission's analysis of distance and drivetime-based catchment areas

3.92 In the Commission's view, there are advantages and disadvantages to any metric used to define catchment areas. The Commission maintains that its approach to defining a geographic market should take into account the particular circumstances of the market in question. The Commission has decided to maintain its definition of geographic markets based on physical distance, and to conduct a sensitivity analysis in its competitive assessment in order to examine how sensitive the competitive assessment would be to alternative ways of measuring distance, such as straight-line spatial measurement and drivetime.

3.93 In the Commission's view, this approach allows it to establish geographic boundaries in defining markets, and then to test how sensitive these boundaries are to alternative distances when carrying out the competitive assessment.

Point 3: Catchment areas centred on the Target Stations

Commission's approach

[196] First Economic Report, paragraph 2.13-2.14.

3.94 For the purpose of defining geographic markets, the Commission has applied target-centred catchment areas (areas centred around the Pelco Target Stations), as is its standard practice for defining geographic frames of reference in local markets.

Views of the Parties

3.95 As noted above, the Parties stated in the Merger Notification Form that:

> *"the Parties are of the view, and would suggest, that there is no reason to depart from the approach previously taken by the CCPC, namely that: (a) the relevant geographic market for the retail sale of motor fuels encompasses a radius of 3.2km in relation to a retail motor fuel service station in an urban area, and a radius of 8km in relation to a retail motor fuel service station in a rural area"*[197]

3.96 Furthermore, the Parties provided information in the Merger Notification Form based on catchment areas centred around Pelco's service stations.[198]

3.97 However, the Second Economic Report and the Compecon Written Response stated that the Commission should apply Circle K and Pelco-based catchment areas simultaneously.

3.98 The Second Economic Report stated that "[*t*]*he CCPC has incorrectly defined catchment areas by only applying isochrones around the target outlets rather than around both parties' outlets*".[199] The Second Economic Report expanded on this view by way of the following hypothetical example:

> *"If we take a situation where a Circle K is 3kms from a Pelco station. The Circle K will be included in the catchment area under the CCPC approach. If there are several competing stations within 1-2kms of the Circle K station in the opposite direction to the Pelco station, these stations will not be included in the catchment area as defined by the CCPC. Their exclusion means that the CCPC's*

[197] Merger Notification Form, paragraph 114.

[198] Merger Notification Form, paragraph 117 and Annex 16 (catchment area maps).

[199] Second Economic Report, paragraph 7.

> *estimates of market concentration will clearly be overstated. In addition, the CCPC analysis ignores the fact that these stations, which are closer to the Circle K than the Pelco is, are therefore closer competitors of the Circle K station than the Pelco is. It is simply wrong to ignore the competitive constraint posed by these stations*."[200]

3.99 The Second Economic Report also submitted that the Commission's preliminary approach with respect to the Proposed Transaction is inconsistent with its approach in two previous cases (*M/23/068 – McMullan Bros/Naas Fuels Limited* and *Maxol/Busselle*[201]) and with the approach of the CMA and the European Commission in decisions with respect to retail markets (including service stations) and waste treatment sites respectively. [202]

3.100 The Compecon Written Response stated in relation to *M/23/068 - McMullan Bros./Naas Fuels Limited*:

> *"interestingly the Determination states that it is CCPC practice, "as a starting point" to assess competition with a Target centric catchment area. It also states that applying the 3.2km area to the purchaser's station adds two service stations "to the geographic frame of reference", i.e. catchment area. Further the approach adopted in that case is entirely consistent with Compecon's argument that, when a Target centric approach indicates high market concentration and a limited number of competitors, it is necessary to extend the isochrone analysis by applying a catchment area centred around the purchaser as well". [203]*

3.101 The Compecon Written Response submitted that when both Circle K and Pelco-centred catchment areas are applied simultaneously, "*the parties have more filling stations in the wider catchment areas,* [but] *the number of competing filling stations increases by*

[200] Second Economic Report, paragraph 3.

[201] Competition Authority, 2002, Report of investigation of the proposal whereby Maxol Energy Limited would acquire the entire issued share capital of Busselle Limited.

[202] Second Economic Report, paragraph 4.

[203] Compecon Written Response, paragraph 2.21.

an even greater amount. The effect is that the parties combined share of filling stations in each catchment area is significantly lower in the wider catchment areas, in the mid-40% range, compared with shares of 53-63% based on the CCPC definition. It is also clear that the number of competitor filling stations is significantly higher in the wider catchments". Table 4 summarises the result of Compecon's exercise.[204]

Table 4: Compecon's application of Circle K and Pelco-centred catchment areas

Table 2.2: Details of Filling Stations in the Relevant Catchment Areas (3.2km).

	Pelco Centred Isochrone				Pelco/Circle K Centred Isochrones			
	Parties' Stations	Competitor Stations	Parties % Stations	Competing Brands	Parties' Stations	Competitor Stations	Parties % Stations	Competing Brands
Airside	3	2	60.0	1	4	5	44.4	3
Artane	9	8	52.9	5	13	18	41.9	9
Newtown	8	6	57.1	3	14	17	45.2	7
Rathfarnham	12	7	63.2	4	22	26	45.8	8

Source: Circle K. Note the Compecon Report only referred to there being one competing brand in Airside as we were unaware that Air Energy had reopened.

Source: Compecon Written Response[205]

Commission's analysis of catchment areas centred on the Target Stations

3.102 The Commission considers that its approach of applying Pelco-centred catchment areas is the appropriate approach to define local catchment areas.

3.103 **First, the Commission notes that its approach in applying catchment areas centred on the Target Stations is consistent with its previous decisional practice**. The Commission notes that the application of target-centred catchment areas is the standard approach it has taken when assessing transactions between service station operators.[206] In relation to its most recent Phase 2 determination involving service station operators, the Commission notes the following:

3.104 In *M/24/068 McMullan Bros./Naas Fuels Limited*, the Commission defined catchment areas centred on the target's service stations; it did not apply both target and acquirer-

[204] The Commission understands that the market shares outlined in this table are based on Circle K/Compecon's estimation of the number of stores in the respective areas and their ownership. As outlined in Section 5, the Commission has calculated market shares based on sales volumes, which offer a more accurate insight into each suppliers' relative size in the market. Furthermore, the Commission has confirmed each station's price-setting arrangement when calculating estimated shares.

[205] Page 124.

[206] See, for example, *M/24/068 McMullan Bros./Naas Fuels Limited, M/23/018 – Maxol/Kinsella's Fuel Services, M/20/029 – Brookfield (Greenergy)/Amber Oil, M/18/004– Maxol/Brennans, M/17/020– Maxol/Great Gas (Turvey), M/17/011– Maxol/Melia's Harold's Cross,* and *M/15/020 – Topaz/Esso Ireland.*

centred catchment areas when defining potential relevant geographic markets or calculating market shares. With respect to its analysis in that determination in relation to one catchment area (Wicklow town), the Commission noted that:

- the parties in that determination each only operated a single service station in the area;
- the parties were not each other's closest competitors; and
- similarly to the hypothetical example described by Compecon above, the parties were located approximately 3km from one another (with the acquirer located close to the edge of the target-centred catchment area).

3.105 Furthermore, the Commission notes that it did not recalculate the estimated market shares in that determination but rather noted that an acquirer-centred catchment area introduced two new suppliers, in relation to which there was evidence that these stations exerted a competitive constraint on the parties.[207] This is not the same as the approach proposed in the Compecon Written Response. The Commission has also considered the constraints exerted by service stations outside of the relevant catchment areas in this Determination, namely as part of its sensitivity analysis and consideration of out-of-market constraints in its assessment of competitive effects.

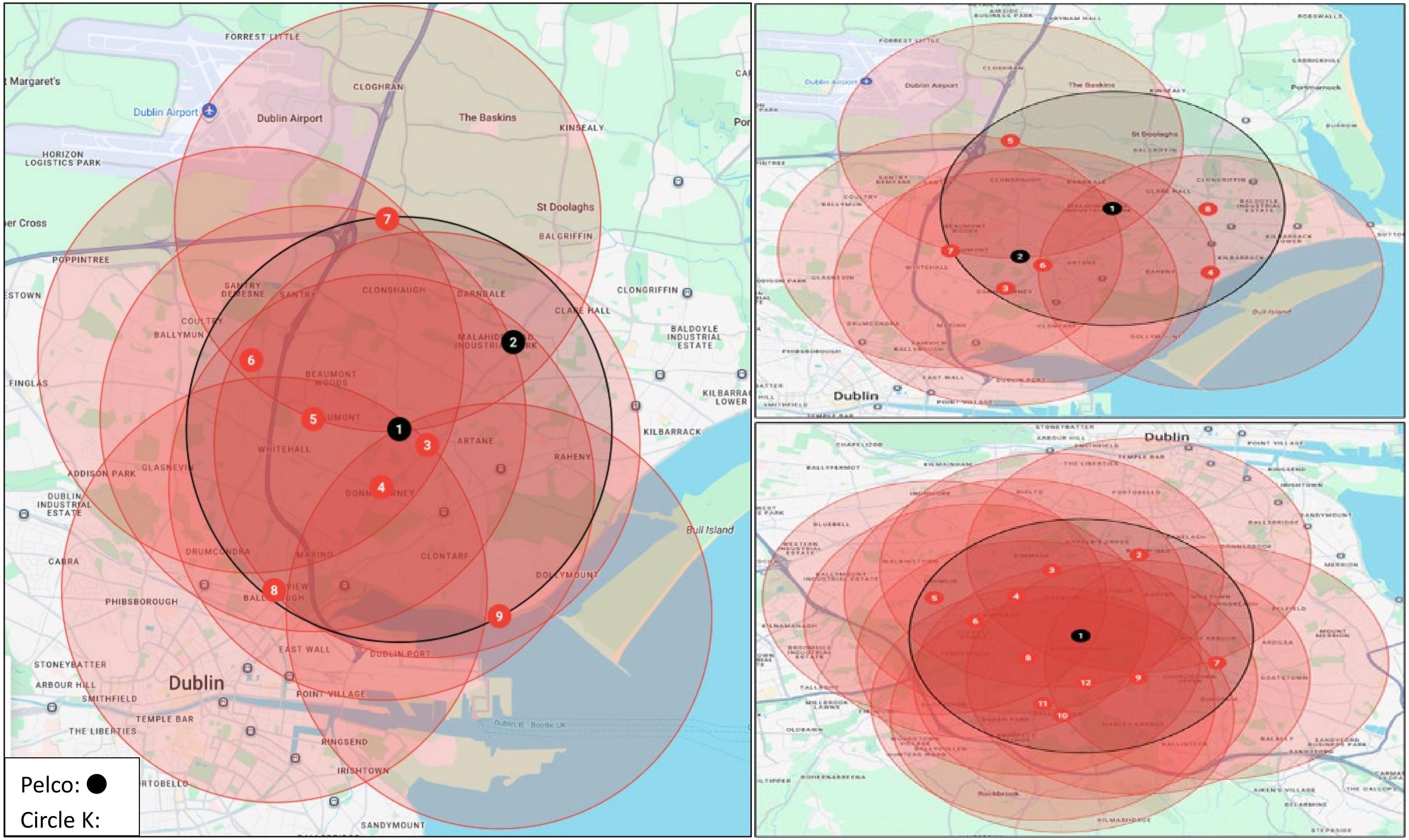
3.106 The Commission does not consider that its application of target-centred catchment areas is inconsistent with its previous decisional practice. Furthermore, as noted elsewhere, the Commission has also considered Circle K-centred catchment areas as part of its sensitivity analysis and has therefore tested its geographic market definition to a greater extent than it has in previous determinations in the motor fuels sector.

3.107 **Second, the Commission notes that applying both Circle K and Pelco-centred catchment areas simultaneously in the manner suggested by the Parties would result in catchment areas that do not reflect the local nature of competition and be illogical, as it would imply that local markets should be defined more widely where there is a greater concentration of stations.** Circle K has a large presence across the

[207] Namely the parties' price monitoring activities and these station's close proximity to the acquirer's sole service station in that area.

State and in Dublin city and county. If, as suggested by the Parties, the Commission were to apply both Circle K and Pelco-centred catchment areas simultaneously, the resulting catchment areas would not reflect the local nature of competition and would include service stations that consumers are unlikely to view as credible alternatives. For example, Figure 10 below shows the area that would be covered if Circle K and Pelco-centred catchment areas are applied to the Parties' service stations in the Artane, Newtown and Rathfarnham areas of Dublin. The red-shaded circles are the areas centred around Circle K stations in the relevant catchment area, while the black-shaded circle is the area centred around the relevant Pelco's station.

Figure 10: Circle K and Pelco-centred catchment areas in Artane, Newtown and Rathfarnham



Source: The Commission

3.108 As shown in the maps above, Circle K owns numerous stations in the Pelco-centred catchment areas, reflecting Circle K's large presence across Dublin city. Applying both Circle K and Pelco-centred catchment areas simultaneously would produce expansive areas which do not reflect which service stations consumers are likely to consider to be viable alternatives and would not reflect the Parties' commercial practice (such as price monitoring).

3.109 In short, the Commission's view is that the use of Pelco-centred catchment areas is consistent with decisional practice. The simultaneous application of catchment areas centred around Circle K stations as well as Pelco stations, in the manner suggested by the Parties, does not reflect the local nature of competition in the retail sale of motor fuels. Circle K has multiple stations across Dublin and considering catchment areas around Circle K stations in the manner suggested by the Parties would greatly extend the catchment areas in a way that does not reflect the realities of drivers purchasing fuel.

3.110 The application of Pelco-centred catchment areas is an appropriate approach to defining local catchment areas for the purposes of assessing the competitive effects of the Proposed Transaction. Notwithstanding the reasoning set out above, the Commission has, for completeness, given the particular circumstances of this investigation and in order to test the Parties submissions on this point, considered Circle K-centred catchment areas as part of its sensitivity analysis in the assessment of competitive effects in section 5.

3.111 Furthermore, the Commission has also considered out-of-markets constraints in Section 5.

Point 4: Commute-based catchment areas

Views of the Parties

3.112 The First Economic Report and Compecon Written Response stated, when outlining the limitations of using isochrones to define catchment areas, that catchment areas should be based on commuting paths:

> *"Consequently, geographic markets for filling stations should be defined based on consumers' commuting paths rather than isochrones. Commuting paths depend on the structure of the road network and the direction of traffic flows."*[208]

> *"Catchment areas/geographic markets for filling stations should be defined based on consumers' commuting paths rather than isochrones. This is particularly the case if an isochrone analysis raises SLC concerns."*[209]

Commission's analysis of catchment areas based on commuting routes

3.113 The Commission notes that commuting routes can be a relevant consideration when assessing local competition within the retail sale of motor fuels. Consequently, the Commission has considered road layout and traffic flows in its assessment of specific local areas in Section 5. The Commission notes that the Parties did not identify or propose specific commuting routes as potential catchment areas. In relation to its assessment of the Proposed Transaction, the Commission does not consider it viable or necessary to define geographic markets based on commuting routes. There is no evidence to suggest that specific commuter routes are a big enough element of the demand base at any of the stations to warrant using them to define geographic markets. For example, the Commission would expect that the Parties' internal documents and price monitoring would reflect this if it were the case, and they do not. In any case, the Commission's sensitivity analysis assesses market concentration when a drive-time based catchment area is applied; this aspect of the sensitivity analysis captures the various travel routes within the areas in which the Parties' service stations are located.

Point 5: Loyalty card analysis & bespoke catchment areas

3.114 As noted above, the Parties submitted in the Economic Report an analysis of a sample of Circle K loyalty card customer transactions. The Commission understands "Circle K loyalty card customers", as referred to in the Economic Report, to mean customers

[208] First Economic Report, paragraph 2.5.

[209] Compecon Written Response, paragraph 4.2.

who have downloaded the Circle K Extra app and have joined this scheme, which offers discounts on fuel and products at participating Circle K service stations.[210] On the basis of an analysis of a sample of loyalty card customer transactions, the Economic Reports concluded that "[t]*he results overall indicate that catchment areas for filling stations, at least in the present case, are significantly wider than suggested by the CCPC*."[211]

3.115 The Commission understands the loyalty card data provided by Circle K in the First Economic Report to have been derived from the following process:

- Circle K provided loyalty card data to Compecon for a [redacted].[212]

- The loyalty card scheme was introduced in late May 2024, giving approximately [redacted] for Circle K customers to sign up to the scheme before the data collection started.[213]

3.116 The data was provided for an individual Circle K sample station in each of the [redacted] catchment areas identified by the Commission. [redacted] was selected as the sample station for [redacted] of the [redacted] catchment areas ([redacted] and [redacted]), giving [redacted] sample stations in total ([redacted]).[214]

- The percentage of motor fuel purchases made by loyalty card customers within the catchment areas varied from [redacted] to [redacted].[215] It is important to note however that the datasets all assigned being 'within catchment area' are in relation to [redacted]. This allocation is explained as

[210] Extra | Circle K

[211] First Economic Report, paragraph 2.22.

[212] First Economic Report, paragraph 2.17.

[213] First Economic Report, paragraph 2.16.

[214] First Economic Report, Table 3.1.

[215] First Economic Report, Table 3.2.

follows: "*On signing up for the scheme, the consumers are* [redacted]."[216] Customers are assigned a certain Circle K service station as their home station based on their [redacted].

3.117 In addressing specific points raised in the Economic Reports, the Commission's view is that the analysis of loyalty card customers' transactions offers very limited assistance when defining markets and does not demonstrate that the Commission's geographic markets are defined too narrowly for the following reasons:

3.118 **The First Economic Report does not provide an insight into the area within which 80% of the Parties' customers are located.** The Commission notes that the First Economic Report stated that:

> "*fuel purchases at all Circle K stations within the relevant catchment areas accounted for* [redacted]*% of all fuel purchases by Circle K loyalty care* [sic] *members included in the sample.* ***This is significantly below the 80% threshold normally used to define catchment areas*** (emphasis added)***.*** [redacted]*% of all fuel purchases were made at filling stations outside of the catchment areas defined by the CCPC*".[217]

3.119 The First Economic Report maintains that its loyalty card analysis demonstrates that the catchment areas applied by the Commission do not meet the 80% threshold typically used when defining bespoke catchment areas. The Commission does not agree with this.

80% catchment areas

3.120 The Commission notes that the 80% threshold referred to in the First Economic Report may be used when defining catchment areas and is typically based on the area within

[216] First Economic Report, footnote 20.

[217] First Economic Report, paragraph 2.21.

which 80% of a supplier's customers are located, or sales are derived.[218] Calculating 80% catchment areas can be useful when data is available for the location of customers – for example, a gym would typically have the home addresses of gym members. In this case, because data is not available on the home locations of customers of motor fuels, calculating 80% catchment areas was not possible.

Different methodology applied by the loyalty card analysis

3.121 The Commission understands the First Economic Report to mean that (i) [redacted] of motor fuel purchases made by Circle K loyalty card members within Circle K's sample were made at Circle K stations within the same relevant catchment area (as defined by the Commission) as the catchment area in which the loyalty card member's [redacted]; and (ii) [redacted] of motor fuel purchases made by Circle K loyalty card members were at Circle K stations outside of the catchment area.

3.122 The loyalty card analysis is not based on (i) customers' original location, (ii) the area where a service station is drawing its customers from, or the area from which a service station generated its revenue. Instead, the loyalty card analysis is based on where a sample of loyalty card customers purchase motor fuel in addition to their [redacted]". This is a completely different metric to *"the 80% threshold normally used to define catchment areas"*, which captures where a specific station's customers are located, **not** whether or how often customers shop outside of an area. Therefore, the loyalty card analysis:

(i) applies an entirely different methodology to that used to calculate bespoke 80% catchment areas; and

(ii) incorrectly draws the conclusion that the Commission's catchment areas do not accurately reflect where a service station draws 80% of its customers or sales.[219] The First Economic Report's conclusion is based on information

[218] For clarity, 80th percentile catchment areas can also be based on the area within which 80% of a supplier's revenue is generated. For further information about 80th percentile catchment area, see (i) European Commission Notice on the definition of the relevant market for the purposes of Union competition law, paragraph 74; and (ii) CMA's Retail mergers commentary, available at https://assets.publishing.service.gov.uk/media/5a81e8e840f0b62302699d23/retail-mergers-commentary.pdf

[219] As noted above, the Commission has not, due to the lack of requisite data, calculated 80% catchment areas.

about where customers purchase motor fuel in addition to [redacted] [redacted] - not customer location.

3.123 Consequently, the First Economic Report incorrectly equates two different types of information and makes the following conclusion:

> *"Thus, fuel purchases at all Circle K stations within the relevant catchment areas accounted for* [redacted] *of all fuel purchases by Circle K loyalty care [sic] members included in the sample. This is significantly below* ***the 80% threshold normally applied when defining catchment areas*** (emphasis). [redacted] *of all fuel purchases were made at filling stations outside of the catchment areas defined by the CCPC"*

3.124 The loyalty card analysis mistakenly equates (i) the percentage of loyalty card customers' purchases that were made within the relevant catchment area with (ii) the 80% threshold, which refers to the area within a service station derives 80% of its customers or sales.[220] This error is made clear in the Compecon Written Response, which states:

> *"The issue anyway is whether the catchment areas as defined by the case team account for 80% of a filling station's sales.* ***Put another way, the question is do consumers make 80% of their fuel purchases within the catchment area of their home station, not why they may or may not do so*** (emphasis added)."

3.125 This is not putting the question another way but rather changing the question. The two points in this quote are fundamentally different and are incorrectly conflated. 80% catchment areas typically capture the geographic area from which a service station draws 80% of its sales or in which 80% of its customers are located, not where a specific customer or subset of customers purchase 80% of their motor fuel. [221]

[220] Or where 80% of its customers are located.

[221] For further information about 80th percentile catchment area, see (i) Commission Notice on the definition of the relevant market for the purposes of Union competition law, paragraph 74; and (ii) CMA's Retail mergers commentary, available at https://assets.publishing.service.gov.uk/media/5a81e8e840f0b62302699d23/retail-mergers-commentary.pdf

3.126 The loyalty card analysis does not, as the Economic Reports maintain, demonstrate that the catchment areas defined by the Commission fail to capture the area within which a station draws 80% of its customers or sales. Nor does it establish 80% catchment areas. Instead, it simply shows that some loyalty card customers purchase fuel at Circle K stations inside and outside of these areas (as is to be expected). As such, the loyalty card analysis does not offer a credible basis for the submission that the Commission's catchment areas are too narrowly defined.

3.127 Having reviewed and considered the loyalty card data analysis and related submissions by Compecon, the Commission does not consider that the loyalty card analysis demonstrates that the Commission's catchment areas are too narrowly defined.

3.128 The Commission considers that its application catchment areas is an appropriate approach to defining local catchment areas for the purposes of assessing the competitive effects of the Proposed Transaction. Notwithstanding the reasoning set out above, the Commission has, for completeness, given the particular circumstances of this investigation and in order to test the Parties submissions on this point, considered how market shares and concentration vary when broader catchment areas are applied.

Point 6: "Type 1" Errors

3.129 The First Economic Report, and subsequently the Compecon Written Response, express the view that the Commission has erred "*in failing to recognise the potential for a false positive (Type I error).*"[222]

3.130 In the context of merger control, a type 1 error, also known as a false positive, arises where a merger that does not raise competition concerns is prohibited by a competition authority. In contrast, a type 2 error, known as a false negative, occurs when an anti-competitive merger is cleared by a competition authority.

3.131 The First Economic Report and Compecon Written Response maintain that the Commission has not considered the possibility of, and has subsequently made, a Type

[222] Compecon Written Assessment, paragraph 6 and 2.3

1 (false positive) error by defining the local catchment areas too narrowly. The Economic Reports stated the following:

> "*A finding of an SLC based on an overly* [narrow] *market definition cannot be relied upon as it is likely to result in a Type I (false positive) error because it will overstate the parties market shares; overstate market concentration; and (iii) excludes rivals that are close competitors of the merging parties and thus understates the post-merger competitive constraints on the merging party*"[223]

> *"The CCPC has stated that its concerns are based on the fact that the proposed transaction would result in high levels of market concentration post-merger and its view that the parties' filling stations are close competitors. This view is based on its analysis of competition within catchment areas defined on the basis of isochrones centred around the relevant target stations. The CCPC's analysis is flawed as catchment areas should be defined by isochrones centred on both purchaser and target filling stations. The failure to define catchment areas correctly is likely to give rise to a false positive (Type 1) error."*[224]

> *"where a narrow market definition suggests a possible SLC is likely, this may be the result of applying a market definition which is too narrow and excludes products and areas which are sufficiently close substitutes and are therefore likely to exercise an effective competitive constraint on the merging parties post-merger. Crucially if a narrow market definition indicates a possible SLC then it is necessary to establish whether such a market definition is correct in order to avoid a false positive (Type I) error. This point is widely understood in the relevant economic literature. The case team, however, committed a serious error, in failing to recognise the potential for a false positive (Type I error)."*[225]

3.132 The Commission does not agree with the view outlined in the Economic Reports that it has (i) not considered the possibility of having applied an overly narrow market

[223] First Economic Report, paragraph 4.3.

[224] Second Economic Report, paragraph 1.

[225] Compecon Written Response, paragraph 6.

definition; and (ii) incorrectly defined the geographic market in relation to the retail sale of motor fuels.

3.133 As outlined above, the Commission has given in-depth consideration to a variety of factors when defining the relevant geographic market, including the various concerns raised by the Parties and their advisors. The Commission has not only fully explained its reasoning for the geographic market definition but has also considered how sensitive the competitive assessment would be to variations in geographic market definition. This directly demonstrates that the Commission has considered how sensitive one aspect of its competitive assessment, namely market shares and concentration, is to changes in the geographic market.

3.134 Market definition is a tool used to frame a competitive assessment; it does not restrict the scope of the Commission's competitive assessment.[226] The Economic Reports stated that the application of a specific market definition excludes service stations that are rivals of the Parties. As outlined in section 5, the Commission has assessed competitive constraints exerted on the Parties from outside the catchment areas.

3.135 The Commission has set out its reasoning for defining particular product and geographic markets. Once markets are defined, the next step in the analysis is to assess the competitive effects within these markets. The Economic Reports conflate these two distinct steps in the analysis. As has been pointed out, for completeness, given the particular circumstances of this investigation and as a result of the Parties submissions on this point, the Commission conducted a sensitivity analysis which has fully considered variations in the parameters used to examine the boundaries of markets.

3.136 In short, the concerns expressed in the Economic Reports regarding type 1 errors are unfounded. The Commission has conducted an in-depth examination of the relevant geographic market. In line with its Merger Guidelines, the Commission has defined markets in order to carry out a competitive assessment. The competitive assessment examines fully the impact of using different means of defining markets and assesses

[226] Commission's Merger Guidelines, paragraph 2.1 to 2.3.

competitive constraints exerted on the Parties and so safeguards against type 1 errors.[227]

Commission's conclusions on the geographic market in the retail sale of motor fuels

3.137 In forming its views on the geographic market, the Commission has considered the relevant information available to it. This included information provided by the Parties, information obtained from third parties, and other information available in the public domain. The Commission has found no reason to depart from its previous approach and has assessed the competitive effects of the Proposed Transaction by reference to the potential product market for the retail sale of motor fuels within the following three geographic frames of reference:

- The retail sale of motor fuels in the State;
- The retail sale of motor fuels within a 3.2km radius of each urban Target Station; and
- The retail sale of motor fuels within an 8km radius of each rural Target Station.

The operation of forecourt convenience stores

Previous decisions of the Commission

3.138 The Commission has previously considered the operation of forecourt convenience stores.[228] The Commission assessed the operation of forecourt convenience stores in local catchment areas. With respect to urban areas, the Commission assessed competition within a 3.2km radius of the relevant target station. With respect to rural areas, the Commission assessed competition within an 8km radius of the relevant target station.[229]

3.139 As noted above, the Commission has assessed the operation of forecourt convenience stores in its most recent determination, *M/23/068 – McMullan Bros/Naas Fuels*

[227] The Commission considers out-of-market constraints as part of its competitive assessment.

[228] See M/23/068 – McMullen Bros/Naas Fuels Limited; M/23/018 – Maxol/Kinsella's Fuel Services; and M/20/029 – Brookfield (Greenergy)/Amber Oil.

[229] M/23/068 – McMullen Bros/Naas Fuels Limited, paragraph 3.45; M/23/018 – Maxol/Kinsella's Fuel Services, paragraph 16; and M/20/029 – Brookfield (Greenergy)/Amber Oil, paragraph 38.

Limited. In this determination, the Commission assessed the operation of forecourt convenience stores on a local basis. Specifically, the Commission assessed the competitive effects of that transaction on a local basis by reference to the following geographic frames of reference:

- The operation of forecourt convenience stores within a 3.2km radius of each urban Target Station; and,
- The operation of forecourt convenience stores within an 8km radius of each rural Target Station.[230]

Commission's conclusions on the geographic market in the operation of forecourt convenience stores

3.140 The Commission has found no reason to depart from its previous approach and has assessed the competitive effects of the Proposed Transaction by reference to the potential product market for the operation of forecourt convenience stores within the following two geographic frames of reference:

- The operation of forecourt convenience stores within a 3.2km radius of each urban Target Station; and
- The operation of forecourt convenience stores within an 8km radius of each rural Target Station.

The sale of fuel cards

3.141 The Commission has previously considered the sale of fuel cards.[231] In these determinations, the Commission assessed the sale of fuel cards on a national basis.[232]

Previous decisions of the Commission

3.142 The Commission has previously considered the sale of fuel cards on a national basis.[233] Fuel cards are typically sold at several service stations within a network to commercial

[230] The Commission applied the CSO's census definition when classifying a station as being located in an urban or rural area in that determination. According to this definition, an urban area is a town with a total population of 1,500 or more, while towns with a population of less than 1,500 are considered rural.

[231] See M/23/068 – McMullen Bros/Naas Fuels Limited; and M/20/029 – Brookfield (Greenergy)/Amber Oil.

[232] M/23/068 – McMullen Bros/Naas Fuels Limited, paragraph 3.26; and M/20/029 – Brookfield (Greenergy)/Amber Oil, paragraph 49.

[233] *M/23/068 – McMullan Bros/Naas Fuels Limited.*

customers and can be used to purchase motor fuels from service stations across a supplier's network, as well as third party stations in certain circumstances.

Commission's conclusions on the geographic market in the sale of fuel cards

3.143 The Commission notes that Pelco agrees that the geographic market in the sale of fuel cards is national.[234]

3.144 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic market in relation to the sale of fuel cards as doing so will not alter the Commission's assessment of the competitive effects of the Proposed Transaction. The Commission has found no reason to depart from the general approach taken in its previous merger determinations regarding the sale of fuel cards. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the sale of fuel cards on a national basis.

The wholesale supply and distribution of motor fuels

3.145 The Commission has previously considered the wholesale supply and distribution of motor fuels.[235] In these determinations, the Commission assessed the wholesale supply and distribution of motor fuels on a national basis.

3.146 The Commission notes that Pelco agrees that the geographic market for the wholesale supply and distribution of motor fuels is national.[236]

Commission's conclusions on the geographic market in wholesale supply and distribution of motor fuels

3.147 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic market in relation to the wholesale supply and distribution of motor fuels as doing so will not alter the Commission's assessment of the competitive effects of the Proposed Transaction. The Commission has found no

[234] Pelco Written Response, paragraph 3.38.

[235] See M/23/068 – McMullen Bros/Naas Fuels Limited; M/23/018 – Maxol/Kinsella's Fuel Services.

[236] Pelco Written Response, paragraph 3.39.

reason to depart from the general approach taken in its previous merger determinations regarding the wholesale supply and distribution of motor fuels. The Commission has therefore assessed the competitive effects of the Proposed Transaction by reference to the wholesale supply and distribution of motor fuels on a national basis.

Overall conclusion on relevant market definition

3.148 Having regard to the evidence available to it, the Commission concludes that the potential relevant markets for the competitive assessment of the Proposed Transaction are as follows:

- The retail sale of motor fuels in the State;
- The retail sale of motor fuels within a 3.2km radius of each urban Target Station;
- The retail sale of motor fuels within an 8km radius of each rural Target Station;
- The operation of forecourt convenience stores within a 3.2km radius of each urban Target Station;
- The operation of forecourt convenience stores within an 8km radius of each rural Target Station;
- The sale of fuel cards in the State; and
- The wholesale supply and distribution of motor fuels in the State (collectively, the "Potential Relevant Markets").

4. RELEVANT COUNTERFACTUAL

Introduction

4.1 The test in section 22(3) of the Act requires an assessment of whether a merger will, or will not, on the balance of probabilities, result in an SLC in a relevant market. In assessing the likely effects of a merger on competition, the Commission typically compares the competitive situation that may be expected to arise following the merger with that which would have prevailed without the merger. The market situation without the merger is often referred to as the "counterfactual". The Commission generally adopts the prevailing conditions of competition as the counterfactual against which it assesses the impact of the merger.[237] The counterfactual is not a statutory test but rather an analytical tool that can be used in answering the question of whether the merger gives rise to an SLC.

4.2 The Commission's Merger Guidelines state that:

> *"The term 'counterfactual' refers to the state of competition without the merger or acquisition. In other words the "actual" situation is the merger being put into effect and the "counterfactual" is the situation in the absence of the merger being put into effect. The counterfactual provides the reference point, or the point of comparison, for assessing competitive effects arising from a merger."*[238]

4.3 The competitive assessment typically considers whether the merger compared to the counterfactual will lead to an SLC. Inevitably, there is a degree of uncertainty as regards hypothetical future events, and the Commission will consider the relevant evidence adduced by the parties as to whether there is likely to be an SLC in the future.

4.4 Paragraph 1.15 of the Merger Guidelines states the following:

> *"[T]he Commission will expect the merging parties to substantiate any counterfactual they propose with objective evidence supported, where*

[237] The Commission's Merger Guidelines, paragraph 1.12.

[238] See paragraph 1.12 of the Commission's Merger Guidelines.

necessary, by independent expert analysis. Such evidence and analysis should obviously be consistent with the parties' own internal pre-merger assessments of the likely counterfactual."

Views of the Parties and Third Parties

4.5 No submission was made to the Commission by the Parties in the Merger Notification Form concerning the relevant counterfactual.

4.6 The Commission received no third-party views commenting on a counterfactual.

4.7 Circle K noted that the Commission was of the preliminary view in the Assessment that the counterfactual was that Pelco would remain in the retail sale of motor fuels. In relation to this preliminary view, Circle K stated:

> "*(a) the status quo preserves a scenario whereby Pelco's prices at the target stations will remain on the high side relative to Circle K's prices;*
>
> *(b) this is compared to a scenario whereby the Proposed Transaction would likely result in lower prices for customers at the relevant Pelco target stations post-completion."*[239]

4.8 Pelco stated the following in its Written Response:

> *"Pelco agrees with the case team's preliminary conclusion that the relevant counterfactual is that, absent the Proposed Transaction, Pelco would remain active in each of the markets identified in Section 3 of the Assessment.*
>
> *It is also worth considering what is likely to happen if the Proposed Transaction is implemented. In this regard, and as noted throughout this Reply, motor fuel prices at Pelco sites are likely to fall as Pelco prices are generally at the higher end of the market whilst Circle K is competitive on price."*[240]

Views of the Commission

[239] Circle K Written Response, paragraph 3.3.

[240] Pelco Written Response, paragraphs 4.4-4.5.

4.9 The Commission has seen no evidence indicating that the prevailing conditions of competition (as outlined in section 5) in the Potential Relevant Markets would change absent the Proposed Transaction.

The Commission's Conclusion on the Relevant Counterfactual

4.10 Based on the above, the Commission considers that, for the purposes of assessing the Proposed Transaction, the relevant counterfactual is that, absent the Proposed Transaction, Circle K and Pelco would remain active in the various Potential Relevant Markets identified in Section 3 (the "Relevant Counterfactual").

5. COMPETITIVE ASSESSMENT HORIZONTAL UNILATERAL EFFECTS

Relevant Principles

5.1 Unilateral effects, as explained in paragraph 4.8 of the Commission's Merger Guidelines, occur when "*a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors*."

5.2 In addition, the European Commission's Horizontal Merger Guidelines[241] ("EC Horizontal Merger Guidelines") state the following in respect of "*Non-coordinated effects*":

> *"A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*
>
> *A number of factors, which taken separately are not necessarily decisive, may influence whether significant non-coordinated effects are likely to result from a merger. Not all of these factors need to be present for such effects to be likely".*[242]

[241] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004: EUR-Lex - 52004XC0205(02) - EN - EUR-Lex.

[242] EC Horizontal Commission's Merger Guidelines, paragraphs 25 – 26.

5.3 In forming its views on the Proposed Transaction, as set out in this Determination, the Commission has considered the relevant information available to it at the time of making the Determination and this included information provided by the Parties in response to the Commission's RFIs and information requests, information provided in the Parties' Written Responses and Oral Submission, information obtained from third parties, and other information available in the public domain.

The Likelihood of Unilateral Effects

5.4 In considering the likelihood of the implementation of the Proposed Transaction resulting in unilateral effects, the Commission has assessed the arguments put forward by the Parties and the relevant evidence collected from the Parties and third parties. Unilateral effects, as explained in paragraph 4.8 of the Commission's Merger Guidelines, occur when:

> *"a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors."*

5.5 The Commission notes that the Parties consider that the Proposed Transaction would not result in an SLC. The Parties expressed this view in various submissions throughout the course of the Phase 1 and Phase 2 investigations. The Commission has also received input from third parties regarding the overall impact of the Proposed Transaction.

5.6 The Commission has identified one potential Theory of Harm (i.e., how the Proposed Transaction is likely to result in an SLC).

5.7 **The Theory of Harm is that the Proposed Transaction will result in the removal of Pelco from certain local catchment areas, which may result in higher prices and reduced quality of service for customers in those local catchment areas.**

5.8 In the Commission's view, this loss of competition is substantial, and countervailing factors would be unlikely to competitively constrain Circle K following the implementation of the Proposed Transaction and prevent an SLC.

5.9 Before commencing its analysis of the Theory of Harm, the Commission sets out below general views of the Parties and third parties regarding the Proposed Transaction.

Parties' views on the Proposed Transaction

5.10 In the Merger Notification Form, the Parties stated that the Proposed Transaction will not give rise to an SLC for the following reasons:

> *"there will remain a wide choice of competing retail motor fuel service stations / competing brands and competing forecourt convenience stores / competing brands available to consumers within a 3.2km radius (for urban designated areas) and an 8km radius (for rural designated areas) of each of the relevant Target Service Stations;"*[243]

> *"there will remain a sufficient number of competing service stations and competing brands to continue to exert a competitive constraint on the Purchaser following completion of the Proposed Transaction. In Determination M/17/019 Petrogas Group Limited (Applegreen Plc) / Certain assets of PR Reilly, the CCPC noted that there would remain two competing brands within the relevant catchment area and that this would be sufficient to continue to exert a competitive constraint (on Applegreen) following completion of that transaction. Applying this same rationale to the Proposed Transaction, with the exception of Skerries (see below) post completion of the Proposed Transaction: (i) there will be no catchment areas that will have less than two competing brands; and (ii) all catchment areas will continue to have multiple competing service stations post completion of the Proposed Transaction (in respect of Skerries, there are no service stations (including 'Circle K' branded service stations) within a 3.2km radius of the Target Service Station, and so there will be no change to the position in Skerries save that a 'Circle K' branded service station will replace a 'Texaco' branded service station post completion of the Proposed Transaction). The position is similar with regards to the operation of forecourt convenience stores as there will remain a sufficient number of*

[243] Merger Notification Form, page 35.

competing convenience stores and competing brands to continue to exert a competitive constraint on the Purchaser. On these issues, reference is made to Tables 4.3.1 and 4.3.3 above and the comments summarised below on the basis of the information contained in the two tables." [244]

5.11 The Parties commented on individual Target Stations as follows:[245]

(i) "Artane

<u>Retail sale of motor fuel:</u> there will be no less than 7 competing service stations[246] *and no less than 4 competing brands post completion of the Proposed Transaction.*[247]

<u>Operation of forecourt convenience stores:</u> there will be no less than 25 competing convenience stores and no less than 8 competing brands within the relevant catchment area post completion of the Proposed Transaction." [248]

(ii) "Newtown

<u>Retail sale of motor fuel:</u> there will be no less than 7 competing service stations and no less than 4 competing brands post completion of the Proposed Transaction.

<u>Operation of forecourt convenience stores:</u> there will be no less than 22 competing convenience stores and no less than 5 competing brands within the relevant catchment area post completion of the Proposed Transaction." [249]

[244] Merger Notification Form, page 35 and 36.

[245] In the Merger Notification Form, the Parties commented on all stations covered by the Proposed Transaction. The Determination focusses on Artane and Newtown Relevant Markets and so only comments on these areas are included.

[246] Merger Notification Form, page 36.

[247] Merger Notification Form, page 36.

[248] Merger Notification Form, page 36.

[249] Merger Notification Form, page 37.

5.12 The First Economic Report provides views on a range of issues with respect to the Proposed Transaction. Having considered the various possible theories of harm (as identified by Compecon), the First Economic Report stated the following with respect to the Proposed Transaction:

"(i) Evidence from Circle K loyalty card data, the parties' current business models, and price monitoring activities do not indicate that the parties are close competitors.

(ii) Loyalty card data indicate that a significant proportion of consumers fuel purchases occurred outside the relevant catchment areas, indicating that the parties are subject to competitive constraints from outside those areas.

(iii) There is evidence of maverick operators affecting prices in several of the catchment areas.

"(iv) When significant competitors not included in the catchment areas as defined by the CCPC are taken into account, there are clearly a sufficient number of competitors to prevent any post-merger unilateral effects in the case of all the target stations."[250]

"Taking all of the above into account, the proposed transaction would not, in our opinion, result in a SLC."[251]

5.13 The Parties disagreed with the Commission's preliminary conclusion in the Assessment that the Proposed Transaction would likely result in an SLC. The Parties' views with respect to the Commission's Assessment and its competitive assessment are considered by the Commission in detail throughout section 5.

Views of Third Parties on the Proposed Transaction

[250] First Economic Report, paragraph 4.4.

[251] First Economic Report, paragraph 4.7.

5.14 The Commission engaged with a number of third-party service station operators in relation to their views of the competitive effects of the Proposed Transaction. These third-party views are summarised below.

Service station operators

5.15 As outlined in paragraph 2.56 above, Maxol raised concerns with respect to the Proposed Transaction's effect on the sale of fuel cards in the State. However, Maxol stated that it "[redacted]"[252]

5.16 During a subsequent call with the Commission, **Maxol** stated the following with regard to the Proposed Transaction:

> *"Maxol stated that it believes that the market is functioning in a competitive manner and that it does not have concerns in relation to the transaction. Maxol stated that it has a concern in relation to the fuel card market and believes that it will help Circle K to expand in the fuel card market and expand their network.* [redacted]" [253]

5.17 **Applegreen** stated that it had no views on the Proposed Transaction during a call with the Commission.[254]

5.18 **Certa**, when asked its views on the Proposed Transaction, stated the following:

> *"Certa stated that Circle K is a very big player in the market and is a competitor.* [redacted]*. Certa stated that it is more focused on its own customers and is not overly focused on competitors but that competitors are a factor it considers when setting the price of fuel. Certa stated that the Proposed Transaction* [redacted]

[252] Maxol Phase 1 Information Request, page 5.

[253] Maxol Call Note, dated 5 February, page 5.

[254] Applegreen Call Note, dated 5 February, page 5. As outlined in section 3, Applegreen provided an insight into how it assesses competition at a local level.

[redacted]. *Certa stated* [redacted].”[255]

5.19 **Top Oil** stated that it had no views on or concerns with the Proposed Transaction during a call with the Commission.[256]

5.20 **LCC Group** (*Go* and *Campus* brands) informed the Commission that it had no views on the Proposed Transaction.[257]

5.21 **Valero** (Texaco brand) stated the following to the Commission:

> *“If the proposed acquisition of the nine Pelco sites proceeds,* [redacted].”[258]

Industry Expert

5.22 The Commission received a submission from an industry expert and subsequently engaged with this industry expert. When asked whether they had any views with respect to the Proposed Transaction, the industry expert stated the following:

> “[Industry Expert] *stated that he did not have concerns about the deal.* [Industry expert] *stated that he cannot see why the deal would be blocked unless there is an area with very high market shares.* [Industry Expert] *stated*

[255] Certa Call Note, dated 6 February, page 5.

[256] Top Oil Call Note, dated 27 March, page 4.

[257] LCC Group response to the Commission’s information request, dated 5 September 2024, question 8.

[258] Valero Background Information Note, dated 30 June, page 2.

that deals should be able to be completed unless they harm the consumer. [Industry Expert] *stated that the CCPC should consider the food and convenience side of the sector as this is the area which will drive future revenues."*[259]

Potential Relevant Markets Subject to the Competitive Assessment

5.23 In Section 3 - Market Definition, the Commission identified the following Potential Relevant Markets:[260]

- The operation of forecourt convenience stores within 3.2km of each urban Target Station;
- The operation of forecourt convenience stores within 8km of each rural Target Station;
- The sale of fuel cards in the State;
- The retail sale of motor fuels in the State;
- The retail sale of motor fuels within 3.2km of each urban Target Station; and
- The retail sale of motor fuels within 8km of each rural Target Station.

5.24 The markets for the retail sale of motor fuels within 3.2km of each urban Target Station and for the retail sale of motor fuels within 8km of each rural Target Station are together referred to as the markets for the retail sale of motor fuels within the local catchment areas (the "Local Catchment Areas").

Relevant markets for which the Commission does not have SLC concerns

[259] Industry Expert Call Note, dated 28 November 2024, page 5.

[260] The Commission has assessed the Proposed Transaction by reference to the wholesale supply and distribution of motor fuels in the State in Section 7.

5.25 In its Assessment, the Commission stated that it had no competition concerns in the Potential Relevant Markets concerning (i) forecourt convenience stores; (ii) fuel cards; and (iii) the retail sale of motor fuels in the State (at a national level).[261]

5.26 As part of the Proposed Transaction, Circle K is acquiring nine **forecourt convenience stores** attached to the Target Stations. Circle K's forecourt convenience stores will continue to compete with the forecourt convenience stores operated by the other service stations within the Local Catchment Areas. Furthermore, all forecourt convenience stores will continue to face competition from supermarket and non-forecourt convenience stores within the respective catchment areas. For these reasons, the Commission had no competition concerns in in relation to the operation of forecourt convenience stores.

5.27 With respect to **fuel cards**, Circle K sells a proportion of its fuel to commercial customers by way of Circle K-branded fuel cards. Pelco sells a range of branded fuel cards but does not sell Circle K-branded fuel cards. Given these branded fuel cards are sold at service stations across the State, Pelco's share in the provision of fuel cards is minimal. Therefore, the Commission had no competition concerns in relation to the sale of fuel cards in the State.

5.28 With respect to the **State-wide market for the retail sale of motor fuels**, there are approximately 1,532 service stations in the State.[262] There are over 400 *Circle K*-branded service stations in the State, representing approximately [redacted] of all service stations in the State.[263] The Target Stations represent less than 1% of the service stations in the State. Therefore, at a national level, the Proposed Transaction would result in a minimal increase in Circle K's share of the number of service stations in the State.

[261] See paragraph 5.8, 5.12 and 5.15 of the Assessment.

[262] See the Commission's Phase 2 Determination in M*/23/068 – McMullan Bros./Naas Fuels Limited*, paragraph 5.5. The Commission notes that the number of service station in the State may have changed since this Determination.

[263] The Commission notes that some service stations within the Circle K-branded network are not owned by Circle K and Circle K does not set the retail price of motor fuels at these stations. Therefore, this estimated share likely overestimates Circle Ks share in the retail sale of motor fuels in the State.

5.29 Furthermore, following the implementation of the Proposed Transaction, there will remain a number of large operators in the State, including Maxol, Applegreen, and Top Oil, among others, that will continue to exert a competitive constraint on Circle K on a national basis. Therefore, the Commission had no competition concerns in the retail sale of motor fuels at a national level.

5.30 In its assessment of the **retail sale of motor fuels within the Local Catchment Areas,** the Commission found that there is no Circle K-owned service station within the Local Catchment Areas of three specific Target Stations.[264] The Commission's view is that, as there are no horizontal overlaps between the Parties in these areas, the Proposed Transaction does not give rise to horizontal competition concerns in respect of these three Target Stations.

The retail sale of motor fuels in the Local Catchment Areas where Parties overlap

5.31 In its Assessment, the Commission assessed the Local Catchment Areas within which both Circle K and Pelco own and operate service stations. These catchment areas were centred on the following Target Stations:

- the Airside Target Station;
- the Artane Target Station;
- the Batterstown Target Station;
- the Newtown Target Station;
- the Rathfarnham Target Station; and
- the Rolestown Target Station.

5.32 Table 5 below provides an overview of the Local Catchment Areas around each Target Station where both of the Parties are active.

[264] Balbriggan Target Station, the Mullingar Target Station, and the Skerries Target Station.

Table 5: Overview of local areas where there is a Circle K service station within the local catchment area of a Target Station

Target Station	Relevant Catchment Area	Nearest Circle K-branded service station	Approximate distance from Target Station	Number of suppliers in the catchment area pre-Proposed Transaction 265	Number of suppliers in the catchment area post-Proposed Transaction[266]
Airside Target Station	3.2km (Urban)	Circle K Swords	1.10km	4	3
Artane Target Station	3.2km (Urban)	Circle K Artane	0.5km	8	7
Batterstown Service Station	8km (Rural)	Circle K Dunshaughlin	3.3km	6	5
Newtown Target Station	3.2km (Urban)	Circle K Donaghmede	1.75km	6	5
Rathfarnham Target Station	3.2km (Urban)	Circle K Rathfarnham Shopping Centre	1.15km	6	5
Rolestown Target Station	8km (Rural)	Circle K Express Ashbourne	6km	10	9

Source: The Commission, based on information provided by the Parties

5.33 In the Assessment, the Commission reached the preliminary view that the Proposed Transaction was likely to result in an SLC in the retail supply of motor fuel in each of these six Local Catchment Areas.

5.34 Following the issuance of the Assessment, the Commission engaged extensively with the Parties. This include analysing the written submissions made by them following

[265] While a service station may operate under a brand, it may be independently owned with price setting power. The Commission has used available information to determine the number of retail suppliers active in each catchment area regardless of branding. For clarity, this column includes the Parties and third-party suppliers.

[266] See previous footnote. The same methodology has been applied post- Proposed Transaction.

the issuance of the Assessment as well their Oral Submissions to the Commission. In light of this engagement and further analysis of the Local Catchment Areas, the Commission was satisfied that it did not have competition concerns in four of the Local Catchment Areas.[267] The four Local Catchment Areas where the Commission no longer has competition concerns are:

- the Airside Catchment Area;
- the Batterstown Catchment Area;
- the Rathfarnham Catchment Area; and
- the Rolestown Catchment Area.

5.35 While the retail sale of motor fuels in these areas is highly concentrated, with Circle K holding a [redacted] share following the implementation of the Proposed Transaction, market concentration is just one of the factors which the Commission considered. In addition to the Proposed Transaction's impact on market structure and concentration, the Commission also considered the extent to which the Parties compete, and the competitive constraints exerted by other suppliers. As is outlined in relation to each of these four Local Catchment Areas below, these factors indicated that the Proposed Transaction would not give rise to an SLC in these areas.

[267] It was confirmed in the Oral Submission on 20 May 2025 that, at that time, the Commission's concerns were limited to Artane, Newtown and Rathfarnham. Following the Oral Submission and the receipt of further information, the Commission decided that it no longer had SLC concerns in the Rathfarnham Local Catchment Area.

Table 6: The retail sale of motor fuel in the four catchment areas from January 2024 to September 2024

Estimated Market Shares[268]						
Catchment Area	Pelco's estimated market share	Circle K's estimated market share	Circle K's estimated market share post-Proposed Transaction	HHI pre-Proposed Transaction	HHI post-Proposed Transaction	HHI Delta
Airside	[5-10]%	[45-50]%	[55-60]%	3,717	4,591	874
Batterstown	[5-10]%	[50-55]%	[55-60]%	3,130	3,734	604
Rolestown	[5-10]%	[40-45]%	[45-50]%	2,637	3,187	550
Rathfarnham	[0-5]%	[60-65]%	[60-65]%	4,152	4,481	329

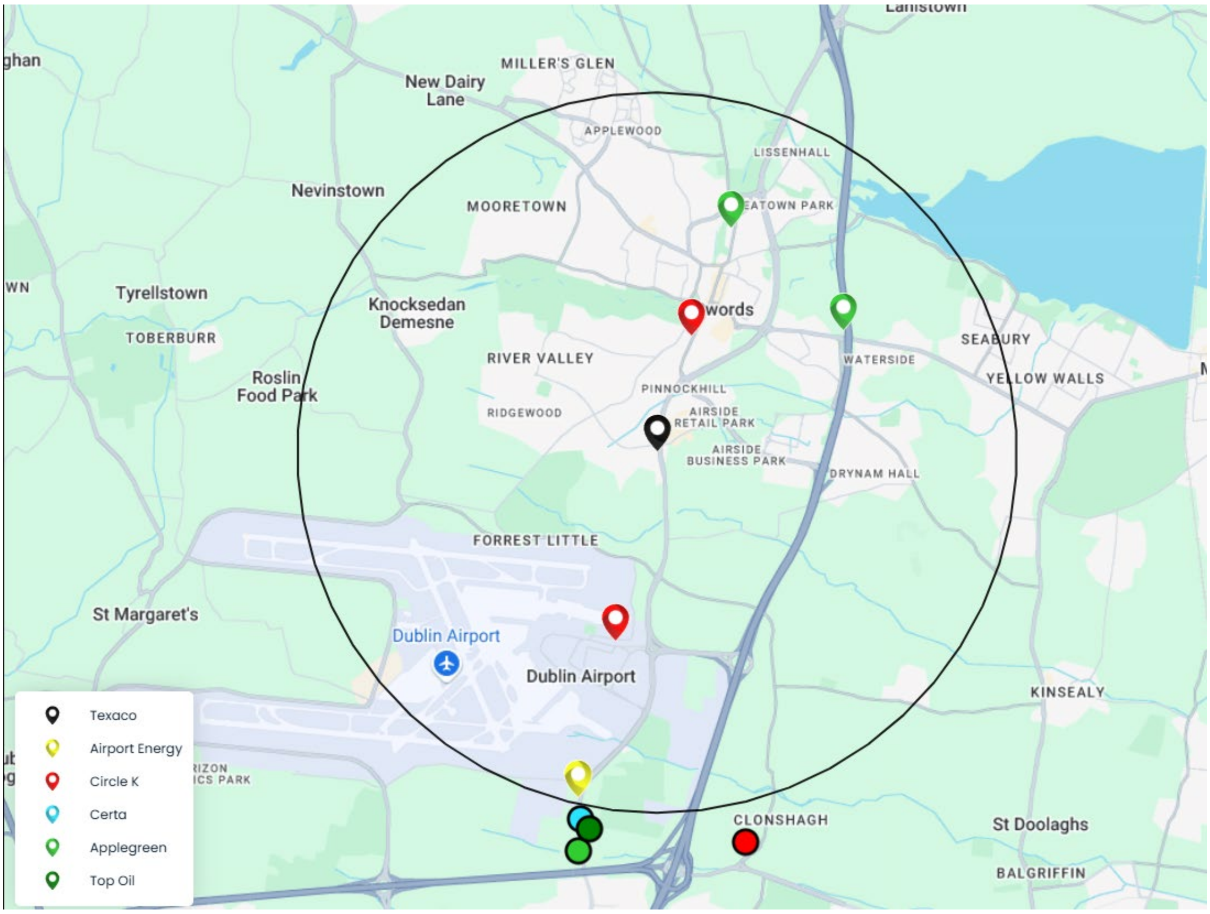
Source: The Commission, based on information provided by the Parties and third parties

[268] Market shares have been rounded to the nearest hundredth of a percent.

5.36 The Commission now sets out its reasoning for concluding that it did not have competition concerns in each of the four Local Catchment Areas specified in Table 6.

Airside catchment area

Map 1: Retailers of Motor Fuels in the Airside Catchment Area



Source: The Commission

5.37 **Market structure & concentration**: As shown in Map 1, the Airside Target Station (black marker) is located to the south of Swords, Co. Dublin, with service stations located to its north and south. There are two Circle K stations in the catchment area, located approximately 1km and 2km from Airside Target Station, respectively (red markers). There are two Applegreen service stations in the local catchment area, both located approximately 2 km from Airside Target Station (green markers). There is one further third-party service station, Airport Energy, located to the south of Dublin Airport, just within the 3.2km radius (yellow marker). There are three service stations

(Applegreen, Certa and Top Oil) located just outside the catchment area to the south.[269]

5.38 Following the Proposed Transaction, Circle K's market share would increase to [55-60]% in the catchment area, a [5-10]% increase on its pre-merger share. Furthermore, the retail supply of motor fuels in this area would be highly concentrated, with a HHI of 4,591.

5.39 **Physical proximity**: Circle K Dublin Airport, which is located just to the west of the Dublin Airport Roundabout, is primarily accessible by traffic departing from Dublin Airport, as there is limited access to the station for drivers as they arrive at Dublin Airport. Therefore, the Commission considers that Circle K Dublin Airport is likely to primarily serve customers that are travelling to and departing from Dublin Airport. The Commission notes that Circle K Swords and the Airside Target Station, owing to their respective locations and the traffic flows between them, also serve customers traveling to Dublin Airport, but also likely serve customers travelling between Swords and north Dublin city to a greater extent than Circle K Dublin Airport.[270] Therefore, the Commission considers that while the Parties compete in the catchment area, this competition is focused between the Airside Target Station and Circle K Swords, rather than Airside Target Station and Circle K Dublin Airport.

5.40 **Monitoring:** The Commission considers that certain service stations located outside of the Airside Catchment Area (but within the parameters applied in the Commission's sensitivity analysis) will continue to exert a significant competitive constraint following the Proposed Transaction. There are three service stations located just outside of the Airside Catchment Area (by approximately 400 metres—all three are within the 3.6km and 10-minute drivetime alternative catchment areas used by the Commission when

[269] There is also a Circle K service station located just outside of the Airside Catchment Area in Clonshaugh.

[270] Circle K email to the Commission 26 March 2025. Circle K stated that "*Circle K considers the Circle K Dublin Airport site as being in its own micro market. This is because to get to this airport site, a customer needs to drive through Terminal 1 and Terminal 2, resulting in a very specific customer profile fuelling for this store. It is not on a commuting path for consumers other than those going to/from the airport and, given airport traffic volumes it is unlikely that consumers would otherwise choose to go to this station. This site primarily serves only taxi drivers and airport staff and customers rather than the local residential customer.*"

conducting its sensitivity analysis) to the south along the Swords Road, namely Certa, Top Oil and Applegreen.

5.41 Circle K monitors these three stations in relation to one of its service stations in the Airside Catchment Area;[271] Pelco does not monitor these stations. Given these three services stations are located just outside the catchment area and are on the same road between Santry and Swords as the Airside Target Station, the Commission considers it likely these stations exert competitive constraints on the Parties, and particularly on the Airside Target Station. In this regard, the Commission notes the results of the traffic survey commissioned by Circle K, which found that high volumes of traffic pass both the Airside Target Station and Certa and Applegreen.[272] The Commission also engaged with suppliers in this area, including Certa, which is located just outside of the Airside Catchment Area.[273] Certa stated that "*the* [redacted] *and that it uses these stations pricings in determining its own pricing*."[274]

5.42 **Conclusion:** The Commission notes that the Airside Catchment Area is highly concentrated, with Circle K holding a [redacted] share following the implementation of the Proposed Transaction. However, taking into account the traffic routes, the particular circumstances of Circle K Dublin Airport (primarily serving airport customers), and the pattern of monitoring, the Commission considers that service stations located outside of the local catchment area will exert a significant competitive constraint following the Proposed Transaction. Therefore, the Commission considers that the Proposed

[271] Circle K Dublin Airport.

[272] Between 70-90%, see paragraph 3.14 of the First Economic Report. 5.215. The Commission notes that, pre-Assessment, the Parties did not provide sufficient information regarding the traffic survey that they had commissioned such as to enable significant weight to be placed on its results. For example, the First Economic Report did not outline: (i) how this exercise was conducted; (ii) how vehicles were monitored, tracked and recorded; (iii) the time period over which the exercise was conducted; or (iv) the locations from which vehicles were monitored/tracked. The Parties recognised in Compecon Written Response: "*The author had understood that full details of the survey and of the loyalty card data would be provided in the parties RFI response. There may have been a misunderstanding between Compecon and the parties in this regard*." Circle K provided further information about the traffic survey in the Circle K Written Response and when requested by the Commission. While the results of the traffic survey were not determinative in themselves, the Commission has considered the results of this survey as part of its competitive assessment of the Proposed Transaction.

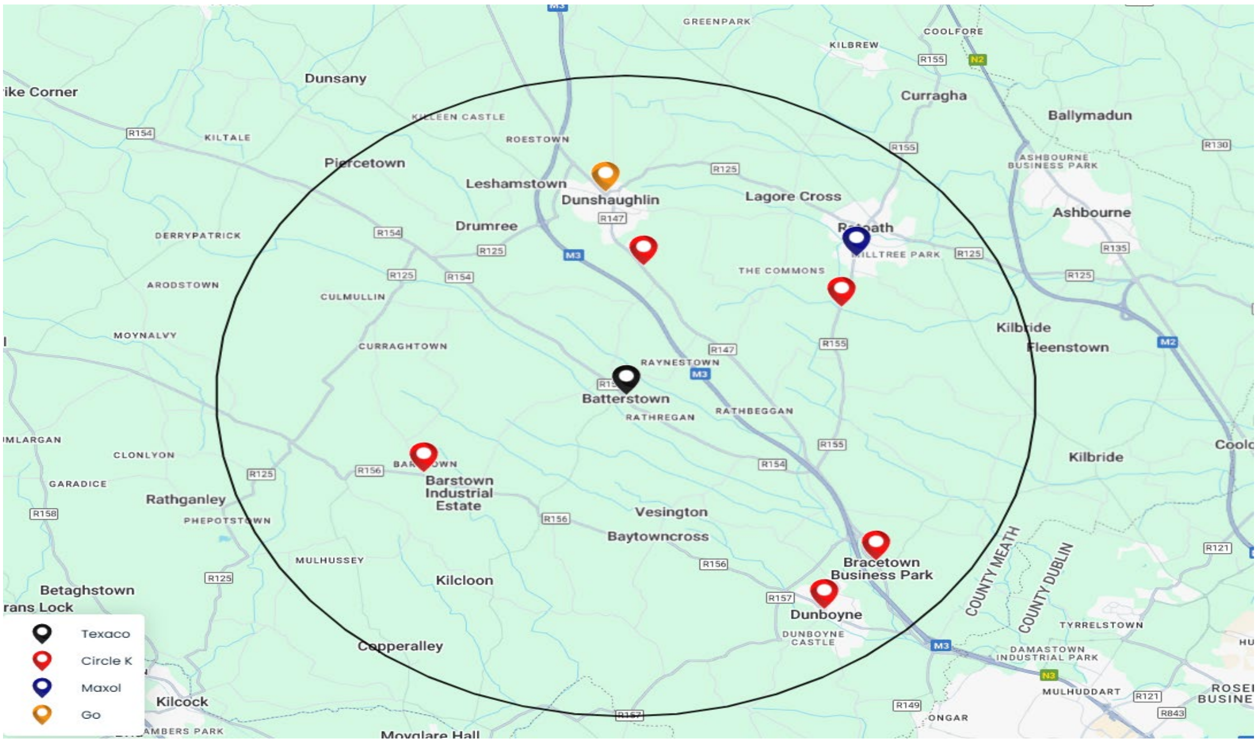
[273] The Commission also engaged with Applegreen, which stated the following with respect to which stations it monitors in relation to its own service station in Airside: *Applegreen stated that is monitors service stations* [redacted] *Applegreen stated that it primarily monitors* [redacted]*. Applegreen stated that the* [redacted] *would also be monitored by Applegreen."* See Applegreen Call Note, dated 5 February 2025.

[274] Certa Call Note, dated 6 February, page 2.

Transaction does not give rise to an SLC with respect to the retail sale of motor fuels in the Airside Catchment Area.

Batterstown catchment area

Map 2: Retailers of motor fuels in the Batterstown Catchment Area



Source: The Commission

5.43 **Market structure & concentration**: As shown in Map 2, the Batterstown Target Station (black marker) is in Batterstown village in Co. Meath. There are 5 Circle-K branded service stations in the Batterstown Catchment Area (red markers).

- Three of these service stations are CoCo sites where Circle K sets the retail price of motor fuels;
- One service station is owned by Circle K but operated by an independent dealer. Circle K does not set the price of motor fuels at this service station. However, Circle K supplies motor fuels to this service station; and
- The final Circle K-branded station is DoDo and sets its prices independently of Circle K. Circle K supplies motor fuels to this service station.

5.44 Maxol (blue marker) and GoPetrol (orange marker) each operate a single service station in the Batterstown Catchment Area. There is a Texaco-branded service station located just outside the Batterstown Catchment Area, which is located in Clonee (not shown on map).[275]

5.45 Following the Proposed Transaction, Circle K's market share would increase to [55-60]%, a [5-10]% increase on its pre-merger share. Furthermore, the retail supply of motor fuels in this area would be highly concentrated, with a HHI of 3,734.

5.46 **Physical proximity:** Looking at the specific location of the Batterstown Target Station in relation to Circle K stations in the Batterstown Catchment Area, the Batterstown Target Station is located along the R154 road between Trim, Co. Meath and the M3 motorway in Piercetown. The Commission notes that Circle K's three service stations in this area are not located on this route, and two of Circle K's stations in this area are located on the opposite side of the M3 to the Batterstown Target Station.

5.47 **Monitoring:** The Commission notes that Pelco monitors [redacted].[276] These service stations are [redacted]. [redacted].[277] [redacted].[278] The Commission considers it likely, as evidenced by [redacted], that these stations exert a significant competitive constraint on Pelco despite being located outside of the Batterstown Catchment Area, given their presence on the same commuter route (the R154).

[275] Pelco does not own or operate this service station.

[276] [redacted].

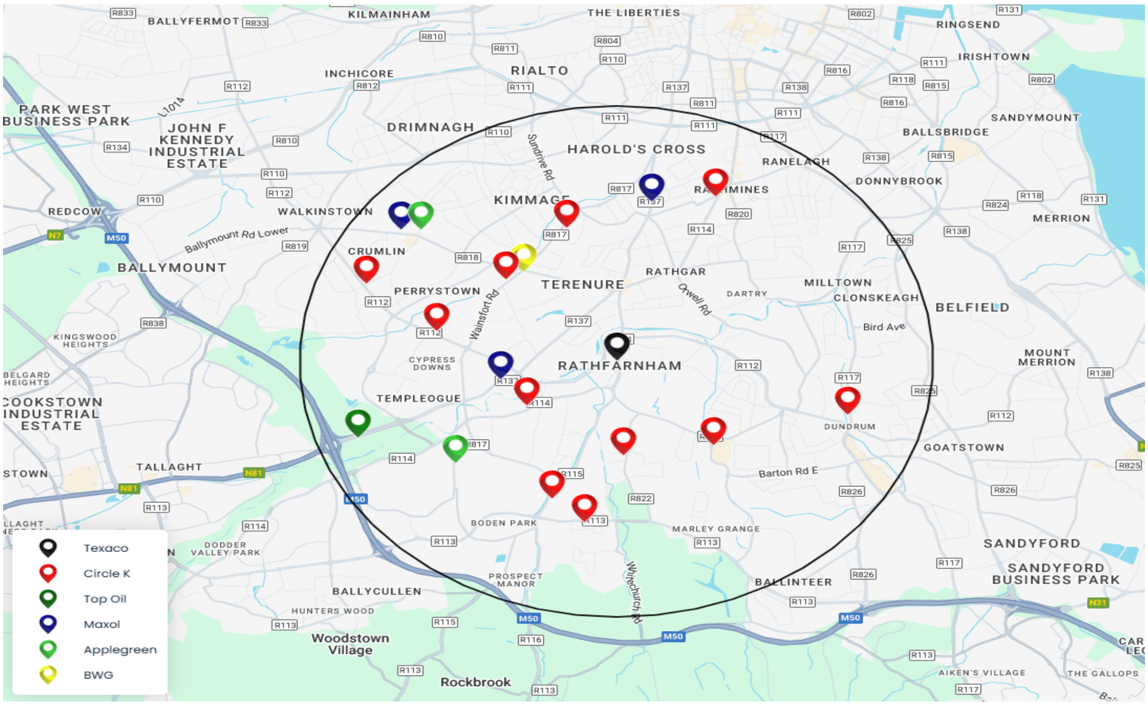
[277] [redacted].

[278] First Economic Report, paragraph 3.14.

5.48 **Conclusion:** The Commission notes that the Batterstown Catchment Area is highly concentrated, with Circle K holding a [redacted] share following the implementation of the Proposed Transaction. However, taking into account their physical proximity and location on travel routes, and the pattern of monitoring, while the Parties compete in this area (as reflected in their price monitoring activity), the Commission considers that there will remain third-party competitors which are likely to compete closely with the Parties and act as a constraint in the Batterstown Catchment Area. Therefore, the Commission considers that the Proposed Transaction does not give rise to an SLC with respect to the retail sale of motor fuels in the Batterstown Catchment Area.

Rathfarnham catchment area

Map 3: Retailers of motor fuels in the Rathfarnham Catchment Area



Source: The Commission

5.49 As shown in Map 3, the Rathfarnham Target Station is located in the centre of Rathfarnham (black marker). The following suppliers are also active in the Rathfarnham Catchment Area:

- Circle K owns 11 service stations in the catchment area (red markers);

- Applegreen owns 3 service stations in the catchment area (light green markers);
- Maxol owns 3 service stations in the catchment area (blue markers);
- BWG owns 1 service station in the catchment area (yellow marker (branded as Maxol)); and
- Spawell Auto Stop (Templeogue) LTD owns 1 service stations in the catchment area (dark green marker (branded as Top Oil)).

5.50 **Market structure and concentration**: Following the Proposed Transaction, Circle K's market share would increase to [60-65]%, a [0-5]% increase on its pre-merger share. Furthermore, the retail supply of motor fuels in this area would be highly concentrated, with a HHI of 4,481.

5.51 **Physical proximity**: The Rathfarnham Target Station is located along the Rathfarnham Road, just north of Rathfarnham Castle Park. Circle K has a large presence across the Rathfarnham Catchment Area, with several Circle K service stations located within approximately 2km of the Rathfarnham Target Station.[279] Circle K service stations are found in each direction from the Rathfarnham Target Station, indicating that many customers travelling to or past the Rathfarnham Target Station likely need to pass a Circle K service station to arrive at the Rathfarnham Target Station.[280] There are also two third parties' service stations within 2km of the Rathfarnham Target Station, namely Maxol Templeogue and KCR (Maxol-branded) service station (1.6km). In light of their stations' respective locations, the Commission considers that the Parties compete in the Rathfarnham Catchment Area.

5.52 **Monitoring:** The Commission notes that Pelco monitors [redacted] while Circle K monitors Pelco when setting prices at 4 of its service stations within the Rathfarnham Catchment Area. These four stations are: (i) Circle K Rathfarnham

[279] Circle K Rathfarnham Shopping Centre (1.2km); Circle K Three Rock (1.25km); Circle K Nutgrove (1.55km); Circle K Fortfield (1.65km); Circle K Ballyboden (2km); Circle K Templeville (2km); and Circle K Sundrive (2km).

[280] Dependent on where a given customer began their journey.

Shopping Centre; (ii) Circle K Three Rock; (iii) Circle K Nutgrove; and (iv) Circle K Ballyboden. However, Circle K also monitors out-of-market service stations in relation to several of its service stations within the Rathfarnham Catchment Area to larger extent that it does in any of the other catchment areas. For example, Circle K Nutgrove and Circle K Three Rock both monitor Maxol Ballinteer and Applegreen Ballinteer in addition to Pelco; Circle K Nutgrove also monitors Certa Dundrum.[281]

5.53 With respect to the constraint exerted by Certa on the Parties, Certa stated the following during its call with the Commission:

> *"Certa stated that it does not monitor the* [redacted] *Certa stated* [redacted]*."*[282]

5.54 The Commission considers it likely, as evidenced by Circle K's price monitoring activity and the views of certain out-of-market service station operators, that these out-of-market stations exert a significant competitive constraint on Circle K despite being located outside of the Rathfarnham Catchment Area.

5.55 **Conclusion:** The Commission notes that the Rathfarnham Catchment Area is highly concentrated, with Circle K holding a [redacted] share following the implementation of the Proposed Transaction. The Commission has taken account of the Parties' price monitoring activity and the physical proximity of service stations on routes surrounding the Rathfarnham Target Station and considers that the Parties compete in this area. However, the Commission also notes the extent of Circle K's monitoring of service stations outside of the Rathfarnham Catchment Area, as well as the views of third-party service station operators from outside of the area. While the Commission considers that any of these out-of-market stations alone is unlikely to sufficiently

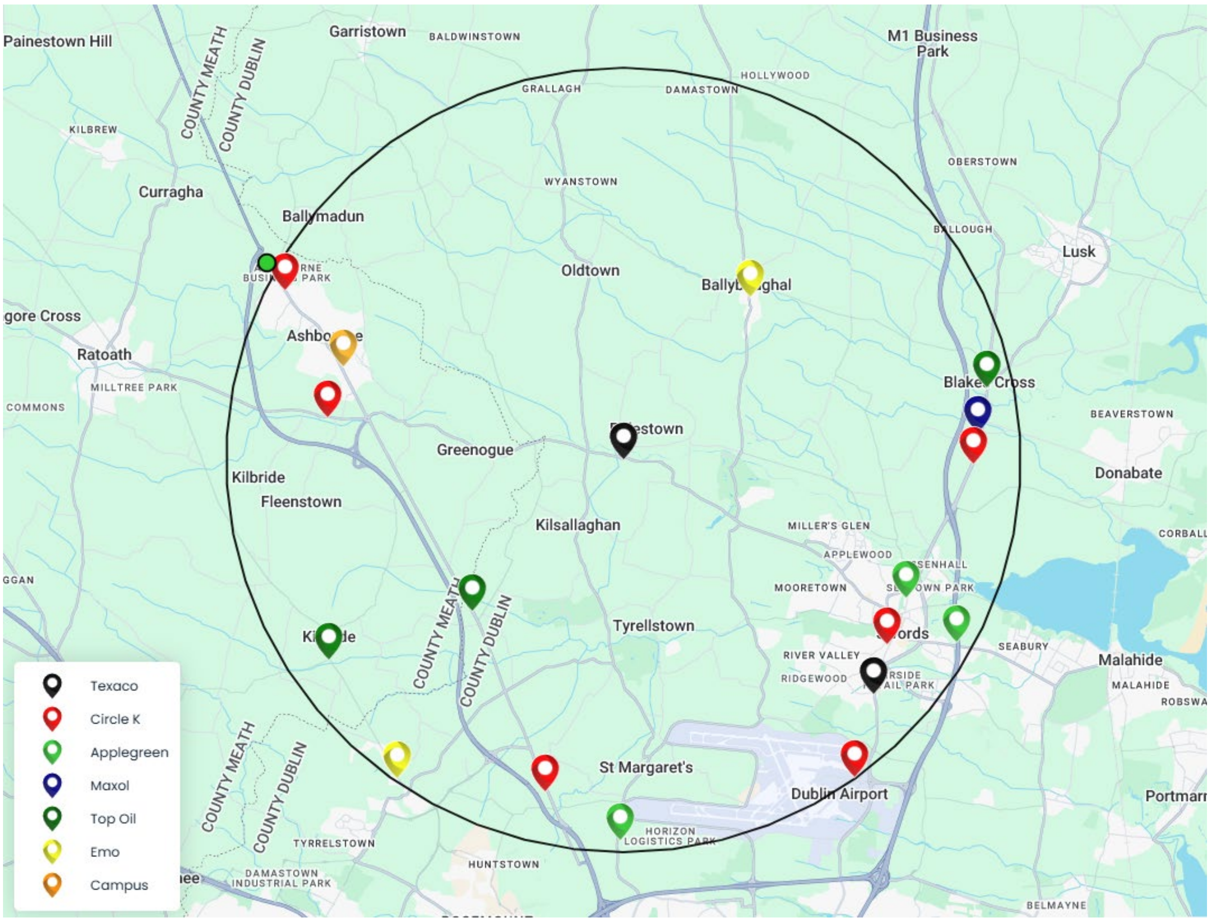
[281] Circle K response to Commission's questions, email dated 10 June, excel titled "Catchment Area Sites – Competitors 09062025".

[282] Certa Call Note, dated 2 February 2025, page 3.

constrain Circle K post-Transaction (such as to replace the constraint exercised by Pelco), the cumulative effect of all of the out-of-market stations indicates that Circle K is likely to be materially constrained following the Proposed Transaction, in relation to the Rathfarnham Catchment Area. Therefore, the Commission considers that the Proposed Transaction does not give rise to an SLC with respect to the retail sale of motor fuels in the Rathfarnham Catchment Area.

Rolestown catchment area

Map 4: Retailers of motor Fuels in the Rolestown Catchment Area



Source: The Commission

5.56 **Market structure and concentration**: As shown in Map 4, the Rolestown Service Station (black marker) is located along the R125 road in Rolestown, Co. Dublin, which is located approximately 7 km to the west of Swords, Co. Dublin. The following suppliers are active in the Rolestown Catchment Area:

- Circle K owns 5 service stations in the catchment area (red markers);

- There is 1 independent Circle K-branded service station (red marker);
- Applegreen owns 3 service stations in the catchment area (light green markers);
- Top Oil owns 1 service station in the catchment area (dark green markers);
- Two separate suppliers operate Top-oil-branded service stations in the catchment area (dark green markers);
- Certa owns 2 service stations in the catchment area (yellow markers);
- There is one independent branded service station (orange marker); and
- Maxol owns 1 service station in the catchment area (blue marker).

5.57 Following the Proposed Transaction, Circle K's market share would increase to [45-50]%, a [5-10]% increase on its pre-merger share. Furthermore, the retail supply of motor fuels in this area would be highly concentrated, with a HHI of 3,187.

5.58 **Physical proximity**: The Rolestown Target Station is located along the R125 road between Ratoath to the east and Swords to the west. While Circle K does not operate a service station on this road, it does operate a service station in Ashbourne and in Swords. However, the Commission notes that there are several other service stations that are also located within Ashbourne and Swords. The Commission notes that Circle K owns five service stations in the Rolestown Catchment Area, all of which are located approximately 6.6km-7.6km from the Rolestown Target Station. The Commission considers that the Parties' respective locations indicate that the Parties do not compete particularly closely.

5.59 **Monitoring**: The Commission notes that the Parties do not monitor one another with respect to each other's stations in the Rolestown Catchment Area.[283]

[283] Pelco Phase 1 RFI Response, question 1(d), document "Q1 (d) Competitor Pricing 2023 2024.xlsx", MD5 hash 887ae57acc8be42e2b764fe13a5fc876 and Circle K response to Commission's questions, email dated 10 June, excel titled "Catchment Area Sites – Competitors 09062025".

5.60 **Conclusion**: The Commission notes that the Rolestown Catchment Area is highly concentrated, with Circle K holding a [redacted] share following the implementation of the Proposed Transaction. However, taking into account the geographic location of the Parties' service stations in relation to each other, and considering the absence of monitoring each other's pricing, the Commission considers that the Proposed Transaction does not give rise to an SLC with respect to the retail sale of motor fuels in the Rolestown Catchment Area.

Potential Relevant Markets for which the Commission has SLC concerns

5.61 In the course of its merger review, the Commission has carefully considered the relevant evidence provided by the Parties and by third parties and continued with its analysis. As the Commission received and considered this information and conducted its analysis, the Commission significantly narrowed its areas of concern throughout the review period. Ultimately, the Commission's analysis of competitive effects focuses on the following two local catchment areas where Circle K and Pelco are active:

- The retail sale of motor fuels within a 3.2km radius of the Artane Target Station (the "Artane Catchment Area"); and
- The retail sale of motor fuels within a 3.2km radius of the Newtown Target Station (the "Newtown Catchment Area").

5.62 These two Potential Relevant Markets are referred to collectively as the "Two Local Catchment Areas."

5.63 As noted above in paragraphs 5.6 to 5.8, the Commission's Theory of Harm is that **the Proposed Transaction will result in the removal of Pelco from the Two Local Catchment Areas (i.e. the Artane Catchment Area and the Newtown Catchment Area) which may result in higher prices and reduced quality of service for customers in these Two Local Catchment Areas.**

The Commission's analysis of the Theory of Harm

Introduction

5.64 The Commission sets out its analysis of the Theory of Harm as follows:

a) **First, the Commission assesses the impact of the Proposed Transaction on market structure and concentration:** In this subsection, the Commission (i) assesses the estimated market shares of the Parties and other suppliers within the Two Local Catchment Areas; (ii) assesses the levels of concentration in the Two Local Catchment Areas; and (iii) conducts a sensitivity analysis with respect to the estimated market shares in these areas.

b) **Second, the Commission examines the extent to which the Parties compete within the Two Local Catchment Areas:** In this subsection, the Commission assesses the competitive relationship between the Parties in each of the Two Local Catchment Areas and considers whether the Parties compete closely with one another.

c) **Third, the Commission assesses factors which could potentially prevent an SLC within the Two Local Catchment Areas:** In this subsection, the Commission assesses (i) barriers to entry and expansion in the Two Local Catchment Areas; (ii) the extent to which out-of-market constraints would prevent an SLC arising in the Two Local Catchment Areas; (iii) mavericks and remaining competitive constraints; and (iv) the Parties' views with respect to their respective non-fuel offering.

d) **Finally, having considered all the above, the Commission sets out its conclusion on the Theory of Harm**.

Impact of the Proposed Transaction on market structure and concentration in the Two Local Catchment Areas

5.65 The Commission has assessed market structure and market concentration in relation to the Two Local Catchment Areas, namely:

- the Artane Catchment Area; and
- the Newtown Catchment Area.

Analysis of market shares and market concentration

5.66 The Commission has had regard to the Commission's Merger Guidelines regarding the role market shares and market concentration have in the Commission's competitive assessment. While market shares and market concentration are not determinative in themselves, they are a measure of market structure, which is a key component of competitive effects analysis, and are therefore one aspect of the Commission's competitive assessment.

Role of market shares and market concentration

5.67 The Commission's Merger Guidelines explain the role that market shares and market concentration have in the Commission's competitive assessments. According to the Merger Guidelines:

> *"A central element in assessing the competitive impact of a merger is identifying its effect on market structure. One dimension to market structure is market concentration. Market concentration refers to the number and size of firms in the market. A concentrated market is one with a small number of leading firms with a large combined market share, and an unconcentrated market is one with a large number of firms with a small combined market share."*[284]

5.68 The Commission's Merger Guidelines go on to explain the use of market shares in measuring concentration:

> *"Market shares are important when measuring concentration. The market shares of firms in the market can give an indication of the extent of a firm's market power. The combined market share of the merging parties, when compared with their respective market shares pre-merger, can provide an indication of the change in market power resulting from the merger. Competition concerns are more likely to arise when the merger creates a merged entity with a large market share."*[285]

[284] Commission's Merger Guidelines, paragraph 3.1.

[285] Commission's Merger Guidelines, paragraph 3.4.

5.69 Furthermore, the Merger Guidelines recognise that market shares form one aspect of the Commission's overall competitive assessment:

> *"**A high level of market concentration post-merger is not sufficient, in and of itself, to conclude that a merger is likely to lead to an SLC**. Other relevant factors (such as, for example, the closeness of competition between the merging parties, market dynamics, barriers to entry and expansion, etc.) will be examined by the Commission before any conclusion is reached concerning the likely competitive impact of a merger*." (emphasis added)[286]

Approach to calculating market shares

5.70 The Commission has estimated market shares based on information provided to the Commission by the Parties and third parties. The Commission considers that volumes of motor fuels sold by each supplier (that sets the price of its motor fuel) represents an appropriate measurement through which the structure and concentration of each catchment area can be captured. The Commission notes the volume of motor fuels sold was also used to calculate market shares in M*/23/068 - McMullan Bros./Naas Fuels Limited.*[287] Furthermore, the European Commission has considered volume of sales as an appropriate basis of market share estimates in the retail sale of motor fuels. For example, in *Case M.10438 - MOL / OMV SLOVENIJA,* the European Commission stated:

> *"For the calculation of sales shares in a given catchment area, the Commission considers that, similarly to the nation-wide market shares, shares in number of stations can be illustrative of the coverage of a competitor, but do not fully capture the market position of this competitor. To solve this issue and contrary to the Notifying Party's approach, it is common practice to weight stations by a metric that captures their importance (for example turnover or volumes sold).*

[286] Commission's Merger Guidelines, paragraph 3.3

[287] The Commission notes the volume of motor fuels sold was also used to calculate market shares in M*/23/068 - McMullan Bros./Naas Fuels Limited.*

As a result, the Commission relied on an approach where fuel stations were weighted by brand-specific national average sales volumes."[288]

5.71 In the Merger Notification Form, the Parties listed the number of competing service stations in the Local Catchment Areas and the number of competing brands in these areas. While the number of competing service stations offers an insight into market structure and concentration, it offers less insight into each supplier's relative size and strength.[289] Therefore, to gain a more accurate understanding of market structure and concentration in the catchment areas, the Commission required the Parties to provide the volume of motor fuels sold from their service stations within the catchment areas. In addition to requiring information from the Parties, the Commission sought information from service station operators in each of the catchment areas.

5.72 The Commission was unable to obtain the volume of motor fuels sold at some service stations. To enable market share estimates to be calculated with respect to 12 service stations,[290] the Commission used the volume of motor fuels supplied to these service stations by their respective wholesale suppliers as a proxy for the volume of motor fuels sold to the public.[291] For 3 service stations,[292] the Commission had to develop its own estimate of the volume of motor fuels sold. To do this, the Commission calculated the average volume of motor fuels sold by service stations in the relevant local catchment area for which such data is available. This average was used as the estimated volume of motor fuels sold at the service station(s) for which the Commission was unable to obtain sales information.

Views of the Parties

[288] Case *M.10438 - MOL / OMV SLOVENIJA*, paragraph 218.

[289] The Commission notes that the number of brands present in a catchment area also offers an insight into a local market. However, as certain stations adopt the brand of their wholesaler supplier while setting retail prices, the Commission considers that sales volumes offer a more accurate measure of market share and concentration.

[290] [redacted]

[291] This information was supplied by the respective wholesale supplier.

[292] Campus-branded service station located in Ashbourne, Co. Meath, Curran Oil Filling Station-branded service station, Tara, Co. Meath, and Amiens Street Service Station-branded service station located in North Wall, Co. Dublin.

5.73 The Parties' views regarding alternative ways of defining catchment areas are set out in detail in Section 3. The Parties submitted that undue emphasis had been placed by the Commission in the Assessment on the significance of the Parties' [redacted] market shares:

> *"The Assessment, and the one potential theory of harm identified by the Commission, appears to be based on a flawed approach, namely that a high market share equates to market power and, as such, must in turn automatically result in an SLC."*[293]

5.74 The Commission does not agree with the Parties' views that its analysis equated high market shares to market power and consequently an SLC finding. As noted above, high market shares and concentration are not, in themselves, determinative of whether a transaction gives rise to an SLC. As demonstrated throughout Section 5, the Commission has considered and analysed a range of other factors beyond market structure, such as closeness of competition, entry and expansion and out-of-market constraints.

Market shares in the Two Local Catchment Areas

5.75 Table 7 summarises the estimated market shares in the retail sale of motor fuels in the Two Local Catchment Areas in the period from January 2024 to September 2024. The estimated market shares for each of the Two Local Catchment Areas are outlined in more detail in the subsequent paragraphs.

[293] Circle K Written Response, paragraph 2.7.

Table 7: Estimated market shares in the retail sale of motor fuel in the Two Local Catchment Areas from January 2024 to September 2024

Estimated Market Shares[294]						
Catchment Area	Pelco's estimated market share	Circle K's estimated market share	Circle K's estimated market share post-Proposed Transaction	HHI pre-Proposed Transaction	HHI post-Proposed Transaction	HHI Delta
Artane	[5-10]%	[55-60]%	[65-70]%	3,519	4,594	1,075
Newtown	[10-15]%	[50-55]%	[60-65]%	3,587	4,768	1,181

Source: The Commission based on information received from the Parties and third parties.

[294] Market shares have been rounded to the nearest hundredth of a percent.

5.76 The Commission notes that Circle K will have a [redacted] market share in the Two Local Catchment Areas following the implementation of the Proposed Transaction, at [60-65]% in the Newtown Relevant Market and [65-70]% in the Artane Catchment Area. Furthermore, as noted in Table 7 above, each of the Two Local Catchment Areas is highly concentrated, and the Proposed Transaction increases that concentration further. The Commission notes that the HHI delta in each of the Two Local Catchment Areas is well above the figure of 150, the threshold below which the Commission considers that a post-merger HHI is unlikely to cause concern.[295]

Sensitivity Analysis: Analysis of alternative catchment areas

5.77 As discussed in Section 3, the Commission has considered in detail the Parties' views with respect to the various ways local markets are defined. The Commission has conducted an analysis of the impact of applying different metrics (increased straight-line distance, drivetime, Circle K-centred areas) with respect to the estimated market shares and concentration in the Two Local Catchment Areas.

5.78 The sensitivity analysis was provided to the Parties in the Assessment.[296] Following submissions from the Parties, particularly on their introduction of Circle K-centred catchment areas, the Commission developed its analysis further.[297]

5.79 The Commission's analysis considered the extent to which the estimated market shares it has calculated in the Two Local Catchment Areas would change when different geographic parameters are applied. The parameters used in the analysis are:

(i) **an extended geographic radius** (3.6km);

(ii) **drivetime-based catchment areas** (10-minute drivetime); and

(iii) **Circle K-centred catchment areas**.

[295] See paragraphs 3.10-3.11 of the Commission's Merger Guidelines.

[296] The Commission outlined the result of its sensitivity analysis when outlining market structure and concentration in relation to each catchment area in the Assessment. The sensitivity analysis outlined in this Determination focuses on the Two Local Catchment Areas.

[297] The Commission did not assess Circle K-centred catchment areas in the sensitivity analysis outlined in the Assessment.

5.80 **Parameter 1 - Extended 3.6km radius**:[298] The Commission has calculated estimated market shares in the retail sale of motor fuels based on an extended geographic catchment area, namely the area within a 3.6km radius of each urban Target Station. The Commission extended the radius of the catchment areas by approximately 12.5%. This extension had the effect of capturing service stations that were located just outside the 3.2km radius.

5.81 **Parameter 2 - 10-minute drivetime isochrone:**[299] The Commission has calculated estimated market shares in the retail sale of motor fuels based on a 10-minute drivetime from urban Target Stations. The Commission notes that the CMA and the European Commission have applied a variety of drivetimes when assessing competition in the sale of motor fuels or other retail markets at a local level, varying from 5 minutes to 20 minutes drivetime, depending on the specific decision and whether the area was classified as urban or rural.[300] Having considered the range of drivetimes applied by both the CMA and European Commission, the Commission considers that 10 minutes is an appropriate time to apply when conducting its sensitivity analysis. The Commission notes that [redacted]".[301] As set out in paragraph 5.70 below, the 10-minute drivetime isochrones encompass journeys of "about five kilometres" with one specific such journey within the 10-minute drivetime area from the Artane Target Station being 4.8 km and one such journey within the 10-minute drivetime area from the Newtown Target Station being 5.6 km.

Calculation of the drivetime area

[298] The Commission also applied a 9km radius to the catchment of rural Target Stations in the Assessment. However, as the Commission does not have competition concerns in these areas, the sensitivity analysis focuses on the Two Catchment Areas, which are centred around urban Target Stations.

[299] The Commission also applied a 15-minute drivetime isochrone in relation to rural Target Stations in the Assessment. However, as the Commission does not have competition concerns in these areas, the sensitivity analysis focuses on the Three Catchment Areas, which are centred around urban Target Stations.

[300] CMA's Retail mergers commentary, available at https://assets.publishing.service.gov.uk/media/5a81e8e840f0b62302699d23/retail-mergers-commentary.pdf, paragraph 2.25 and *M.10652 – MOL / LOTOS PALIWA*, paragraph 44.

[301] Oral Submission, page 59, line 1-12. The Commission notes that the Parties' economic advisor's view is that catchment areas should be based on both Circle K and Pelco's stations. Also see the First Economic Report, paragraph 2.14.

5.82 The Commission calculated the 10-minute drivetime isochrones using two online tools/software: (i) OpenStreetMap ("OSM"), which is an online mapping tool; and (ii) OpenRoute Service ("ORS"), which is software used to calculate drivetime isochrones. When calculating drivetime isochrones, ORS applies the following parameters:

- **Speed limits**: ORS generally uses the maximum speed limit of a road as its assumed starting base speed. For example, many urban areas may have speed limits of 50km/h, while motorways may have speed limits of 100km/h to 120km/h. Specifically for Dublin city, ORS uses the maximum speed limit (such as 50km/h, or 30km/h in residential areas). ORS will then reduce the maximum speed limit to 90% (i.e. approximately 45km/h for a 50km/h road) to reflect that drivers are unlikely to consistently drive exactly at the speed limit.

- **Turns and changing of direction**: The base speed may then be further adjusted to account for other factors, such as turns, changes in direction, roundabouts, one-way systems, and road types.

- **Traffic congestion and time of day**: ORS does not apply live or variable traffic conditions or generally account for traffic congestion. ORS's drivetime isochrones are therefore based on free-flowing traffic within a road's respective speed limits.

5.83 The Commission notes that ORS does not account for traffic congestion, time of day or weather, but instead assumes free flowing traffic conditions. It is likely therefore that the drivetime isochrones overstate, at times, the distance a driver could cover within the set 10-minute drivetime. For example:

- **Artane**: Connolly Train Station, located on Amiens Street in Dublin 1, is included within the 10-minute drivetime of the Artane Target Station (see Figure 16 below). However, if a driver began their journey from the Artane Target Station at 5:00pm on Saturday, 29 March 2025, Google Maps estimates the journey would take between 14 and 28 minutes. This journey would see customers travel a distance of 4.8km.[302]

- **Newtown**: Clontarf Park in Dublin 3 is included within the 10-minute drivetime of the Newtown Target Station (see Figure 17 below). However, if a driver began their journey from the Newtown Target Station at 8:00am on Tuesday, 17 June 2025, Google Maps estimates the journey would take between 14 and 24 minutes. This journey would see customers travel a distance of 5.6km.[303]

5.84 Drivetimes will vary based on a variety of factors. The Commission has included the examples above solely to illustrate that its drivetime catchment areas are likely to overstate, at times, the distance a driver will be able to travel in 10 minutes. Consequently, the Commission considers that in certain instances, its application of the drivetime isochrones may overstate the number of service stations that are potentially exerting competitive constraints on one another. Notwithstanding this, for the purposes of its competitive assessment, and in order to test the point raised by the Parties, the Commission has applied its 10-minute catchment areas in its sensitivity analysis of catchment areas based on alternative metrics.

5.85 **Parameter 3 - Circle K-centred catchment areas**: As detailed in Section 3, the Commission (i) considers its application of Pelco-centred catchment areas is appropriate and captures local competitive dynamics; and (ii) notes there are several issues with applying Circle K-centred catchment areas in the manner suggested by the Parties. However, in order to test the point raised by the Parties, the Commission has also considered some catchment areas centred around certain Circle K service stations. The Commission applied catchment areas around Circle K service stations that are either (i) monitored by Pelco; and/or (ii) located in close geographic proximity to Pelco's stations.[304]

[302] Shortest distance according to suggested routes by Google Maps.

[303] Shortest distance according to suggested routes by Google Maps

[304] For the purposes of this analysis, Circle K stations within approximately 2km of a Pelco station are considered be in close geographic proximity to Pelco.

Catchment area 1: Artane Catchment Area

5.86 Map 5 below shows the location of each retail supplier of motor fuels in the Artane Catchment Area.

Map 5: Retailers of motor fuels in the Artane Catchment Area

Source: The Commission

5.87 As shown in Map 5, the Pelco Artane Target Station (black marker, number 1) is located between Beaumont and Artane in north Dublin city. The Pelco Newtown Target Station (black marker, number 2) is also located within the Artane Catchment Area. There are seven Circle K service stations within the Artane Catchment Area (red markers). There are (i) two Applegreen service stations (light green markers – 10 and 11); (ii) two Top-Oil branded service stations (purple markers - 14 and 15); (iii) two Maxol service stations (dark blue markers - 12 and 13); (iv) one Certa service station (light blue marker, 16); and (v) the East Wall Service Station in the Artane Catchment Area (orange marker - 17).

5.88 Table 8 shows the estimated market shares in the retail sale of motor fuels in the Artane Catchment Area. This analysis considers the volume of motor fuels sold by each supplier (that sets its prices) within the Artane Catchment Area, within the period from January 2023 to September 2024.

Table 8: The retail sale of motor fuels in the Artane Catchment Area in 2023 and 2024

Artane Catchment Area [305]								
Supplier	**Service Station**	**Brand**	**Estimated Volume (litres) 2023**		**Estimated volume (litres) January to September 2024**		**Estimated Share 2023**	**Estimated share January to September 2024**
Pelco	Artane	Texaco	[redacted]		[redacted]			
	Newtown		[redacted]	[redacted]	[redacted]	[redacted]	[5-10]%	[5-10]%
Circle K	Artane	Circle K	[redacted]		[redacted]			
	Maypark		[redacted]		[redacted]			
	Beaumont		[redacted]		[redacted]			
	Omni SC		[redacted]		[redacted]			
	Clonshaugh		[redacted]		[redacted]			
	Richmond		[redacted]		[redacted]			
	Clontarf Bull		[redacted]	[redacted]	[redacted]	[redacted]	[55-60]%	[55-60]%
Parties combined			[redacted]	[redacted]	[redacted]	[redacted]	**[65-70]%**	**[65-70]%**

305 Market shares have been rounded to the nearest hundredth of a percent.

	223 Howth Road	Applegreen	[redacted]		[redacted]			
Applegreen	54-56 Howth Rd, Clontarf West		[redacted]	[redacted]	[redacted]	[redacted]	[5-10]%	[5-10]%
	Richmond Road	Maxol	[redacted]		[redacted]			
Maxol	Swords Road		[redacted]	[redacted]	[redacted]	[redacted]	[5-10]%	[5-10]%
LCC Group	East Wall Service Station	Campus	[redacted]	[redacted]	[redacted]	[redacted]	[5-10]%	[5-10]%
Sean Carroll Garages Limited	Top Oil Raheny	Top Oil	[redacted]	[redacted]	[redacted]	[redacted]	[0-5]%	[0-5]%
Certa	Certa Clarehall SC	Certa	[redacted]	[redacted]	[redacted]	[redacted]	[5-10%	[5-10]%
Murad Oil Limited	Top Oil Kilbarrack SC	Top Oil	[redacted]	[redacted]	[redacted]	[redacted]	[0-5]%	[0-5]%
Total			[redacted]	[redacted]	[redacted]	[redacted]	**100%**	**100%**

Source: The Commission, based on information provided by the Parties and third parties

5.89 Circle K's share in the retail sale of motor fuels would increase from [55-60]% to [65-70]% in the Artane Catchment Area following the implementation of the Proposed Transaction, an increase of [5-10]% on its pre-merger share. The following service station operators will remain in the retail sale of motor fuels in the Artane Catchment Area following the implementation of the Proposed Transaction: Applegreen (operating 2 service stations), Maxol (operating 2 service stations), LLC Group (operating 1 service station), Sean Carroll Garages Limited (operating 1 service station under the Top Oil brand), Certa (operating 1 service station) and Murad Oil Limited (operating 1 service station under the Top Oil brand). Each of these suppliers is significantly smaller than Circle K, with no supplier holding a share of over [5-10]%, in comparison to Circle K's [65-70]% share.

5.90 Prior to the Proposed Transaction, the retail sale of motor fuels in the Artane Catchment Area is highly concentrated. Table 9 below illustrates that the HHI in the retail sale of motor fuels in the Artane Catchment Area following the implementation of the Proposed Transaction would be approximately 4,594. The change in the HHI of 1,075 is well above the figure of 150, the threshold below which the Commission considers that a post-merger HHI is unlikely to cause concern.[306]

Table 9: HHI in the retail sale of motor fuels in the Artane Catchment Area in 2024 (January to September)

	HHI
Prior to the Proposed Transaction	3,519
Post-implementation of the Proposed Transaction	4,594
HHI delta	1,075

Source: The Commission

5.91 The Commission's view is that the retail sale of motor fuels in the Artane Catchment Area is already highly concentrated and the Proposed Transaction increases that concentration further, with Circle K holding a [redacted] market share.

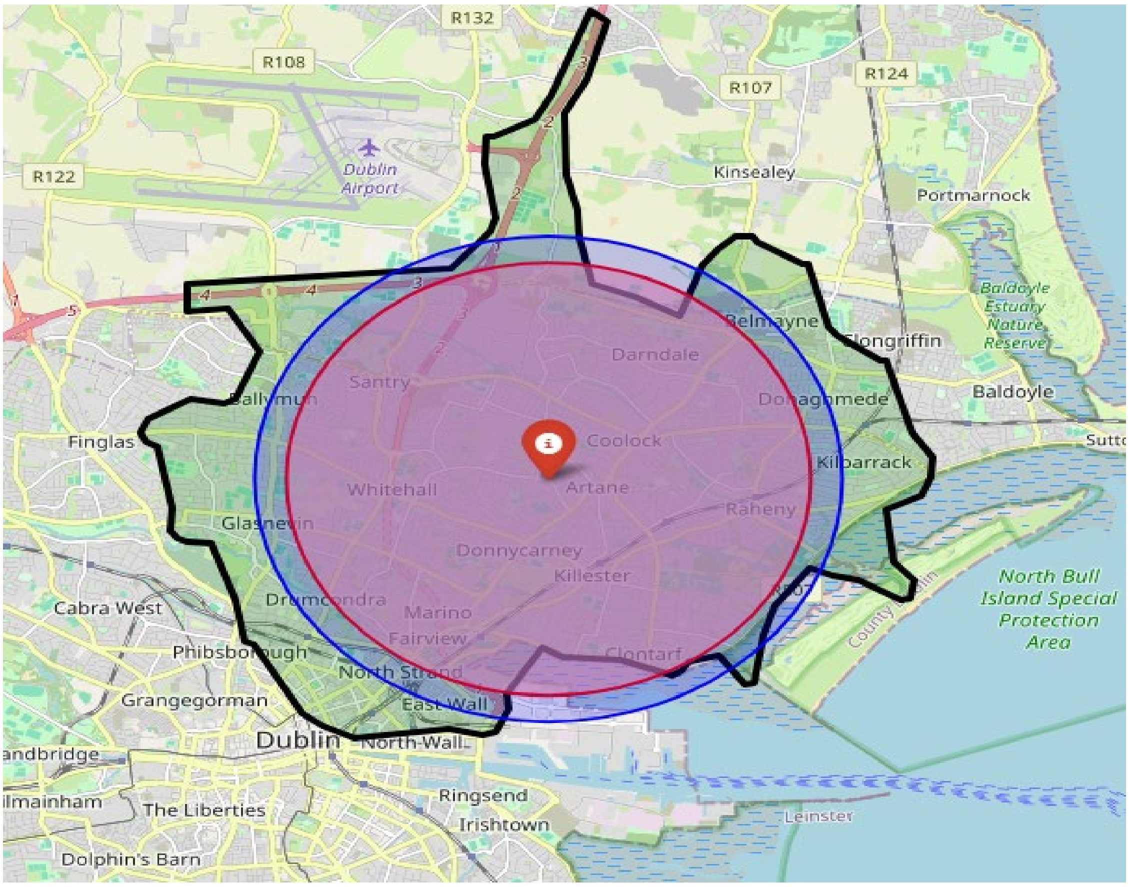
[306] See paragraphs 3.10-3.11 of the Commission's Merger Guidelines.

Sensitivity Analysis

5.92 As set out in Section 3, given the particular circumstances of this investigation, the Commission has considered market shares in Artane under alternative geographic parameters.

5.93 Figure 11 below shows the area covered within: (i) the Artane Catchment Area (3.2km from the Artane Target Station) (the purple area); (ii) the extended catchment area (3.6km) (the blue area); and (iii) a 10-minute drivetime from the Artane Target Station (the green area). Table 10 below shows the estimated market shares based on the volume of motor fuels sold by each supplier that sets the price of its fuel: (i) within the extended catchment area (3.6km); and (ii) within a 10-minute drivetime from the Artane Target Station.

Figure 11: Artane Catchment Area, the extended catchment area and the 10-minute drivetime area.



Source: The Commission

Table 10: The retail sale of motor fuels in the area surrounding the Target Station in Artane in 2023 and 2024

Artane Catchment Area [307]						
			3.6km radius from the Artane Target Station		10-minute drivetime from the Artane Target Station	
			Estimated Share		Estimated Share	
Supplier	Service Station	Brand	2023	2024 (January 2024 to September 2024	2023	2024 (January 2024 to September 2024)
Pelco	Artane Newtown	Texaco	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Circle K	Artane Maypark Beaumont Omni SC Clonshaugh Richmond Clontarf Bull Foxhall Dublin Port Nevin Ballymun cross Autobahn (Glasnevin)	Circle K	[65-70]%	[65-70]%	[65-70]%	[65-70]%

[307] Market shares have been rounded to the nearest hundredth of percent.

	Donaghmede					
Parties combined			**[70-75]%**	**[70-75]%**	**[70-75]%**	**[70-75]%**
Applegreen	223 Howth Road	Applegreen	[10-15]%	[10-15]%	[5-10]%	[5-10]%
	54-56 Howth Rd, Clontarf West					
	Santry					
Maxol	Richmond Road	Maxol	[0-5]%	[0-5]%	[0-5]%	[0-5]%
	Swords Road					
LCC Group	East Wall Service Station	LCC Group	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Sean Carroll Garages Limited	Top Oil Raheny	Top Oil	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Certa	Certa Clarehall SC	Certa	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Amien St. Service Station	Amies St. Service Station	Amien Street Service Station	NOT IN CATCHMENT AREA	NOT IN CATCHMENT AREA	[0-5]%	[0-5]%
Texaco	Texaco Ballygall	Texaco	NOT IN CATCHMENT AREA	NOT IN CATCHMENT AREA	[0-5]%	[0-5]%

Murad Oil Limited	Top Oil Kilbarrack SC	Top Oil	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total			**100%**	**100%**	**100%**	**100%**

Source: The Commission, based on information provided by the Parties and third parties

CCPC

5.94 As noted above in Table 10, the Parties' combined market share in the Artane Catchment Area for January 2024 to September 2024 is [65-70]% (when applying a catchment area radius of 3.2km). Testing the sensitivity via the parameters described above and assessed in Table 10 above produces the following results:

(a) If the catchment area radius was **extended from 3.2km to 3.6km**, the Parties' combined market share would **increase from [65-70]% to [70-75]%.** The Commission notes that no additional service station operators are included in the market share estimates when the catchment area is expanded to 3.6km. However, additional Circle K and Applegreen service stations are accounted for in the market shares when the 3.6km radius is applied;[308]

(b) If the catchment area was defined by a **drivetime of 10 minutes**, the Parties' combined market share would **increase from [65-70]% to [70-75]%.** The Commission notes that two additional service station operators (Texaco[309] and Amiens Street service station) are included in the market share estimates when the catchment area is defined by a 10-minute drivetime area.[310]

5.95 The Commission has also considered market shares and concentration in Artane when catchment areas are centred around Circle K stations.[311] The Commission has considered catchment areas centred on three specific Circle K service stations, as these are the service stations that are in close geographic proximity to Pelco and/or are

[308] The Commission notes that the HHI within the retail sale of motor fuels within 3.6km catchment area is approximately 4,902, well above the 2,000 threshold to be considered highly concentrated, as outlined in paragraph 3.10 of the Commission's Merger Guidelines.

[309] The Commission notes that Pelco currently operates this Texaco owned and branded station. However, following the Proposed Transaction this station will continue to be operated by the current owners of Pelco and therefore does not form part of the group of service stations being acquired by Circle K.

[310] The Commission notes that the HHI within the retail sale of motor fuels within 3.6km catchment area is approximately 4,735, well above the 2,000 threshold to be considered highly concentrated, as outlined in paragraph 3.10 of the Commission's Merger Guidelines.

[311] The Commission outlined in Section 3 why it considers that applying catchment areas around each Circle K service station and Target Station simultaneously to be inappropriate in this case.

monitored by Pelco. These stations are (i) Circle K Artane; (ii) Circle K Maypark; and (iii) Circle K Beaumont.[312]

5.96 Table 11 below outlines the market shares in these Circle K-centred catchment areas.

[312] In this regard, see the Commission's consideration of how closely the Parties compete in Artane below.

Table 11: Market shares in Circle K-centred catchment areas

Artane Catchment Area					
			3.2km radius from Circle K Artane	3.2km radius from Circle K Maypark	3.2km radius from Circle K Beaumont
			Estimated Share	Estimated Share	Estimated Share
Supplier	**Service Station**	**Brand**	2024 (January 2024 to September 2024)	2024 (January 2024 to September 2024)	2024 (January 2024 to September 2024)
Pelco	Artane	Texaco	[5-10]%	[5-10]%	[5-10]%
	Newtown				
Circle K	Artane	Circle K	[65-70]%[313]	[60-65]%[314]	[50-55]%[315]
	Maypark				
	Beaumont				
	Omni SC				
	Clonshaugh				
	Richmond				
	Clontarf Bull				
	Foxhall				
	Dublin Port				
	Nevin				
	Ballymun cross				
	Autobahn (Glasnevin)				
Parties combined			**[70-75]%**	**[70-75]%**	**[55-60]%**
Applegreen	223 Howth Road	Applegreen	[5-10]%[316]		

[313] Excluding [redacted]

[314] Excluding [redacted]

[315] Excluding [redacted].

[316] Excluding [redacted]

	54-56 Howth Rd Santry			[5-10]%[317]	[10-15]%
Maxol	Richmond Road Swords Road	Maxol	[5-10]%	[5-10]%	[5-10]%
LCC Group	East Wall Service Station	LCC Group	[5-10]%	[5-10]%	[0-5]%
Sean Carroll Garages Limited	Top Oil Raheny	Top Oil	[0-5]%	[0-5]%	[0-5]%
Certa	Certa Clarehall SC	Certa	[0-5]%	NOT IN CATCHMENT AREA	NOT IN CATCHMENT AREA
Amiens St. Service Station	Amiens St. Service Station	Amiens Street Service Station	NOT IN CATCHMENT AREA	[5-10]%	NOT IN CATCHMENT AREA
Texaco	Texaco Ballygall	Texaco	NOT IN CATCHMENT AREA	NOT IN CATCHMENT AREA	[0-5]%
Murad Oil Limited	Top Oil Kilbarrack SC	Top Oil	[0-5]%	NOT IN CATCHMENT AREA	NOT IN CATCHMENT AREA

[317] Excluding Applegreen Santry.

Top Oil	Top Oil Collinstown	Top Oil	NOT IN CATCHMENT AREA	NOT IN CATCHMENT AREA	[10-15]%
Total			**100%**	**100%**	**100%**

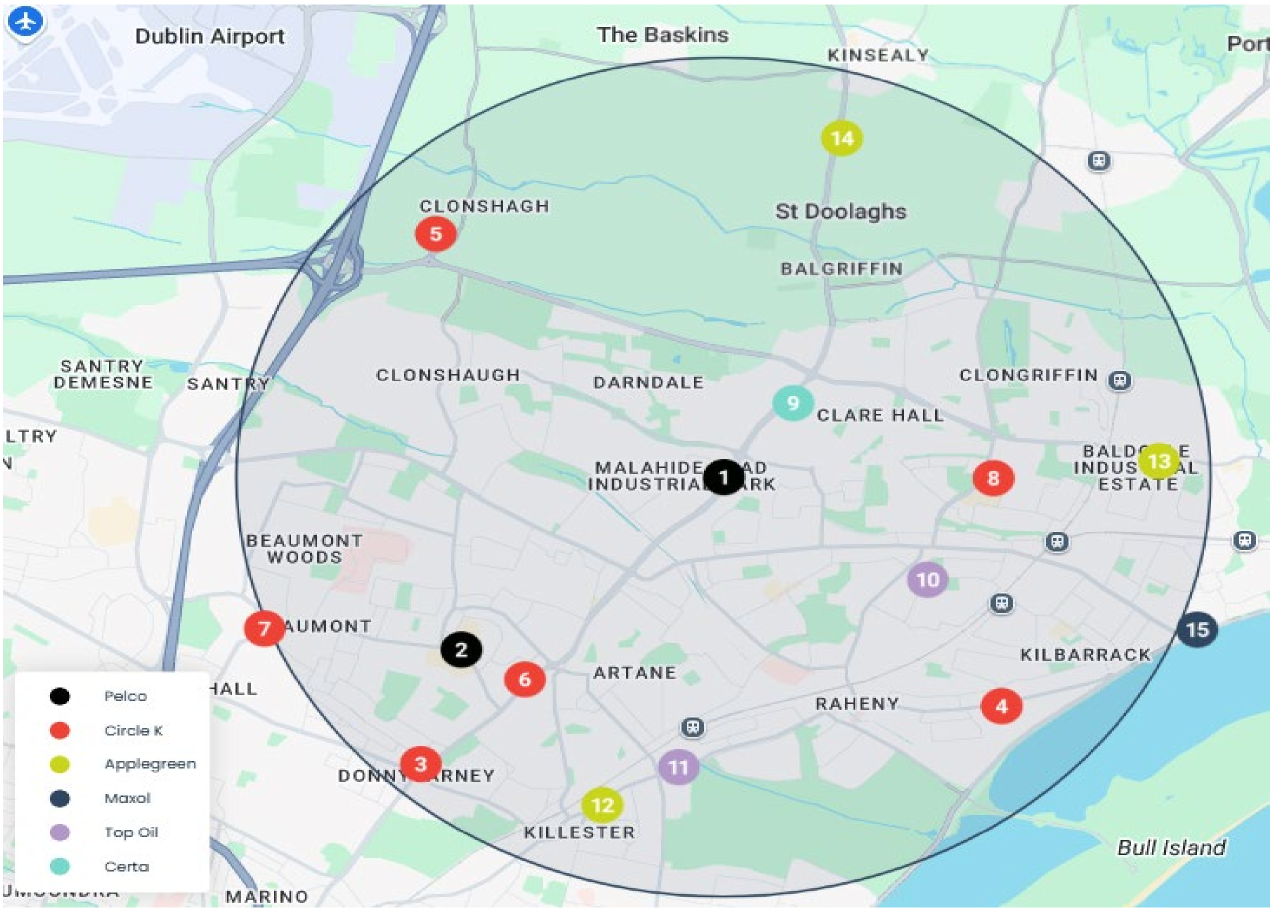
Source: The Commission, based on information provided by the Parties and third parties

5.97 The retail sale of motor fuels is highly concentrated within each of the three Circle K-centred catchment areas. Furthermore, the Commission notes that Circle K has a [redacted] market share when catchment areas are centred around Circle K Artane and Circle K Maypark ([70-75]% – [70-75]%) than in the Artane Catchment Area (which is centred on Pelco's Artane Target Station – [65-70]%). When the catchment area is centred around Circle K Beaumont, Circle K still holds a [redacted] market share of [55-60]%. Therefore, the Commission considers that countervailing 'chain of competition' effects—whereby the Artane Catchment Area is highly concentrated but Pelco Artane's closest Circle K competitor sites themselves remain highly competitively constrained such as to curtail a price increase in the Artane Catchment Area post-Proposed Transaction—do not apply here.

Catchment area 2: Newtown Catchment Area

5.98 Map 6 below shows the location of each retail supplier of motor fuels in the Newtown Catchment Area.

Map 6: Retailers of Motor Fuels in the Newtown Catchment Area



Source: The Commission

5.99 As shown in Map 6, there are two Target Stations located in the Newtown Catchment Area, namely the Newtown Target Station (black marker, number 1) and the Artane Target Station (black marker, number 2). The following other suppliers are active in the Newtown Catchment Area:

- Circle K owns 6 service stations in the catchment area (red markers);
- Applegreen owns 3 service stations in the catchment area (light green markers – 12, 13, and 14);
- There are 2 Top Oil-branded service stations in the catchment area (operated by Sean Carroll Garages Limited and Murad Limited, respectively) (purple markers 12 and 13); and
- Certa owns 1 service station in the catchment area (light blue marker, 9).

5.100 Table 12 shows the estimated market shares in the retail sale of motor fuels in the Newtown Catchment Area. This analysis considers the volume of motor fuels sold by each supplier that sets the price of its fuel within the Newtown Catchment Area within the period from January 2023 to September 2024.

Table 12: The retail sales of motor fuels in the Newtown Catchment Area in 2023 and 2024

Newtown Catchment Area [318]								
Supplier	**Service Station**	**Brand**	**Estimated Volume (litres) 2023**		**Estimated volume (litres) January to September 2024**		**Estimated Share 2023**	**Estimated share January to September2024**
Pelco	Newtown	Texaco	[redacted]	[redacted]	[redacted]	[redacted]	[10-15]%	[10-15]%
	Artane		[redacted]		[redacted]			
Circle K	Artane	Circle K	[redacted]	[redacted]	[redacted]	[redacted]	[50-55]%	[50-55]%
	Maypark		[redacted]		[redacted]			
	Beaumont		[redacted]		[redacted]			
	Clonshaugh		[redacted]		[redacted]			
	Donaghmede		[redacted]		[redacted]			
	Foxhall		[redacted]		[redacted]			
Combined			[redacted]		[redacted]		**[60-65]%**	**[60-65]%**
Applegreen	223 Howth Road	Applegreen	[redacted]	[redacted]	[redacted]	[redacted]	[20-25]%	[20-25]%
	Baldoyle		[redacted]		[redacted]			

318 Market shares have been rounded to the nearest hundredth of a percent.

	Kinsealy		[redacted]	[redacted]		
Sean Carrol Garages Limited	Top Oil Raheny	Top Oil	[redacted]	[redacted]	[0-5]%	[0-5]%
Certa	Certa Clarehall SC	Certa	[redacted]	[redacted]	[5-10]%	[5-10]%
Murad Oil Limited	Top Oil Kilbarrack SC	Top Oil	[redacted]	[redacted]	[0-5]%	[0-5]%
Total			[redacted]	[redacted]	**100%**	**100%**

Source: The Commission, based on information provided by the Parties and third parties

5.101 Circle K's share in the retail sale of motor fuels would increase from [50-55]% to [60-65]% in the Newtown Catchment Area following the implementation of the Proposed Transaction, an increase of [10-15]% on its pre-merger share. The following service station operators will remain in the retail sale of motor fuels in the Newtown Catchment Area following the implementation of the Proposed Transaction: Applegreen (operating 3 service stations), Sean Carroll Garages Limited (operating one service station under the Top Oil brand), Certa (operating one service station) and Murad Oil Limited (operating one service station under the Top Oil brand). Each of these suppliers is significantly smaller than Circle K, with no supplier holding a share of over [20-25]% (three suppliers holding shares below [5-10]%) in comparison to Circle K's [60-65]% share.

5.102 Prior to the Proposed Transaction, the retail sale of motor fuels in the Newtown Catchment Area is highly concentrated. Table 13 below illustrates that the HHI in the retail sale of motor fuels in the Newtown Catchment Area following the implementation of the Proposed Transaction would be 4,768. The change in the HHI of 1,181 is well above the figure of 150, the threshold below which the Commission considers that a post-merger HHI is unlikely to cause concern.[319]

Table 13: HHI in the retail sale of motor fuels in the Newtown Catchment Area in 2024 (January to September)

	HHI
Prior to the Proposed Transaction	3,587
Post-implementation of the Proposed Transaction	4,768
HHI delta	1,181

Source: The Commission

5.103 The Commission's view is that the retail sale of motor fuels in the Newtown Catchment Area is already highly concentrated and the Proposed Transaction increases that concentration further with Circle K holding a [redacted] market share.

Sensitivity analysis

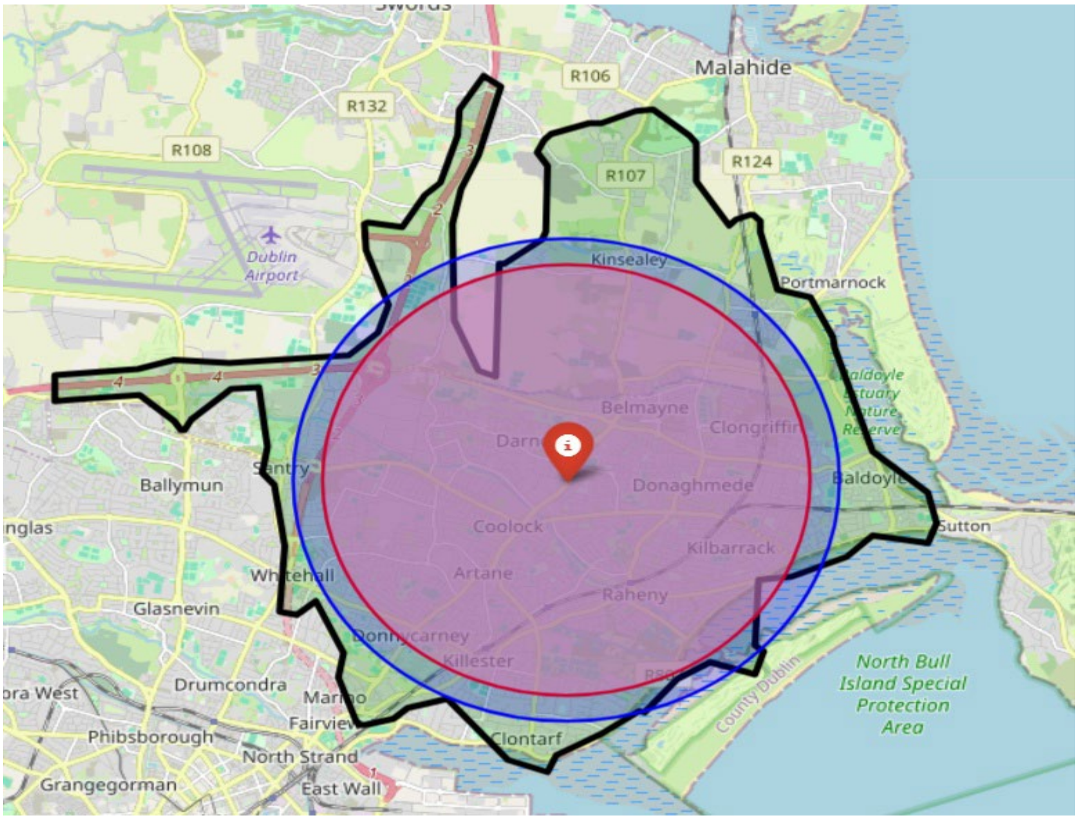
5.104 As set out in Section 3, given the particular circumstances of this investigation and in order to test the Parties' submissions on this point, the Commission has considered

[319] See paragraphs 3.10-3.11 of the Commission's Merger Guidelines.

how the estimated market shares in Newtown change when different geographic parameters are applied.

5.105 Figure 12 below shows the area covered within: (i) the Newtown Catchment Area (3.2km from the Newtown Target Station - the purple area); (ii) the extended catchment area (3.6km from the Newtown Target Station - the blue area); and (iii) a 10-minute drivetime from the Newtown Target Station (the green area).

Figure 12: Newtown Catchment Area, the extended catchment area and the 10-minute drivetime area



Source: The Commission

5.106 Table 14 below shows the estimated market shares based on the volume of motor fuels sold by each supplier that sets the price of its fuel: (i) within the extended catchment area (3.6km); and (ii) within a 10-minute drivetime from the Newtown Target Station.

Table 14: The retail sale of motor fuels in the area surrounding the Newtown Target Station in 2023 and 2024

Newtown Catchment Area						
			3.6km radius		10-minute drivetime	
			Estimated Share		Estimated Share	
Supplier	Service Station	Brand	2023	2024 (January 2024 to September 2024	2023	2024 (January 2024 to September 2024)
Pelco	Newtown Artane	Pelco	[10-15]%	[10-15]%	[5-10]%	[5-10]%
Circle K	Artane Maypark Beaumont Clonshaugh Donaghmede Ballymun Clontarf Bull Foxhall	Circle K	[50-55]%[320]	[50-55]%	[45-50]%	[45-50]%
Parties combined			**[60-65]%[321]**	**[60-65]%**	**[50-55]%**	**[55-60]%**
Applegreen	223 Howth Road Baldoyle 54-56, Howth Rd Santry Kinsealy	Applegreen	[20-25]%	[20-25]%	[20-25]%	[20-25]%

[320] To note, an error in the Assessment listed the market share range for this station as [55-55%] the correct range is [50-55%].

[321] To note, an error in the Assessment listed the market share range for this station as [60-90%] the correct range is [60-65%].

Maxol	Baldoyle Swords Road Sutton	Maxol	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Sean Carroll Garages Limited	Top Oil Raheny	Top Oil	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Certa	Certa Clarehall SC	Certa	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Top Oil	Top Oil Portmarnock	Top Oil	NOT IN CATCHMENT AREA	NOT IN CATCHMENT AREA	[0-5]%	[0-5]%
Murad Oil Limited	Top Oil Kilbarrack SC	Top Oil	[0-5]%[322]	[0-5]%[323]	[0-5]%	[0-5]%
Total			**100.00%**	**100.00%**	**100.00%**	**100.00%**

Source: The Commission, based on information provided by the Parties and third parties.

[322] To note, an error in the Assessment listed the market share range for this station as 0%, the correct range is [0-5%].

[323] To note, an error in the Assessment listed the market share range for this station as 0%, the correct range is [0-5%].

5.107 As noted above in Table 7, the Parties' combined market share in the Newtown Catchment Area for January 2024 to September 2024 is [60-65]% (applying a catchment area radius of 3.2km). Testing the sensitivity via the parameters described above and assessed in Table 14 above produces the following results:

(a) If the catchment area radius was **extended from 3.2km to 3.6km**, the Parties' combined market share would **decrease from [60-65]% to [60-65]%.** The Commission notes that one additional service station operator (Maxol) is included in the market share estimates when the catchment area is expanded to 3.6km.[324]

(b) If the catchment area was defined by a **drivetime of 10 minutes**, the Parties' combined market share would **decrease from [60-65]% to [55-60]%.**[325] The Commission notes that two additional service station operators (Maxol & Top Oil) are included in the market share estimates when the catchment area is defined by a 10-minute drivetime.

5.108 The Commission has also considered how market shares and concentration change in Newtown when catchment areas are centred around Circle K stations. The Commission has considered catchment areas centred on four specific Circle K service stations, as these are the service stations that are in close geographic proximity to Pelco and/or are monitored by Pelco. These stations are (i) Circle K Artane; (ii) Circle K Maypark; (iii) Circle K Beaumont; and (iv) Circle K Donaghmede.

5.109 The Commission has considered catchment areas centred on Circle K Artane, Circle K Maypark, and Circle K Beaumont above in relation to the Artane Catchment Area. The Commission notes that these service stations are also located in the Newtown Catchment Area and Circle K has a [redacted] share in these catchment areas when

[324] The Commission notes that the HHI within the retail sale of motor fuels within 3.6km catchment area is approximately 3,253, well above the 2,000 threshold to be considered highly concentrated, as outlined in paragraph 3.10 of the Commission's merger guidelines.

[325] The Commission notes that the HHI within the retail sale of motor fuels within 3.6km catchment area is approximately 3095, well above the 2,000 threshold to be considered highly concentrated, as outlined in paragraph 3.10 of the Commission's merger guidelines.

catchment areas are centred on these Circle K stations (more than [55-60]%), as shown in Table 15 below.

Table 15: The Parties' market shares in Circle K Artane, Circle K Maypark and Circle K Beaumont centred-catchment areas

Supplier	3.2km from Circle K Artane	3.2km from Circle K Maypark	3.2km from Circle K Beaumont
Pelco	[5-10]%	[5-10]%	[5-10]%
Circle K	[65-70]%	[60-65]%	[50-55]%
Parties combined	**[70-75]%**	**[70-75]%**	**[55-60]%**

Source: The Commission, based on information provided by the Parties and third parties

5.110 For the purposes of its analysis in relation to the Newtown Catchment Area, the Commission has also considered the market shares and concentration within a catchment area centred around Circle K Donaghmede, as this station is located close (within approximately 1.8km) to the Newtown Target Station. The Parties would have a combined share of [30-35]% within a catchment area centred around Circle K Donaghmede, and this catchment area is not highly concentrated.

5.111 When catchment areas are centred on the Circle K stations with which the Target Station competes closely (i.e. Circle K Artane and Circle K Maypark[326]), Circle K has a [redacted] market share. However, the Commission does not consider that Circle K Donaghmede competes particularly closely with Pelco.[327] This means that the

[326] As is considered in more detail later in Section 5, these stations are located in close proximity to Pelco and are on the same side of the Malahide Road as the Newtown Target Station.

[327] As is considered in more detail later in Section 5, these stations are located on different roads/travel routes.

competitive conditions in the Circle K Donaghmede-centred catchment area are of little relevance to the competitive assessment of the Newtown Catchment Area.

CCPC

5.112 **Of the six separate parameters[328] applied to the Newtown Catchment Area in the sensitivity analysis, five parameters demonstrated that Circle K has a very large share in a highly concentrated area**. When expanded by distance, drivetime, or centred around three Circle K stations, Circle K will have a [redacted] share (between [55-60]% and [70-75]%) in the Newtown area following the Proposed Transaction. Therefore, the Commission considers that its sensitivity analysis clearly demonstrates that the impact of the Proposed Transaction on those stations which compete most closely with Pelco Newtown, will also be to significantly increase market shares in already concentrated markets.

Parties' views on the sensitivity analysis

5.113 The Parties were provided with the Commission's analysis in the Assessment.[329] Pelco stated the following with respect to the Commission's sensitivity analysis:

> *"This sensitivity analysis involved (i) extending the radii in urban and rural catchment areas of 3.2km to 3.6km and from 8km to 9km, respectively, and (ii) using 10 minute and 15 minute drivetimes for urban and rural areas, respectively. This "sensitivity analysis" involved an extremely limited "extension" of the case team's catchment area analysis, so much so that it almost suggests tokenism in response to the consistent, clear and contrasting precedents of the CMA and the European Commission and the views of the Industry Expert."*[330]

> *"In any case, there is no credibility to the sensitivity analysis carried out by the case team, a far wider extension should have been undertaken as illustrated by the approaches taken by the CMA and the European Commission and as suggested by the Industry Expert."*[331]

[328] For clarity, these six parameters are: (i) the 3.6km catchment area; (ii) the 10-minute drivetime catchment area; (Iii) Circle K Artane-centered catchment area; (iv) Circle Maypark-centered catchment area; (v) Circle K Beaumont-centered catchment area; and (vi) Circle K Donaghmede-centered catchment area.

[329] For clarity, the analysis in the Assessment did not consider Circle K-centred catchment areas. Following its engagement with the Parties following the Assessment, the Commission updated its analysis to account for Circle K-centred catchment areas.

[330] Pelco Written Response, paragraph 3.29.

[331] Pelco Written Response, paragraph 3.29.

"Pelco does not believe that there is any credibility to the "sensitivity analysis" undertaken by the case team given the extremely limited extension that it involves to the catchment area analysis used by the case team to date in the Investigation and the Assessment. In particular, 3.6km rather than 3.2km in urban areas is almost miniscule whilst 9km rather than 8km in rural areas is potentially irrelevant given the nature of rural environments in the State. In contrast, the following and significantly wider radii are used by the CMA and the European Commission but ignored by the case team:- - CMA: 5km (urban)/20km (rural); and, - European Commission: 2.5km (cities)/5km (suburban)/20km (rural). 5.20 In addition, the following radii are suggested by the third party Industry Expert: 4.8km (urban)/16km to 24km (rural), but, again, are ignored by the case team."[332]

5.114 The Compecon Written Response also expressed the view that the sensitivity analysis was insufficient and further noted:

"The Assessment further argues that it has addressed the issue of an overly narrow catchment area by conducting a sensitivity analysis. The case team's sensitivity analysis involved expanding the catchment areas by 400m (equivalent to a single lap of a running track) in urban areas and by 1km in rural areas.

Firstly, as with the original catchment areas, the case team has advanced no economic justification or rational [sic] *for the additional distances. Just as it is unable to say if the original catchment areas accounted for 80% of customers or sales, it is not in a position to establish whether the expanded area captures the appropriate share of customers or sales. Second, the extended area still falls far short of the wider catchment areas as identified by the "Industry Expert" and applied by the EU Commission and CMA. Thirdly the extended catchment areas are clearly far narrower than catchment areas centred around both parties' filling stations. The so-called "sensitivity analysis" is wholly inadequate*

[332] Pelco Written Response, paragraph 5.19 to 5.20.

and lacks any theoretical or empirical basis. This point is considered further in section.”[333]

5.115 The Commission does not agree with the Parties' views that its analysis of catchment areas based on alternative metrics is insufficient. The Commission has tested its catchment areas using three separate parameters: (i) an extended distance-based catchment area; (ii) a drivetime-based catchment area; and (iii) Circle K-centred catchment areas.[334] In this regard, the Commission notes, particularly with respect to the 10-minute drivetime, the sensitivity analysis applies the specific drivetime considered by the CMA and within the range of drivetimes applied by the European Commission, as has been cited by the Parties as an appropriate basis within which to assess local markets. The Commission notes that the application of the 10-minute drivetime covers an area beyond the extended distance catchment area.

5.116 The Commission notes that one of the reasons to conduct this type of analysis is to assess how sensitive the estimated market shares and concentration are to changes to the geographic market. The purpose of a sensitivity analysis is not to continually expand the area until the Parties' market shares decrease. As outlined below, while the market shares and concentration vary when different parameters are applied (as is expected), this change does not indicate that the Commission's market definition is too narrow. Furthermore, the Commission notes that in certain areas, Circle K's market share actually increases when the catchment area is expanded because of Circle K's large presence across Dublin.

Parties' alternative sensitivity analysis

5.117 The Compecon Written Response outlined the results of an alternative sensitivity analysis conducted by Compecon. To conduct this alternative analysis, Compecon:

> *"applied a catchment area of 4.8kms for urban areas and 16-24 kms in rural areas. Such catchment areas, as noted, are in line with the views of the*

[333] Compecon Written Response, paragraph 2.25 -2.26.

[334] For clarity, the Commission tested Circle K-centred catchment areas as part of its sensitivity analysis following the receipt of further information and engagement with the Parties following the issuance of the Assessment.

"Industry Expert", the EU Commission and the CMA. In the case of urban areas, we identified catchment areas around both parties filling stations."[335]

5.118 Compecon presented results of their alternative sensitivity analysis in the following table:

Table 3.9: Details of Filling Stations in the Relevant Catchment Areas (4.8km).				
	Parties' Stations	Competitor Stations	Parties % Stations	Competing Brands
Airside	[redacted]	[redacted]	[redacted]	[redacted]
Artane				
Newtown				
Rathfarnham				

Source: Circle K.

5.119 According to the Compecon Written Response:

"The results show that in all of the urban catchment areas, the parties face competition from a large number of competing stations and brands. The parties' share of filling stations across the four catchment areas ranges from [redacted]*%. It is acknowledged that sales are a better measure of market share but, as pointed out, there are no independent data for local market shares and the parties are unable to obtain data on competitors' sales."*[336]

5.120 There are several points the Commission notes with respect to the Parties' alternative sensitivity analysis.

5.121 **First, the Parties applied a different metric to conduct their analysis and estimate market shares.** The Commission notes that the Parties' alternative sensitivity analysis is based on the number of service stations rather than sales volumes. As noted above, previous decisions by the Commission and by the European Commission have emphasised the limitations of relying on the number of stations when considering market concentration and have instead used volume of fuel sold.

5.122 **Second, although the Parties argued for the use of drivetime as a metric, the Parties seemingly** [redacted]**.** In relation to

[335] Compecon Written Response, paragraph 3.23.

[336] Compecon Written Response, paragraph 3.24.

the Parties' alternative sensitivity analysis, the Parties [redacted].[337] As discussed above, the Commission has carried out an analysis based on drivetime (in addition to other metrics), and, as set out in paragraph 5.70, the Commission's 10-minute drivetime catchment area analysis already captures journeys of the distance proposed by the Parties.

5.123 As a result, the Commission does not consider that the Parties' alternative sensitivity analysis demonstrates that the Commission's sensitivity analysis is insufficient.

The Commission's conclusions on market structure and concentration

5.124 The Commission has calculated market shares for the Two Local Catchment Areas identified above. The Two Local Catchment Areas exhibit high levels of concentration. The Two Local Catchment Areas are already highly concentrated, but post-Proposed Transaction, all would have HHIs in excess of 3,000, and with deltas of multiples of the level above which the Commission would consider further analysis to be required.

5.125 The Commission set out in Section 3 its reasoning for defining catchment areas in terms of a straight-line distance radius from each Target Station, and the Commission maintains its view that this is an appropriate methodology. However, as outlined above, the Commission has carried out further analysis to determine how sensitive the estimated market shares are to changes in the parameters used to define the markets. This exercise has taken account of issues raised by the Parties in their submissions, including in the Economic Reports, in relation to the use of different measures to define catchment areas.

5.126 The Commission's analysis shows that, while varying the parameters does affect market shares (as would be expected), the market shares calculated by (i) expanding the catchment radius; (ii) using drivetime rather than distance; and (iii) centring the area around certain Circle K stations did not reduce the market shares to a level of market concentration that would remove concern. Indeed, Circle K holds a [redacted] share when these alternative parameters are applied, and in certain cases, Circle K's

[337] Oral Submission, page 59, line 1-12.

share increases when the area is expanded, reflecting Circle K's large presence across Dublin. Table 16 summarises the Parties' combined share when the three different parameters are applied.

Table 16: Summary of the analysis of catchment areas using alternative metrics[338]

Catchment Area	3.2km (the defined catchment area radius)	Extended radius (3.6km)	Drivetime	Circle K-centred catchment areas
Artane Catchment Area	[65-70]%	[70-75]%	[70-75]%	[55-60]% - [70-75]%
Newtown Catchment Area	[60-65]%	[60-65]%	[55-60]%	[30-35]% – [70-75]%

Source: The Commission, based on information provided by the Parties and third parties

5.127 The Commission's analysis clearly demonstrates that, following the Proposed Transaction, Circle K would have a very large market share in the retail sale of motor fuels in highly concentrated local markets in Artane and Newtown, irrespective of which parameters are applied to define the geographic scope of these local markets. As noted, the Commission considers that Circle K has a large presence across Dublin. The Commission's assessment of the Proposed Transaction is therefore not dependent on the application of its specific distance-based catchment area.

Closeness of competition

5.128 Close competitors are likely to exert greater competitive constraints on one another than firms that do not compete closely. Therefore, a merger between close

[338] Market shares have been rounded to the nearest hundredth of a percent.

competitors is more likely to raise competition concerns than a merger between suppliers which do not compete closely. In some cases, a merger between suppliers with high combined market shares may not raise competition concerns if the suppliers are not close competitors. Conversely, mergers between suppliers with relatively low combined market shares may raise competition concerns if the suppliers are close competitors and exert strong competitive constraints on one another.

5.129 Often, firms compete more or less closely in terms of how similar or different their product or service offerings are. The EC Horizontal Merger Guidelines note that:

> *"[t]he higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. For example, a merger between two producers offering products which a substantial number of customers regard as their first and second choices could generate a significant price increase. Thus, the fact that rivalry between the parties has been an important source of competition on the market may be a central factor in the analysis."*[339]

5.130 Further, the EC Horizontal Merger Guidelines note that:

> *"[t]he merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes."*[340]

5.131 The Commission considers that the Parties have very similar product offerings, and that their products can be considered as close substitutes. This is an indication that the Parties are likely to be close competitors.

How the Commission has assessed closeness of competition

5.132 In assessing whether the Parties compete closely with one another, the Commission has considered two key factors:

[339] EC Horizontal Merger Guidelines, paragraph 28.

[340] EC Horizontal Merger Guidelines, paragraph 28.

- **Factor 1:** the importance of the geographic location of the Parties' stations in relation to each other; and
- **Factor 2:** the extent to which the Parties monitor each other's prices.

5.133 As outlined in the following paragraphs, **the Commission considers that these two factors show that the Parties are close competitors, and that this supports SLC concerns.**[341] The Commission's analysis of each factor is set out in detail below.

Factor 1: Geographic location

The importance of location in local markets

5.134 As detailed in Section 2, location is a key factor of competition between service stations. Along with factors such as price, a service station's location influences where customers decide to purchase motor fuel. Consequently, where two service stations are located close to one another, customers are more likely to view these stations as close substitutes when making their decision.

How the Commission has assessed geographic location in relation to closeness of competition

5.135 The Commission has examined the competitive relationship between the Parties by assessing the location of the Parties' respective stations within the Artane and Newtown Catchment Areas. As part of this examination, the Commission has accounted for road layout and traffic in the relevant local area.

5.136 The Commission's analysis is structured as follows:

- First, the Commission considers the location of the Parties' service stations,[342] as well as the local road layout and traffic; and
- Second, the Commission considers the views expressed by the Parties.

Artane Catchment Area

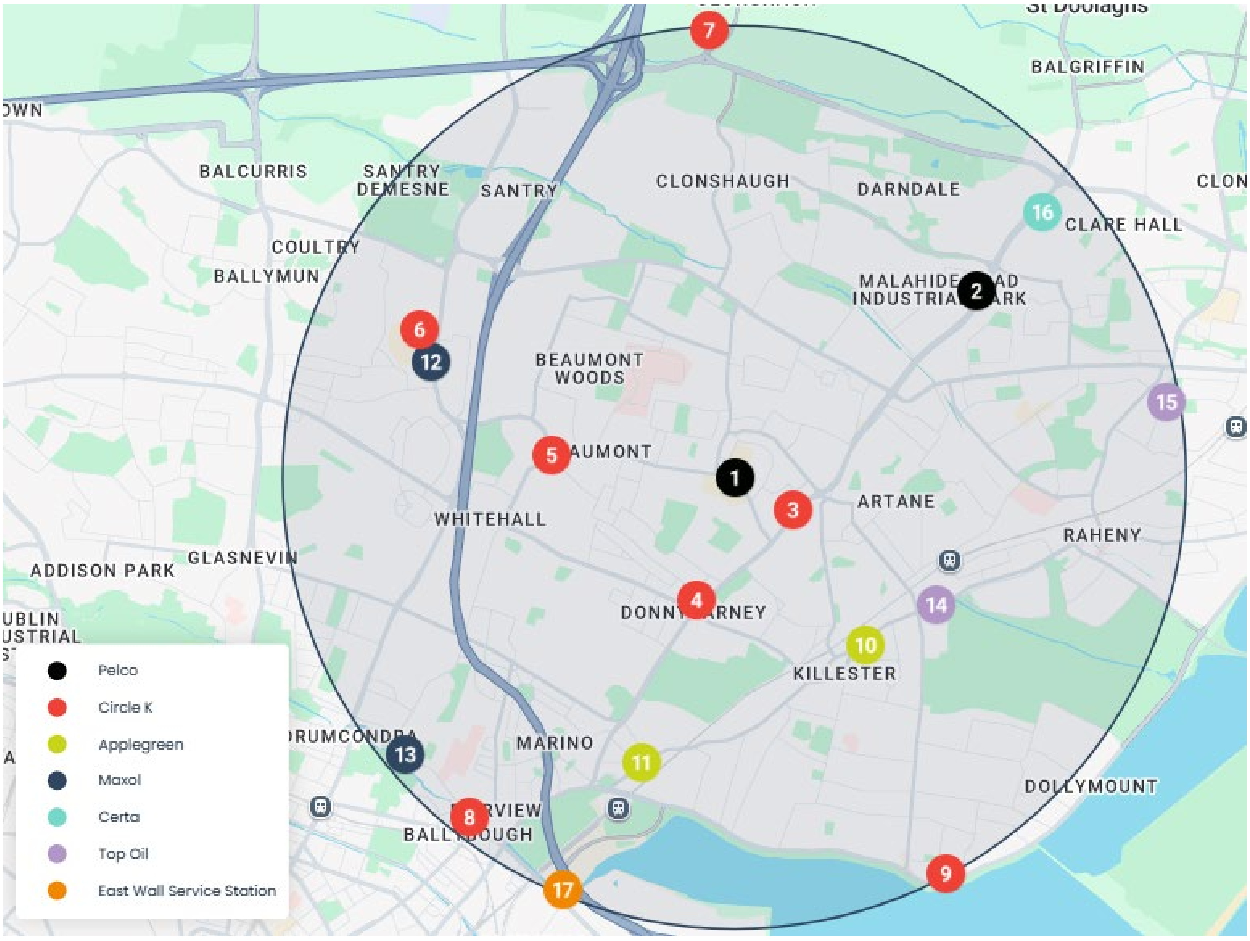
[341] The Commission also considered location and price monitoring activity in its local analysis in *M/23/068 – McMullan Bros./Naas Fuels Limited*.

[342] Note that this analysis is concerned with the Parties' stations only – competitors' stations and the competitive constraint they exert are discussed later in Section 5.

Location of the Parties' stations

5.137 Map 7 shows the location of service stations within the Artane Catchment Area. Circle K stations are marked in red, while Pelco's stations are marked in black.

Map 7: Service stations in the Artane Catchment Area



Source: The Commission

5.138 As shown above, Pelco has two service stations in this catchment area, namely the Artane Target Station (black marker, number 1) and the Newtown Target Station (black marker, number 2). Circle K owns seven service stations in this catchment area (red markers). The Commission considers that certain of these Circle K stations, given their distance from the Artane Target Station[343] and location on different travel routes, are unlikely to be competing particularly closely with Pelco. For example, the Artane and

[343] The Commission has focused its analysis within the Artane Catchment Area on which service stations compete closely with the Artane Target Station. The Commission focuses its analysis within the Newtown Relevant Market on which stations compete closely with the Newtown Target Station. The Commission notes that these two catchment areas overlap.

Newtown Target Station are located on or just off the Malahide Road, a commuting route into and out of Dublin city. Several Circle K stations (such as number 6 and 7 on the map above) are not located on or near this route or near the Artane or Newtown Target Stations. Therefore, the Commission has focused its analysis on Circle K stations that, in light of their distance from the Artane Target Station and local road layout, are more likely to be competing closely with Pelco. These service stations are:

- Circle K Artane (red marker, number 3);
- Circle K Maypark (red marker, number 4); and
- Circle K Beaumont (red marker, number 5).

5.139 The Artane Target Station is located on Kilmore Road, between these three Circle K service stations: Circle K Beaumont (number 5) (approximately 1.3km) to the west along the Beaumont Road/Skelly Lane; Circle K Artane (number 3) (approximately 500m) to the east on the Malahide Road; and Circle K Maypark (number 4) (approximately 930m) to the south, again on the Malahide Road.[344]

5.140 The Commission notes that these three Circle K service stations are the three service stations located closest to the Artane Target Station. The next closest service station, which is to the northeast along the Malahide Road, is another Pelco service station, namely the Newtown Target Station (number 2).

Local travel routes and traffic flows

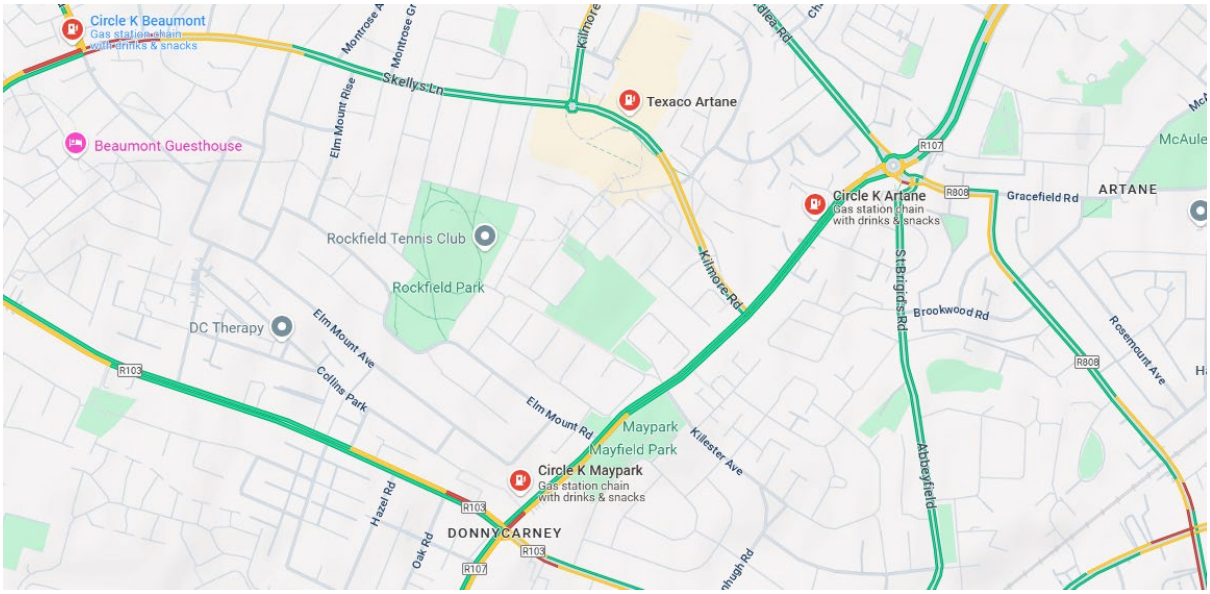
5.141 The Commission notes that the Artane Target Station, Circle K Artane and Circle K Maypark are all located on or just off the Malahide Road, which runs northwards from Fairview Park in Dublin towards Malahide.

5.142 **Artane Target Station:** As shown in Map 4, Circle K Artane and Circle K Maypark are both located very close (approximately 500 metres and 930 metres, respectively) to the Artane Target Station, which is located approximately 500 metres from the Malahide Road. Circle K Beaumont, which is further west on Beaumont Road, is located

[344] These distances refer to straight line distance.

approximately 1.3km from the Artane Target Station and is positioned on the same side of the road. Therefore, the Commission considers that it is likely that many customers travelling to or past the Artane Target Station need to pass one of these Circle K service stations to arrive at the Artane Target Station.[345] Indeed, the traffic survey commissioned by Circle K indicated that a high percentage (80% - 100%) of traffic passing the Artane Target Station also passed a Circle K station.[346] Map 8 below shows the Parties' service stations in this area with the main traffic routes highlighted in green and/or yellow.[347]

Map 8: Traffic routes surrounding the Artane Target Stations



Source: The Commission[348]

5.143 The Artane Target Station is located close to and between three Circle K stations, with traffic, particularly from the west and the Malahide Road, passing Circle K stations prior to reaching the Artane Target Station, as demonstrated in the traffic survey commissioned by Circle K.[349]

[345] Depending on their respective travel route.

[346] See the First Economic Report, paragraph 3.14 and the Compecon Written Response, paragraph 3.42.

[347] Traffic speed is denoted by colour, with green representing fast flowing traffic, yellow representing more slower moving traffic, with red indicating slow moving traffic.

[348] Google Maps.

[349] The Commission notes that travel routes will vary by customer.

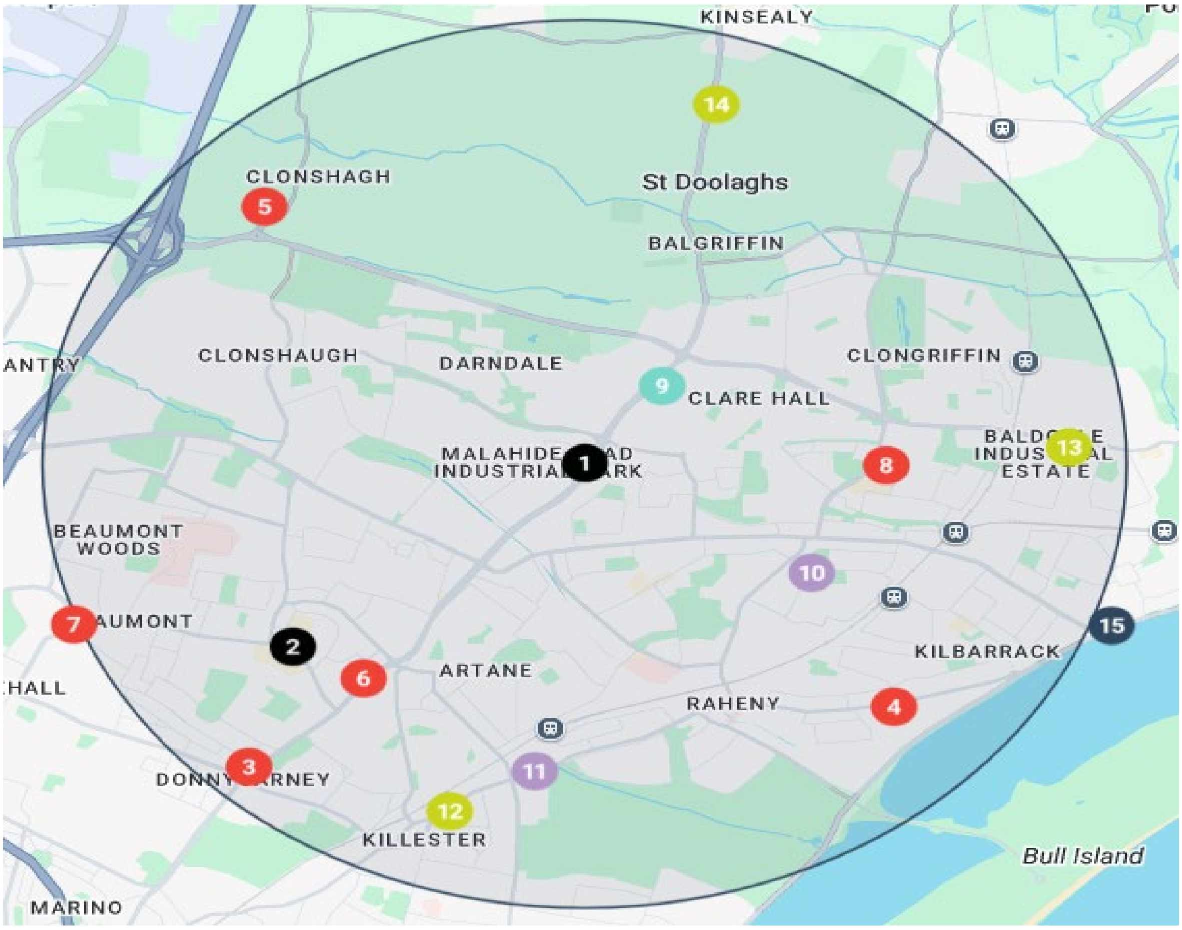
5.144 The Commission considers that the Parties' service stations compete closely in the Artane Catchment Area. The Commission notes that the Parties' price monitoring activity also indicates this, as is outlined in more detail below.

Newtown Catchment Area

Location of the Parties' stations

5.145 Map 9 shows the location of the Parties' service stations within the Newtown Catchment Area. Circle K stations are marked in red, while Pelco's stations are marked in black.

Map 9: Service stations in the Newtown Catchment Area



Source: The Commission

5.146 As shown above, Pelco has two service stations in this catchment area, namely the Newtown Target Station (black marker, number 1) and the Artane Target Station (black marker, number 2). Circle K owns six service stations in this catchment area (red markers). The Commission considers that certain stations, given their distance from the Newtown Target Station and their location on different travel routes, are less likely to be competing particularly closely with Pelco. Therefore, the Commission has focused its analysis on Circle K stations that, in light of their distance from the Newtown Target Station and local road layout, are more likely to be competing closely with Pelco. For clarity, these service stations are:

- Circle K Artane (red marker, number 6)
- Circle K Maypark (red marker, number 3); and
- Circle K Donaghmede (red marker, number 7).

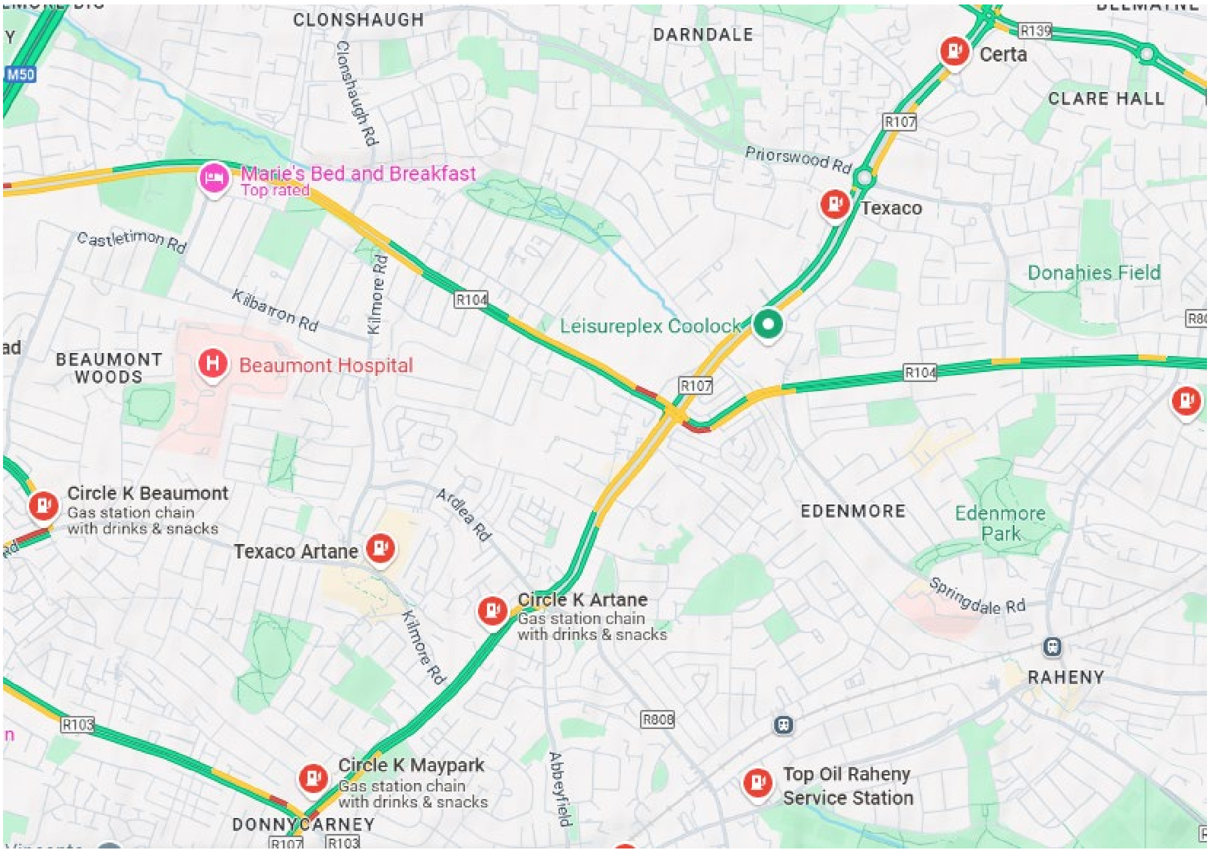
5.147 The Newtown Target Station (black marker, number 1) is located along the Malahide Road, to the north of Circle K Artane and Circle K Maypark, which are both also located on the Malahide Road to the south. The Newtown Target Station and these two Circle K stations are all located on the west side of the Malahide Road. The Newtown Target Station is located approximately 1.8km from Circle K Donaghmede (number 8), which is located alongside the Donaghmede Shopping Centre to the west.

Local travel routes and traffic flows

5.148 The Commission notes that the Newtown Target Station, Circle K Artane and Circle K Maypark are all located on the same side of the Malahide Road, a key commuting route into and out of Dublin city centre from north Dublin city and north county Dublin.

5.149 **Newtown Target Station:** The Newtown Target Station is located approximately 2km and 3km to the north of Circle K Artane and Circle K Maypark, along the Malahide Road, respectively. The Newtown Target Station, Circle K Artane and Circle K Maypark are all located on the same side of the Malahide Road. There is no third-party service station located between Circle K Maypark and the Newtown Target Station on the Malahide Road. Therefore, the Commission considers that it is likely that many customers travelling to or past the Newtown Target Station will pass a Circle K service station to arrive at the Newtown Target Station. Indeed, the traffic survey commissioned by Circle K indicated that a high percentage (90% - 100%) of traffic passing the Newtown Target Station also passed a Circle K station. Map 10 below lists the Parties' service stations in this area with the main traffic routes highlighted in green/yellow.

Map 10: Traffic routes surrounding the Newtown Target Stations



Source: The Commission

5.150 As shown above, the Newtown Target Station, Circle K Maypark and Circle K Artane are all located along the Malahide Road. Given their location on this travel route and the lack of a third party service station between these respective stations, the Commission considers that the Newtown Target Station, Circle K Artane and Circle Maypark are all competing closely for customers travelling along this route, and particularly for those customers travelling northward (the Parties' stations are located on the west side of the road and are more easily accessible by northward bound traffic).

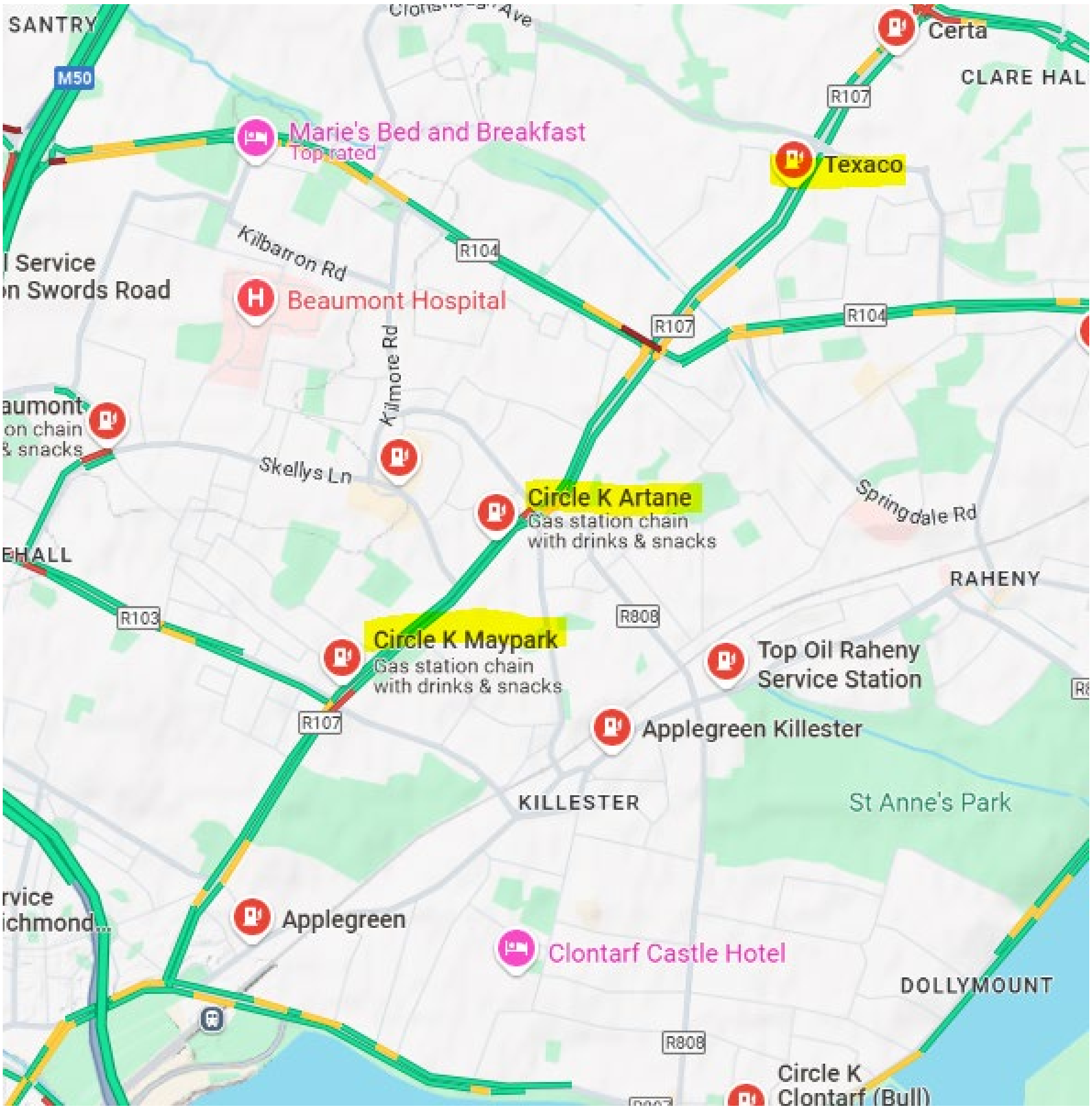
5.151 The Commission notes that Circle K Donaghmede is located to the west of the Newtown Target Station. While located relatively close together in respect of distance, these two service stations are located on different travel routes. Consequently, the Commission considers that their respective locations and the relevant traffic routes indicate that they do not compete particularly closely with one another.

Certa Clarehall

5.152 Certa Clarehall is located relatively close (approximately 730m to the north) to the Newtown Target Station on the Malahide Road. Therefore, the Commission considers that Certa and the Newtown Target Station likely compete for customers. However, Certa Clarehall is located on the opposite side (east) of the Malahide Road, which is a dual carriageway. Therefore, in order to access Certa Clarehall, drivers traveling north (on Pelco's side of the road) need to cross the traffic-light junction at the entrance to the Clarehall Shopping Centre. Drivers travelling south (on Certa Clarehall's side of the road) need to the cross the road at Woodies Coolock to reach the Newtown Target Station. The Commission notes that, in contrast, drivers travelling north do not need to cross a junction to enter either the Newtown Target Station, Circle K Artane or Circle Maypark.

5.153 Furthermore, the Commission notes that following the Proposed Transaction, Circle K would own 3 of the 4 service stations located on the Malahide road (a key commuting route in Dublin city) and all of the service stations focused on northbound traffic, as shown on Map 11 below. For clarity, the Texaco station is Pelco's Newtown Target Station.

Map 11: Malahide Road



Source: The Commission

5.154 The Commission considers that customers travelling through the Newtown Catchment Area, and particularly those travelling along the Malahide Road, are likely to consider the Parties' service stations as close substitutes. Consequently, the Commission considers that the Parties' service stations compete closely in the Newtown Catchment Area. The Commission notes that the Parties' price monitoring activity also supports this, as is outlined in more detail below.

5.155 The Commission now considers the views raised by the Parties and third parties with respect to the location of service stations in the Two Local Catchment Areas.[350]

Views of the Parties on geographic location

5.156 Circle K stated the following in response to the Commission's Assessment:

> *"Are Circle K and Pelco each other's closest competitors (as opposed to being close competitors) in each of the Six Catchment Areas?*
>
> *It is not disputed that Circle K and Pelco could be considered as competitors within the [Six] Catchment Areas. All service stations operating within each of the [Six] Catchment Areas can be said to compete with each other or compete closely with each other, and all service stations operating within each of the [Six] Catchment Areas impact on the pricing strategies applied by each such service station and by each brand operating in each of the [Six] Catchment Area. This, by definition, is what a catchment area captures – competitors.*
>
> *However, for the reasons set out in more detail in paragraph 4.5 below, it is clear that Circle K and Pelco, while competitors, cannot be considered on any reasonable basis to be each other's closest competitors in the Six Catchment Areas."*[351]

5.157 A merger between close competitors is more likely to raise competition concerns than a merger between suppliers who do not compete closely. The European Commission recognises that *"the fact that rivalry between the parties has been an important source of competition on the market may be a central factor in the analysis"*.[352] The more closely firms compete in the market, the more likely a merger between them is to raise competition concerns. Therefore, one of the key questions considered by the Commission is to what extent (if any) do the Parties compete. In this regard, the

[350] The Commission notes that some of the Parties' objections to its analysis of geographic location also relate to the Parties' views with respect to geographic market definition. These points have been addressed in Section 3 of this Determination and are not revisited here.

[351] Circle K Written Response, paragraph 4.4.8, point 2.

[352] The EC Horizontal Merger Guidelines, paragraph 28.

Commission notes the following statement of the Court of Justice of the European Union (the "CJEU") in *Case C-376/20 P Commission v CK Telecoms UK Investments*:

> "(Citing point 121 of the Advocate General's Opinion), *a higher degree of closeness of competition between the parties to a concentration may constitute evidence that it is more likely than not that that concentration will significantly impede effective competition in the internal market or in a significant part of it, whereas a lesser degree of closeness of competition between those parties may constitute evidence to the contrary".*[353]

5.158 The Commission assesses the extent to which firms compete closely and whether the loss of this competitive relationship will, or will not, on the balance of probabilities, result in an SLC.[354] The Commission is not required, in finding that a transaction will on the balance of probabilities give rise to an SLC, to demonstrate that the merging parties are each other's closest competitors. Rather, the Commission's assesses the extent to which the Parties compete closely, and, if they compete closely, whether the loss of this competitive relationship as a result of the Proposed Transaction will give rise to an SLC.

5.159 The Parties raised a variety of different issues while disputing that the Parties are close competitors based on their stations' respective locations. Specifically, the Parties raised the following issues:

5.160 **Issue 1 - The relevance of geographic location to competition**: The Parties and the Economic Reports stated the following with respect to the relevance of a service station's location:

> *"The CCPC also made fundamental errors in considering whether the Parties are close competitors in the Six Catchment Areas. In this regard, the Assessment claimed that the Parties are close competitors based on geographic proximity, price monitoring and traffic flows. Geographic proximity provides weak support*

[353] Paragraph 188.

[354] Closeness of competition forms one aspect of the Commission's assessment of the likely competitive effects of the Proposed Transaction. It is not, in itself, determinative of whether the Commission concludes that the Proposed Transaction gives rise to an SLC.

for such a proposition as arguably all filling stations along a consumer's route are equally close competitors."[355]

"There is a geographical overlap between the parties' filling stations in the relevant catchment areas. However, it cannot be assumed that the parties are close competitors based on geographical proximity. For reasons already outlined in section 2 of the report, isochrones are not an accurate way of identifying competitors in motor fuel retailing. Commuting routes are arguably much more important."[356]

"The Assessment claims the parties are close competitors based on: a. Geographic proximity; b. Price monitoring; and c. Traffic flows. Geographic proximity provides weak support for this proposition. Arguably all filling stations along a consumer's route are equally close competitors."[357]

5.161 Circle K stated the following:

"*It is also important to note that service stations within Catchment Areas do not always exert the same level of influence over each other, as some sites are on different traffic flows, while others on the same routeway but slightly outside the Catchment Area do.*"[358]

5.162 **Issue 2 - Traffic flow**: The Parties stated that the Commission's consideration of traffic flow in the Assessment was based "*on the case team's assumptions about possible traffic flows for which there is no supporting evidence and which cannot be considered reliable*".[359] Furthermore, the Parties stated that "[t]*he traffic count survey indicates that the parties face a number of close competitors."*[360]

[355] Pelco Written Response, paragraph 5.12.

[356] First Economic Report, paragraph 3.4.

[357] Compecon Written Response, paragraph 11.

[358] Circle K Phase 2 RFI Response, paragraph 3.41.

[359] Compecon Written Response, paragraph 3.44

[360] Compecon Written Response, paragraph 3.42.

5.163 **Issue 3 - Loyalty card analysis:** As detailed in Section 3, the Parties submitted that the loyalty card analysis outlined in the First Economic Report demonstrates that the Commission defined local markets too narrowly. Additionally, the First Economic Report drew the following conclusion based on the loyalty card analysis**:**

> *"The data in Table 3.2 indicate that loyalty card members made very few fuel purchases at other Circle K stations within the same catchment area as their home station. The majority of other Circle K stations within the relevant catchment areas accounted for less than 5% of total fuel purchase transactions by members. Another Circle K station in the same catchment area only accounted for more than 5% of members' fuel purchase transactions in three out of 28 cases. This further illustrates the point that just because stations may fall within the same catchment areas based on isochrone analysis does not imply they are close competitors".*[361]

The Commission's analysis of the Parties' views

5.164 The Commission now assess the three issues raised by the Parties.

5.165 **Issue 1 - The relevance of geographic location to competition**: The location of retail outlets is a standard factor considered when assessing competition in local retail markets. In addition to factors such as price, consumers will consider the location of service stations when deciding where to purchase motor fuel; stations located in close proximity to one another are more likely to be viewed by customers as close substitutes. The Commission notes the Parties have identified location as a factor on which service stations compete:

> *"Competition among fuel retailers is intense, with companies vying for market share based on location, convenience, pricing, and additional services offered."*[362]

[361] First Economic Report, paragraph 3.7.

[362] Meger Notification Form, section 4.4, paragraph 61.

"Categories of customers can include: (a) price-driven customers: customers who choose fuel stations based on price; and/or (b) convenience-seeking customers: customers who opt for nearby stations that are easy to access."[363]

In addition to distance, [Circle K] also considers other factors when considering whether a service stations [sic] may be considered as competing service stations within a particular Catchment Area, including: · brand; · geographical location; · pricing; · fuel grade offering; and · forecourt size."[364]

"Aligned with pricing is location and the convenience of a service station on a travel route is also relevant to where consumers choose to buy fuel."[365]

5.166 The Commission maintains that the location of the Parties' service stations is an important factor when assessing the degree to which the Parties compete. However, as demonstrated above, the Commission assesses location within the context of road layout and traffic flow; the Commission has not simply assumed the Parties compete closely solely based the distance between their locations. For example, as outlined above, the Commission noted that Circle K Donaghmede is located in close geographic proximity to the Newtown Target Station. However, given that these two stations are located on different traffic routes, the Commission concluded that these specific stations were unlikely to compete closely. Similarly, the Commission ultimately concluded that Circle K Dublin Airport and the Airside Target Station did not compete closely in light of local traffic routes, despite their close proximity to one another.

5.167 The Commission maintains that location is a useful factor to consider when assessing how closely service stations compete.

5.168 **Issue 2 – Traffic flow**: As outlined above, the Commission considered traffic flow as part of its consideration of whether the Parties compete closely in the Two Local Catchment Areas. The Commission noted: (i) the location of the Parties' stations (for example, the Malahide Road in Artane and Newtown); (ii) the direction that traffic

[363] Merger Notification Form, section 4.4, paragraph 70.

[364] Circle K Phase 1 RFI Response, question 7.

[365] Circle K Phase 2 RFI Response, question 17.

travels (for example, northbound or southbound); and (iii) in certain cases, whether the Parties' stations were located on the same side of the road to assess whether consumers can access the stations without changing direction.[366] The Commission considered traffic flow by reference to maps outlining the road layout of the relevant area as well as the traffic survey commissioned by Circle K.

5.169 The Parties did not identify which specific assumptions made by the Commission they regarded as unsupported or incorrect. The Commission does not agree that its consideration of traffic flow is incorrect.

5.170 Finally, the Commission notes the results of the traffic survey in relation to the Two Local Catchment Areas were cited by the Parties as follows:

> *"- Approximately [redacted]% of cars passing Pelco Artane also pass a Circle K."* [367]
>
> *- Approximately [redacted]% of cars passing Pelco Newtown pass Circle K Artane and Certa (a low cost operator) at Clare Hall."*[368]

5.171 **Issue 3 – Loyalty card analysis**: The First Economic Report noted that its loyalty card analysis showed that [redacted] Circle K loyalty customers made transactions at Circle K stations [redacted] in the relevant catchment areas (accounting for less than [redacted]% of transactions). The First Economic Report, based on this, concluded that being located within a catchment area does not imply that two service stations are close competitors.

5.172 In the Commission's view, the loyalty card analysis is of limited utility when assessing closeness of competition between service stations in the Two Local Catchment Areas. The First Economic Report's analysis of loyalty card customer transactions does not provide an insight into which service stations Circle K competes with. The loyalty card analysis assesses [redacted] (who may not be representative of Circle K customers as a whole) within the Circle K network. It does

[366] For example, needing to cross at a junction.

[367] First Economic Report, paragraph 3.14.

[368] First Economic Report, paragraph 3.14.

not identify [redacted] these customers do or do not make purchases at. Consequently, their behaviour does not indicate which third party service stations are competing closely with Circle K.

Factor 2: Price monitoring activity

5.173 The Commission's analysis of the extent to which the Parties are close competitors will now consider evidence from the Parties regarding their monitoring activities.

5.174 The Commission's view is that there is evidence that the Parties compete closely with one another in the Two Local Catchment Areas. This includes evidence submitted by the Parties in respect of their monitoring of competitors.

Price monitoring behaviour

5.175 As detailed in Section 2, the Parties and third parties monitor the prices of other service stations when setting their own prices. Circle K explained that it uses a pricing software into which its staff report "[redacted]."[369] Pelco also monitors its competitors: "[redacted]."[370]

5.176 In this section, the Commission considers the Parties' price monitoring activity in relation to the Two Local Catchment Areas as well as the views raised by the Parties in relation to that activity.

Views of Third Parties on monitoring

5.177 In order to examine the overall approach to service station monitoring in the motor fuel sector, the Commission asked third party service station operators for their views.

[369] Circle K Phase 1 RFI Response, question 8.

[370] Pelco Phase 1 RFI Response, question 8.

5.178 **Applegreen** stated that when determining which competitors it monitors "*proximity is the main factor that determines which service stations it monitors.*"[371] Applegreen stated that in relation to the north Dublin area that "[redacted] *in this area that it would compete with. Appelgreen stated that these would be* [redacted] *Applegreen stated that it competes with* [redacted]."[372]

5.179 **Maxol** stated that "*it considers a range of factors when it decides which competitor service stations to monitor. Maxol stated that its decision as to which service stations it monitors* [redacted]. *Maxol stated that it also* [redacted] *Maxol stated, because of this,* [redacted]."[373] Maxol also stated that "*for example, if a consumer is coming from a commuter town, Maxol's competitors are those* [redacted]."[374]

5.180 **Certa** stated that when determining which competitors to monitor that "*proximity to its own service station is the main factor which determines which service stations it monitors and that this varies on a site-to-site basis.*"[375] Certa stated that "*with respect to its* [redacted], *it monitors the* [redacted] *which is located* [redacted]."[376]

5.181 **Top Oil** stated that it "[redacted]".[377] Top Oil also stated that "*since Covid consumers have changed their commuting patterns and are generally more willing to drive longer distances*"[378] and noted that "*consumers may travel further distances to*

[371] Applegreen Call Note, dated 5 February 2025, page 2.

[372] Applegreen Call Note, dated 5 February 2025, page 3.

[373] Maxol Call Note, dated 5 February 2025, page 2.

[374] Maxol Call Note, dated 5 February 2025, page 2.

[375] Certa Call Note, dated 6 February 2025, page 2.

[376] Certa Call Note, dated 6 February 2025, page 2.

[377] Top Oil Call Note, dated 27 March 2025, page 2.

[378] Top Oil Call Note, dated 27 March 2025, page 2.

use the amenities of a service station if they happen to have a preference for these amenities."[379]

5.182 Third party service station operators generally assess competition in the local area in which they operate, while also noting that they do not necessarily restrict this assessment to their immediate locality. Certain third parties also noted that the range of services offered by other service stations is also an important consideration when assessing which service stations they are in competition with. The Commission considers that its engagement with third parties demonstrates that the purpose of monitoring prices is to take competitors' prices into account when setting a station's own price and suppliers select certain stations to monitor.

Monitored competitors in the Two Local Catchment Areas

Artane Catchment Area

5.183 **Pelco's monitoring activity**: Pelco operates two service stations in the Artane Catchment Area: the Artane Target Station and the Newtown Target Station.

5.184 Pelco's price trackers show that [redacted]

[379] Top Oil Call Note, dated 27 March 2025, page 2.

Figure 13: Pelco Price Tracker in relation to the Artane Target Station (referred to as Texaco Artane in the tracker)

[redacted]

Source: Pelco[380]

5.185 Pelco provided price trackers to the Commission and explained its price monitoring activities in response to the Pelco Phase 1 RFI. However, in the Pelco Written Response, Pelco stated:

> *"Pelco monitors* [redacted] *In addition, as the* [redacted]*."*[381]

5.186 Therefore, while not reflected in its price tracker, Pelco stated that it [redacted].

5.187 **Circle K's monitoring activity**: Circle K owns seven service stations within the Artane Catchment Area. As outlined above, the Commission considers that, in light of their

[380] Pelco Phase 1 RFI Response, question 1(d), see document titled "*Q1(d) Competitor Pricing 2023 2024*".

[381] Pelco Written Response, paragraph 5.50.

location and traffic flow in the area, the following Circle K stations are particularly relevant competitors, geographically, with the Artane Target Station:

- Circle K Artane;
- Circle K Maypark; and
- Circle K Beaumont.

5.188 Figure 14 below lists the stations Circle K monitors in relation to the above three Circle K stations.

Figure 14: Circle K monitoring activity in relation to Circle K Artane, Circle K Maypark and Circle K Beaumont

b) Artane Catchment Area;		
CIRCLE K ARTANE	**CIRCLE K MAYPARK**	**CIRCLE K BEAUMONT**
[redacted]	[redacted]	[redacted]
Certa Clarehall		Certa Dublin Airport Express
Applegreen Clontarf	Certa Clarehall	Applegreen Santry
Independent / East Wall - Dublin (LCC)	Applegreen Clontarf	
	Independent / East Wall - Dublin (LCC)	

Source: Circle K

5.189 Circle K Artane and Circle K Beaumont each monitor [redacted], while Circle K Maypark monitors [redacted]. The Commission notes that the Artane Target Station is the closest third-party station to each of these three Circle K stations.

Applegreen Killester

5.190 The Commission notes that Circle K stated that it considers the "[redacted][382] within the Artane Catchment Area as a whole. During a call with the Commission, Applegreen stated "[redacted] *in this area which it would compete with. Applegreen stated these would be* [redacted]. *Applegreen stated that it competes with* [redacted]."[383] The Commission understands that Applegreen

[382] Circle K Written Response, paragraph 4.5.19.

[383] Applegreen Call Note, dated 5 February 2025, page 3.

was referring to [redacted] and the [redacted].

5.191 While the Commission considers that Applegreen competes with the Parties in the Artane Catchment Area, this does not mean that the Parties do not compete closely with one another. As noted above, the Commission assesses the extent to which the Parties compete, not whether the Parties are each other's closest competitors. The Commission considers whether an expansion in supply by Applegreen post-Transaction would impact whether the Proposed Transaction will result in an SLC later in Section 5.

5.192 The Parties actively monitor [redacted] in the Artane Catchment Area – indeed, Pelco's price tracker only monitors Circle K in relation to the Artane Target Station. While Circle K monitors other competitors in addition to Pelco, the Commission considers that evidence of price monitoring indicates that Parties compete closely in the Artane Catchment Area.

Newtown Catchment Area

5.193 **Pelco's monitoring activity**: Pelco monitors [redacted]

Figure 15: Pelco Price Tracker in relation to the Newtown Target Station (referred to as Texaco Newtown in the price tracker)

[redacted]

Source: Pelco[384]

5.194 [redacted].

5.195 [redacted]

5.196 **Circle K monitoring activity:** Circle K owns six service stations within the Newtown Catchment Area. As outlined in Figure 16 below, [redacted] in the Newtown Catchment Area.

[384] Pelco Phase 1 RFI Response, question 1(d), see document titled "*Q1(d) Competitor Pricing 2023 2024*".

Figure 16: Circle K's monitoring activity in relation to certain Circle K stations

CIRCLE K DONAGHMEDE SHOPPING C	CIRCLE K ARTANE	CIRCLE K BEAUMONT
Applegreen Baldoyle	[redacted]	
Applegreen Kinsealy	Certa Clarehall	Certa Dublin Airport Express
Certa Clarehall	Applegreen Clontarf	Applegreen Santry
Top Oil Kilbarrack Service Station	Independent / East Wall - Dublin (LCC)	
[redacted]		
CIRCLE K MAYPARK	**CIRCLE K CLONSHAUGH**	
[redacted]	Applegreen Kinsealy	
	[redacted]	
Certa Clarehall	Certa Clarehall	
Applegreen Clontarf	Applegreen Baldoyle	
Independent / East Wall - Dublin (LCC)		

Source: Circle K

5.197 As outlined above, the Commission considers that, in light of their location and traffic flow in the area, the following Circle K stations are particularly relevant competitors, geographically, with the Newtown Target Station:

- Circle K Artane; and
- Circle K Maypark.

5.198 The Commission notes that both of these stations [redacted] in the Newtown Catchment Area, with Circle K Maypark monitoring [redacted]

Certa Clarehall

5.199 Within the Newtown Catchment Area as a whole, Circle K states that it considers [redacted] to be its closest competitor.[385] The Commission notes that Circle K monitors [redacted] in relation to several of its stations in the area, [redacted]. The Commission does not consider that Circle K's competition with [redacted] indicates Circle K does not compete closely with Pelco.

5.200 The Parties actively [redacted] in the Newtown Catchment Area, with several Circle K stations [redacted]. The Commission considers that evidence

[385] Circle K Written Response, paragraph 4.5.29.

of price monitoring also demonstrates that the Parties compete closely in the Newtown Catchment Area.

Views of the Parties on price monitoring

5.201 The Parties stated that their price monitoring activity, and the Commission's assessment of this activity, does not demonstrate that the Parties are close competitors.[386]

5.202 **First, Pelco and the Compecon Written Response stated that Pelco monitors Circle K as Circle K tends to monitor a wider range of stations**. Therefore, by monitoring Circle K, Pelco can 'piggyback' on Circle K's price monitoring activities:

> *"for practical and logistical reasons, Pelco* [redacted] *As also explained in the Pelco statement contained in Paragraph 2.24,* [redacted]*."*[387]

[386] First Economic Report, paragraph 3.10, paragraph 4.4(i), Pelco Written Response, paragraph 5.50, Compecon Written Response, paragraph 3.34.

[387] Pelco Written Response, paragraph 2.8

> *"Pelco has indicated, however,* [redacted] *Pelco is aware that* [redacted]*"*[388]

5.203 The Commission notes that Pelco considers price monitoring to be [redacted] In light of this, Pelco's [redacted] The Commission considers that Pelco monitors [redacted] Therefore, even if Pelco considers that by monitoring [redacted],[389] Pelco still appears to have identified Circle K as a main competitor.

5.204 **Second, the Compecon Written Response considers that by assessing price monitoring behaviour, the Commission is repeating its consideration of location**:

> *"The Assessment claims the parties are close competitors based on:*
>
> - *Geographic proximity;*
> - *Price monitoring; and*
> - *Traffic flows.*
>
> *Geographic proximity provides weak support for this proposition. Arguably all filling stations along a consumer's route are equally close competitors. In the case of price monitoring, the Assessment considers whether stations monitored are the closest to the parties' stations. This effectively repeats the proximity test and is not a separate test".*

[388] Compecon Written Response, paragraph 3.22.

[389] In this regard, the Commission notes that most suppliers monitor their competitors' prices and account for these prices when setting their own prices. Therefore, monitoring any service station could be understood as monitoring a price which is reflective of overall market prices.

5.205 Price monitoring behaviour indicates which service stations are considered by the Parties when they set prices. Therefore, by assessing price monitoring, the Commission is assessing the Parties' own commercial behaviour prior to the Proposed Transaction. As noted in Section 2, location is a key factor on which service stations compete. The fact that the Parties tend to primarily monitor service stations that are located nearby to their own stations reflects the importance of location.

5.206 **Third, the Parties stated that their price monitoring activity indicates that the Parties do not compete closely in the Two Local Catchment Areas:**

> **Artane & Newtown:** "*Pelco monitors* [redacted]*.*"[390]

> **Newtown:** *"It could be argued that the geographic location and price monitoring suggest that the parties may be close competitors in Airside, Artane and Rathfarnham but less so in Newtown where Certa is the closest competitor based on geographic location and price monitoring."*[391]

5.207 With respect to the Two Local Catchment Areas, the Commission does not consider that Pelco's monitoring activity demonstrates that it views all operators in these areas "without distinction". Pelco monitors five stations in Artane and Newtown, three of

[390] Pelco Written Response, paragraph 5.50.

[391] Compecon Written Response, paragraph 3.34.

which are Circle K stations. The Commission does not consider that Pelco's monitoring of other suppliers, namely Certa and Applegreen, indicates that the Parties do not compete closely.

The Parties' view regarding Pelco's prices relative to Circle K & "product positioning"

5.208 The Parties submitted that (i) Pelco charges higher prices than Circle K; and (ii) Pelco focuses on its non-fuel offering. The Parties stated that this indicates that the Parties do not compete closely and have different business models:

> *"Significantly, the case team overlooks a key point which is critical to the issue of closeness of competition, namely, product positioning, although this was mentioned in the Pat Massey Report and is standard in both the literature and in merger review in other jurisdictions. As explained throughout the Reply, the evidence indicates that the Parties position themselves in different areas of the market ([redacted]) indicating that they are not close competitors."*[392]

> *"It is important to note generally in considering the competition implications of the Proposed Transaction, and in particular the extent to which Pelco and Circle K could be said to be close competitors, a point which Pelco makes throughout this Reply, namely, that the two companies have very different approaches to their offerings in their respective retail motor fuels businesses. Circle K is recognised as a price discounter with the emphasis in its service station and convenience store offering on competitive fuel prices. Pelco's emphasis is on [redacted] This also means also that it*

[392] Pelco Written Response, paragraph 5.12.

is not likely that Circle K would raise fuel prices in Pelco stations as a result of the Proposed Transaction."[393]

5.209 In the Parties' view, the difference in the price of motor fuel between Circle K and Pelco indicates that the Parties do not compete closely.[394] Furthermore, the Parties submitted that Pelco tends to [redacted] and that this also indicates the Parties are not closely competing (as Pelco is positioning itself differently to Circle K).[395]

5.210 The Commission notes that Pelco generally charges higher prices for motor fuel than Circle K. However, it does not follow that this means that the Parties are not competing closely, or that Pelco is not a competitive constraint on Circle K. As will be detailed below, Circle K's monitors Pelco's prices in the Two Local Catchment Areas. This indicates that Circle K views Pelco as exerting a competitive constraint.

5.211 In terms of Pelco's [redacted], the Commission notes that differentiation between suppliers in respect of [redacted] does not necessarily indicate lack of competition—it may indeed be a result of competition and suppliers trying to position themselves to increase revenue; It depends on the context of the market in question. In these markets, the Commission notes the following statement made by Pelco at the Oral Submission:

> *"The Pelco business model, as a small operator* [redacted] *Therefore, as a company our strategy has always been to* [redacted]

[393] Pelco Written Response, paragraph 5.39.

[394] For example, see Pelco Written Response, paragraph 5.58, First Economic Report, paragraph 3.12, Compecon Written Response, paragraph 3.47.

[395] Compecon Written Response, paragraph 3.47.

[redacted]."[396]

5.212 In light of its local analysis, the views of the Parties and available relevant information, the Commission considers that the geographic location of the Parties' stations (as well as local traffic flows) demonstrates that the Parties compete closely in the Two Local Catchment Areas. Furthermore, the Commission has seen no evidence to indicate that Pelco's non-fuel offering is materially different from Circle K's offering, as Circle K also offers the same range of non-fuel products and services as Pelco.[397]

Overall conclusion with respect to closeness of competition between the Parties in the Two Local Catchment Areas

5.213 A merger between firms which compete closely will remove a strong competitive constraint and hence be more likely to raise competition concerns than a merger between competitors which do not compete as closely.[398] Assessing closeness of competition between the Parties is one element in an overall analysis of unilateral effects.

5.214 The Commission's assessment of closeness of competition is that the Parties compete closely with one another in the Artane and Newtown Catchment Areas. In coming to this view, the Commission has analysed the geographic relationship between the Parties' stations in the Two Local Catchment Areas, looking at factors including the distance between the Parties' stations and local traffic flow. The Commission has also examined the way in which the Parties view each other in terms of competitive position. This examination considered the extent to which the Parties monitor each other's pricing. The Commission notes that monitoring is a direct input into price setting.

5.215 In summary, Pelco monitors [redacted] in relation to its own stations in the Two Local Catchment Areas. Indeed, Pelco's price trackers in relation to the Artane Target

[396] Pelco, Oral Submission, page 27, line 5 -13.

[397] Circle K discussed its focus on its non-fuel offering during its Oral Submission. For example, see Circle K, oral submission to the Commission, 20 May 2025, page 5 lines 20 – 28, and page 6, lines 6 – 22.

[398] Commission's Merger Guidelines, paragraph 4.19.

Station [redacted] The Commission considers that Pelco's monitoring activity clearly demonstrates it competes closely with Circle K.

5.216 Circle K also consistently monitors Pelco's service stations. Circle K monitors Pelco in each of the Two Local Catchment Areas.

5.217 In regard to Pelco's pricing, the First Economic Report and Compecon Written Response stated that Pelco's prices are "[redacted]" (relative to Circle K) and expressed a view that this indicates that Pelco does not exert a competitive constraint on Circle K's prices and that the Parties are not particularly close competitors. The Commission does not agree that Pelco "generally" [redacted] is evidence that they are not close competitors. It is clear that Circle K does not consider that Pelco's prices are so high that they would not act as a constraint. The evidence is that the monitoring activity shows that Circle K and Pelco consider each other's pricing when setting their prices. This is evidence of a constraint imposed by Pelco on Circle K's pricing which would be lost as a result of the Proposed Transaction.

5.218 In light of the above, the Commission considers that the Parties compete closely in the retail sale of motor fuels in both the Artane and Newtown Catchment Areas. Furthermore, the Commission considers that the following Parties' stations compete closely:

- Pelco's Artane Target Station competes closely with Circle K Artane, Circle K Maypark and Circle K Beaumont (and vice versa); and
- Pelco's Newtown Target Station competes closely with Circle K Artane and Circle K Maypark (and vice versa).

Summary of the competitive effects arising from the Proposed Transaction

5.219 The analysis of market structure and concentration indicates that, post-Proposed Transaction, the Parties' combined market shares in the Two Local Catchment Areas are very high. Concentration in the Two Local Catchment Areas would also be very high. The Commission has established that this is the case even when different geographic parameters are applied.

5.220 The Commission also has evidence that the Parties are close competitors in the Two Local Catchment Areas. The Parties' stations are located close to each other on common traffic routes. The Parties monitor each other's pricing and use this monitoring as an input into their price setting. For all of the reasons considered in detail in this section, it is the Commission's view that the Parties exert a competitive constraint on each other, and this competition would be lost as a result of the Proposed Transaction. Taking all of these considerations into account, the Commission's finding is that the Proposed Transaction would be likely to result in an SLC in the Two Local Catchment Areas.

5.221 The Commission now goes on to consider factors which may prevent an SLC in the Two Local Catchment Areas.

Commission's consideration of countervailing factors which would prevent an SLC

5.222 The Commission now assesses factors which could potentially prevent an SLC in the Two Local Catchment Areas. These are:

- potential for entry and expansion in the Two Local Catchment Areas;
- out-of-market constraints;
- mavericks; and,
- the Parties' view with respect to the effect of price increases on their non-fuel offering.

Entry and expansion

5.223 In considering barriers to entry, the Commission seeks to assess the extent to which market power may be constrained by the occurrence or threat of new entry. When considering barriers to expansion, the Commission seeks to assess the ability of existing rivals to profitably expand supply. In both cases, the entry and/or expansion needs to fulfil the following three conditions.

(a) **Likelihood.** The Commission's Merger Guidelines set out that *"[t]he Commission will assess whether a new entrant would be likely to make a commercial return on its investment at or above current premerger market prices taking into account the entry costs involved (including sunk costs that would not be recovered if the new entrant later exited) and the likely responses of incumbent firms*",[399] and that "*other factors that would affect the likelihood of entry include the level of demand at existing prices, whether demand is growing, the output level the entrant is likely to obtain, the likely impact of entry on prices post-merger, and the scale at which the entrant would operate*".[400]

(b) **Timeliness.** The Commission's Merger Guidelines note that "*the longer it takes for potential entrants to become effective competitors, the less likely it is that market participants will be deterred from causing harm to competition"*[401] and that *"[w]hile entry that is effective within two years is normally considered timely, the appropriate timeframe for effective new entry will depend on the characteristics and dynamics of the market under consideration."*[402]

(c) **Sufficiency.** The Commission's Merger Guidelines set out that *"[f]or entry to be sufficient, it must be likely that incumbents would lose significant sales to new entrants*" and that *"[e]ntry that is small-scale, localised, or targeted at niche segments is unlikely to be an effective constraint post-merger".*[403]

Barriers to entry

5.224 The Commission's view is that key barriers to new market entry are potentially:

- planning permission and other regulatory requirements; and

[399] Merger Guidelines, paragraph 6.6.

[400] Merger Guidelines, paragraph 6.6.

[401] Merger Guidelines, paragraph 6.5.

[402] Merger Guidelines, paragraph 6.5.

[403] Merger Guidelines, paragraph 6.8.

- the finance required for market entry.

Views of the Parties

5.225 In the Merger Notification Form, the Parties stated that:

> *"There are no fundamental barriers to entry to the market in the retail sale of motor fuels. Obtaining finance is the main issue for potential new entrants. Certain licenses and regulatory requirements must be met in terms of operations, as the sector is regulated. Nevertheless, in recent years, new operators have entered the motor fuel retail market in the State, including companies like Go, Certa, and Inver."*[404]

5.226 However, Pelco noted that:

> *"Planning can be one of the most difficult barriers to entry in any area. Permissions and Licences also have to be obtained. And a site must be compliant with various Legislations."*[405]

5.227 Similarly, Circle K noted that:

> *"Costs: Due to land zoning under existing Council Development plans and planning requirements, it is difficult to secure planning permission to develop New-to-Industry (NTI) service stations in greenfield or brownfield locations."*[406]

5.228 The level of investment required for market entry will vary depending on factors such as location and the condition of the site to be acquired. Pelco provided some estimates of investment requirements as follows:

> *"A new site, with no previous station on the plot, will have a significant entry cost. A typical one acre site, to develop as a Service Station, could cost upwards of €3m to €4m. This would include site purchase, planning, and build of same.*

[404] Merger Notification Form, Page 28, Paragraph 62.

[405] Pelco Phase 2 RFI response, Q10 a).

[406] Circle K Phase 1 RFI Response, question 18.

An existing site, while the development costs would not be as significant, may need upgrade works to the building, underground tanks and car washes. Estimated costs here could be in the region of €1.5 to €2m.

Purchase of an existing site where the infrastructure is compliant, and only the shop and car washes need to be replaced would have an estimated cost of €0.5m to €1m.

Most of the above costs can be recouped on exit, these costs would not be considered sunk, therefore the cost element is no barrier to exit. "[407]

5.229 In the Circle K Written Response, Circle K stated:

"Planning permission has been granted for the development of a service station in the Airside Catchment Area and it is expected that this service station will open in the next two years. The entry of a new operator will decrease Circle K's market share in the Airside Catchment Area.

Planning permission has been granted to Applegreen for the development of a new service station in Dunshaughlin in the Batterstown Catchment Area and works commenced on site on 10 October 2024. The proposed development includes the provision of a service area with c. 10 fuel pumps, an electric vehicle charging hub, a retail convenience store and an ancillary amenity/services building. It is expected that this development will be completed by 24 June 2025. The entry of a new operator will decrease Circle K's market share in the Batterstown Catchment Area."[408]

5.230 In the Pelco Written Response, Pelco stated:

"Pelco agrees with the CCPC's preliminary view that new entry is possible but disagrees with the view also expressed in the Assessment that potential for

[407] Pelco Phase 2 RFI response, Q10 (a).

[408] Circle K Written Response, paragraphs 4.7.1 and 4.7.2.

entry is unlikely to be a strong constraint on market power in retail fuel markets."[409]

5.231 In the Compecon Written Response, Compecon stated:

> *"The case team's preliminary conclusion is that, while market entry is certainly possible, prospective entry is unlikely to be timely or sufficient such as to constrain the merged entity within the Six Catchment Areas. Compecon agrees that entry is not straightforward but disagrees with the suggestion that entry is unlikely to be timely or sufficient. Compecon notes, in this regard, that there have been examples of entry in both Airside and Batterstown within the past 18 months. These have involved filling stations that had previously been closed. It also notes, based on the case team's estimates of market shares in both cases … that these entrants have had a significant impact in terms of capturing market share at the expense of market incumbents. Those competitors who are cited in the Assessment expressed mixed opinions about the likely opening of new greenfield sites."*[410]

5.232 Compecon also referred to entry during the Oral Submission:

> *"We've already heard about entry. We've had two examples of entry, we have examples of entry in both Airside and Batterstown in 2024, and you've also been told about plans for future entry in both areas. The fact that the case team concludes that entry is unlikely to be timely or sufficient is simply inconsistent with the evidence."*[411]

Views of third parties

5.233 The Commission also sought the views of third parties with respect to barriers to entry. When asked whether greenfield service stations open regularly, **Applegreen** stated that: "*it is not as common as it was in the past. Applegreen stated there are certainly new entrants buying existing service stations sites. Applegreen stated that fuel volume*

[409] Pelco Written Response, paragraph 5.64.

[410] Compecon Written Response, paragraph 3.48.

[411] Compecon, Oral Submission, page 49, line 22 -25.

sales are generally declining and as such there may not be the same desire to develop new sites. Applegreen stated that most new greenfield sites tend to open around motorways."[412]

5.234 Likewise, **Certa** stated that "*it was uncommon to see greenfield sites open as margins were no longer as strong as they were, and the capital inputs are too high.*"[413]

5.235 **Top Oil** stated that "*it is common to see new sites being opened especially with the development of the motorway networks and the development of sites on motorways. Top Oil stated that the development of motorway plazas by Pat McDonagh as well as the Maxol site near Blake's Cross are all examples of newly opened sites."*[414]

Commission's view

5.236 The Commission notes that there is planned entry in the Airside and Batterstown Catchment Areas. As detailed above, the Commission considers that the Proposed Transaction is unlikely to give rise to competition concerns in the retail sale of motor fuels in these areas. The planned entry in these areas further supports the Commission's conclusion in these areas.

5.237 In relation to the Two Local Catchment Areas, the Commission's view is that while new entry is possible, a number of factors mean that the potential for entry is unlikely to be a strong constraint on market power in retail fuel markets in these areas. These factors include:

- **Planning:** The Parties and their competitors have noted the challenges associated with planning, obtaining licences and other regulatory requirements. Generally, the planning process can be lengthy, and this could affect how rapidly market entry (in relation to a greenfield service station) could occur. Timeliness may also be affected by investment needs. Significant investment is required to develop a completely new site, and even to upgrade and develop an existing site. A new entrant seeking to

[412] Applegreen Call Note, dated 5 February 2025, page 5.

[413] Certa Call Note, dated 6 February 2025, page 4.

[414] Top Oil Call Note, dated 27 March 2025, page 3.

secure investment and obtain planning permission for a new site may not be able to become a constraint within a two-year period, the timeframe within which the Commission would normally consider whether a new entrant would to be able to constrain the merged entity.

- **Market dynamics:** Petrol and diesel service stations face a challenging market environment, with fuel sales potentially declining due to factors such as increasing fuel efficiency, and increased competition from alternative fuel sources, particular in relation to electric vehicles.[415] These factors may be indicative of a declining market, or at least an uncertain market environment, which may deter prospective entrants.

5.238 The Commission's conclusion is that, while market entry is certainly possible, prospective entry is unlikely to be timely or sufficient such as to constrain the merged entity within the Two Local Catchment Areas. Furthermore, the Commission has not seen information which would indicate there will be entry by a new supplier(s) within either of the Two Local Catchment Areas. For entry to ameliorate an SLC in a Local Catchment Area, it would need to be entry in that Local Catchment Area or otherwise affect the retail sale of motor fuels in that Local Catchment Area.

Barriers to expansion

5.239 In relation to barriers to expansion, the Commission's Merger Guidelines state that:

> *"Harm to competition threatened by a merger may also be constrained by the ability of rivals profitably to expand production in response to higher prices. As with new entry, expansion by rivals must be timely, likely, and sufficient to prevent an SLC."*[416]

5.240 The Commission's Merger Guidelines also state:

[415] Industry Expert Call Note, dated 28 November 2024, page 2. Certa Call Note, dated 6 February 2025, page 5. Applegreen Call Note, dated 5 February 2025, page 5.

[416] Commission's Merger Guidelines, paragraph 6.19.

"The ability and incentive of rivals to expand output and sales if competition is harmed post-merger will depend on a number of factors including but not limited to: (a) The number of rivals capable of expanding output and sales. (b) The level of rivals' spare capacity. (c) The cost of expanding output. (d) ***The ability of rivals to source increased inputs and successfully market increased output to customers*** (emphasis added)*. (e) The level of excess capacity held by the merged entity that could be deployed to prevent rivals from capturing sales."* [417]

5.241 The Commission's view is that the key barriers to expansion would potentially include competitors being unable to expand due to:

- Storage capacity for fuel at their service station; and/or
- Limits on the delivery of fuel.

Views of third parties

5.242 In response to the Commission's queries about the extent to which storage capacity may constitute a barrier to expansion, the Parties and third parties explained that the logistics of their supply meant that they would not generally be limited by storage capacity.

5.243 Furthermore, third parties generally believed that limitations associated with fuel delivery would not constitute a barrier to expansion.

5.244 **Applegreen** stated [redacted]. *Applegreen stated that if it had an increase in demand of 10-20% from a site over a couple of days,* [redacted]." [418] With respect to such fluctuations in demand, Applegreen stated that "*fluctuations in demand is not uncommon. Applegreen stated that, for example, if there was* [redacted]*. Applegreen stated* [redacted]

[417] Commission's Merger Guidelines, paragraph 6.20.

[418] Applegreen Call Note, dated 5 February 2025, page 3.

[redacted] *that there may be fluctuations in demand as a result.”*[419]

5.245 **Maxol** carried out an analysis of its busiest stations and logistical capabilities and concluded that it has [redacted] stating that ‘[redacted]”[420]

5.246 **Certa** stated the following in relation to how it could react to an increase in demand:

> *“[it] could deal with an increase in demand and would face very little difficulty in doing so. Certa stated that it had approximately 100 HGV in its fleet which are used for home heating oil deliveries but that they can be deployed to restock a service station if needed. Certa stated that it also has contracts in place with hauliers to bring fuel from terminals to its sites, as such they have the option to use these to make fuel drops to sites. Certa stated that it nominates the amount of fuel required two months in advance from its suppliers and Certa’s stock fuels from these nominations. Certa stated that if demand increased it could nominate additional amounts as the months progressed. Certa stated that as such there would be no logistical issue in meeting an increase in demand. “*[421]

Views of the Parties

5.247 In the Circle K Written Response, Circle K stated the following in relation to potential expansion by remaining suppliers:

> *“Would existing competitors be in a position to expand their retail sale of motor fuels following implementation of the transaction?*
>
> *The answer to this is clearly, ‘Yes’*
>
> *The Commission notes (paragraph 5.244 of the Assessment) that: ‘Third parties generally believed that limitations associated with fuel delivery would not*

[419] Applegreen Call Note, dated 5 February 2025, page 4.

[420] Maxol response to the Commission’s information request, dated 6 September 2024, question 4.

[421] Certa call note, dated 6 February 2025, page 3.

constitute a barrier to expansion'. Maxol stated that: '[redacted]*' (paragraph 5.247 of the Assessment). Certa stated that: 'it could deal with an increase in demand and would face very little difficulty in doing so.' (paragraph 5.248 of the Assessment)."*

Notwithstanding the view of competitors when canvassed by the Commission, the Commission in the Assessment then, bizarrely, states (at paragraph 5.249 of the Assessment) that:

'The Commission preliminarily considers that competitors would not be able to develop alternative locations such that they could replace the lost competition between Pelco and Circle K for those customers for whom Pelco and Circle K are the closest geographic substitutes [..],'

ignoring [sic] *the confirmations / evidence provided by competitors that they had capacity to expand their retail sale of motor fuels following implementation of the transaction. Referring instead to competitors not being able to 'develop alternative locations' appears wholly contrived when all the evidence provided by competitors clearly demonstrates that developing alternative sites is not relevant given that existing locations can deal with an increase in demand and would face very little difficulty in doing so. The reference to 'alternative locations' suggests that expanding the retail sale of motor fuels is contingent upon the establishment of new sites by competitors. This is inconsistent with the position taken by the Commission in McMullan Bros / Naas Fuel Limited where expansion in that regard was based on a capacity to increase the retail sale of motor fuels in existing sites simply by increasing the frequency of delivery. The approach adopted by the Commission in this regard is concerning to Circle K."*[422]

[422] Circle K Written Response, paragraph 4.4.8, number 3.

5.248 In relation to potential expansion by competitors, Pelco stated the following in the Pelco Written Response:

> *"Whilst the case team concludes that there are unlikely to be significant structural barriers to expansion for existing competitors, it then immediately raises the issue of location and argues that competitors might not be able to develop alternative locations such that they could replace the lost competition between the Parties for those customers for whom the Parties are the closest geographic outlet, again without providing any evidence of the extent to which this point could be justified or relevant. It would seem to Pelco that the capacity of outlets to expand generally is more relevant. With respect to the case team, the point on location comes across as something of a non- sequitur to the more important issue of capacity generally."*[423]

5.249 In relation to the Commission's view on barriers to expansion, Compecon stated the Commission's conclusions were "*reached without any prior analysis or discussion and is not supported by evidence*."[424]

Views of the Commission

5.250 In light of the views of the Parties and third parties, the Commission considers that there are unlikely to be significant structural barriers to expansion for existing competitors. However, as detailed above, location is a key factor of competition between service stations, as customers decide where to purchase motor fuel based on their travel routes and the location of service stations in relation to said routes. Therefore, the Commission considers whether expansion by remaining suppliers would sufficiently constrain Circle K following the Proposed Transaction.

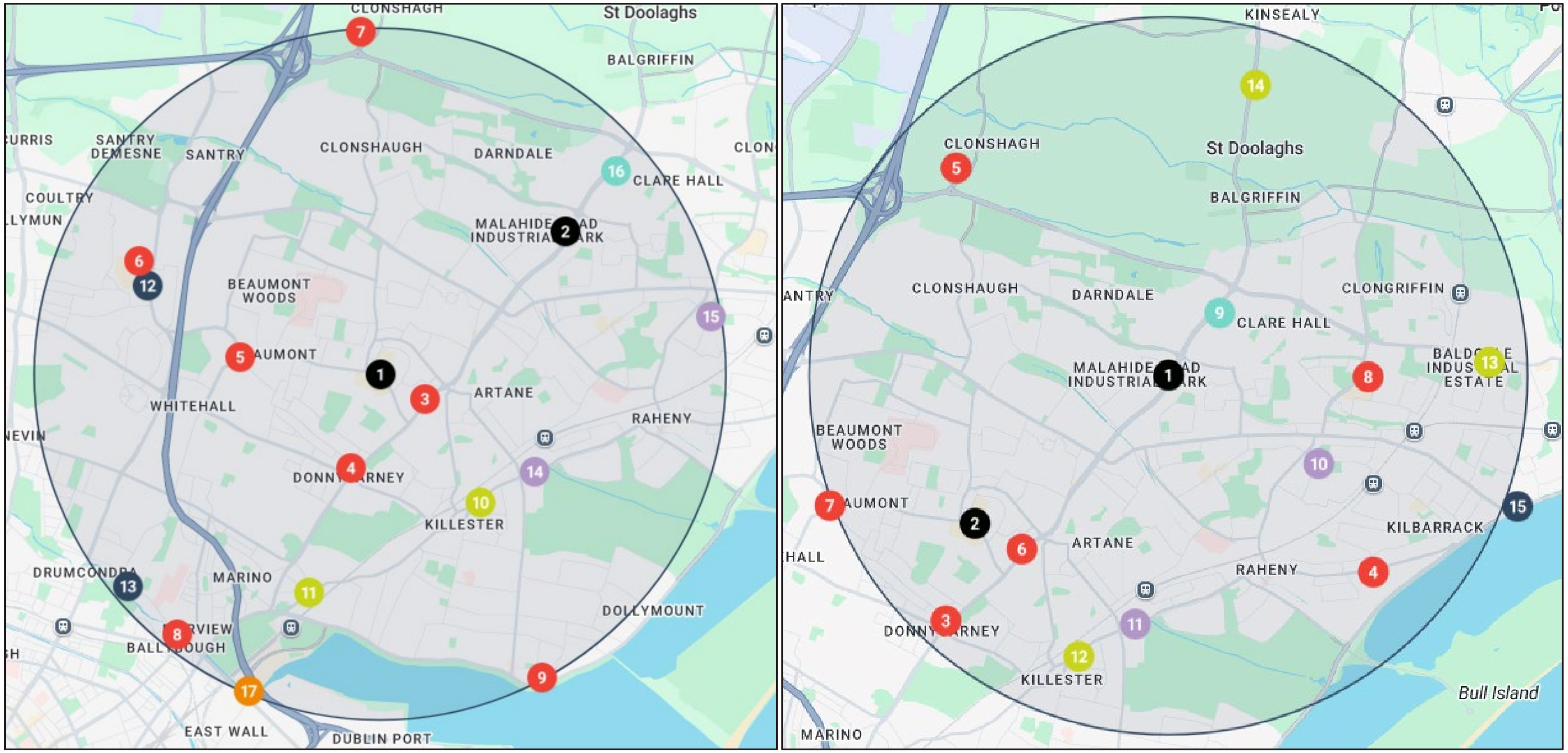
Artane and Newtown Catchment Areas

5.251 Map 12 shows the Artane Catchment Area and the Newtown Catchment Area.

[423] Pelco Written Response, paragraph 5.70.

[424] Compecon Written Response, paragraph 3.51.

Map 12: The Artane and Newtown Catchment Areas



Source: The Commission

5.252 The Commission considers that potential expansion by remaining suppliers in these two areas would be insufficient to constrain Circle K following the Proposed Transaction.

5.253 **By reason of their location (and therefore their competitive relationship with Circle K post-Transaction) the Commission does not consider potential expansion by remaining rivals as being sufficient to prevent an SLC in either of the Two Local Catchment Areas**. For an increase in supply to constrain the merged entity post-Proposed Transaction, customers would need to consider the stations which are increasing supply to be close substitutes to the relevant service stations of the merged entity (i.e. they would switch to the alternative station(s)).[425] As noted above, location is a key factor which influences customer behaviour and competition between service stations. For an expansion in supply by remaining suppliers to be sufficient to prevent an SLC, customers would need to switch from Circle K to said suppliers in response to a price increase. As noted above, the Commission considers that Pelco's stations in the Two Local Catchment Areas compete closely with the following Circle K stations: (i) Circle K Artane; (ii) Circle K Maypark; and (iii) Circle K Beaumont. Therefore, post-Proposed Transaction, customers would need to consider the stations which are increasing supply to be close substitutes to these Circle K stations.[426]

5.254 The Commission does not consider that potential increases by suppliers located on different travel routes from these stations (i.e. suppliers that do not compete closely with Circle K) would sufficiently constrain Circle K post-Proposed Transaction, as customers are unlikely to switch to such stations following a price increase by Circle K. For example, an expansion in supply by stations such as the East Wall Service Station, Maxol Swords Road, or Top Oil Raheny is unlikely to constrain Circle K in rising prices in Circle K Beaumont, Circle K Artane, Circle K Maypark, the Artane Target Station or the Newtown Target Station. This is because these third-party stations are located on

[425] For clarity, the Artane Target Station, the Newtown Target Station, Circle K Artane, Circle K Maypark and Circle K Beaumont.

different travel routes. Consequently, customers are unlikely to switch to these stations in sufficient numbers (for many customers, this would likely require changing their travel route).

Certa Clarehall

5.255 As noted above, following the Proposed Transaction, Circle K would own 3 of the 4 stations along the Malahide Road, a key commuting route into and out of Dublin city. The only other station located on this route is Certa Clarehall. The Commission notes that Certa Clarehall is located on the east side of the Malahide Road. By reason of its location and local traffic flow, the Commission considers that this station is likely to primarily service southbound traffic, while Circle K's sites on the road are likely to primarily serve northbound traffic leaving Dublin city.

5.256 Therefore, while the Commission considers that Circle K and Certa compete, the Commission does not consider that an expansion in supply by Certa Clarehall would be sufficient to prevent an SLC in either of the Two Local Catchment Areas following the implementation of the Proposed Transaction.

Applegreen: Kinsealy, Killester and Clontarf

5.257 Circle K stated that it considers the "[redacted])"[427] within the Artane Catchment Area as a whole. Circle K did not identity which of its stations competes closely with this [redacted] station or why it considers this [redacted] station to be its closest competitor.

5.258 During a call with the Commission, Applegreen stated "[redacted] *in this area which it would compete with. Applegreen stated these would be* [redacted] *Applegreen stated that it competes with* [redacted]."[428] The Commission understands that Applegreen was referring to [redacted] and the [redacted]

[427] Circle K Written Response, paragraph 4.5.19.

[428] Applegreen Call Note, dated 5 February 2025, page 3.

5.259 The Commission notes that there are two Applegreen service stations on the Howth Road: (i) Applegreen located at 54-56, Howth Road, Clontarf West (referred to as Applegreen Clontarf on Applegreen's website)[429] and (i) Applegreen located at 221-223 Howth Road, Dublin (referred to as Applegreen Killester on Applegreen's website).[430] The Commission notes that Circle K monitors [redacted] in relation to only 1 of its 7 service stations in this area, namely Circle K Clontarf Bull. The Commission notes that none of the Circle K stations which are located close to Pelco (Artane, Beaumont, Maypark) monitor [redacted] Finally, the Commission notes that neither Applegreen Killester nor Applegreen Clontarf are located on the Malahide Road. Given their location and local traffic flow, these Applegreen stations are less likely to be competing closely with Circle K Artane, Circle K Maypark, Circle K Beaumont or Pelco (the Artane Target Station and the Newtown Target Station).

5.260 Furthermore, the Commission notes that Applegreen Kinsealy is located between Kinsealy and north Dublin city, approximately 2.7km from the Newtown Target Station and 4.6km from Circle K Artane and is located on the opposite side of the road. By reason of its location, the Commission does not consider that customers would switch to Applegreen Kinsealy from Circle K in sufficient numbers to prevent an SLC in either of the Two Local Catchment Areas following the implementation of the Proposed Transaction.

5.261 The Commission does not consider that an expansion in supply by these Applegreen stations in the area would be sufficient to prevent an SLC in the Artane Catchment Area and/or Newtown Catchment Area following the implementation of the Proposed Transaction.

Out-of-market constraints

5.262 Having considered the extent to which barriers to entry and expansion are likely to replace the competitive constraint provided by Pelco, the next factor the Commission

[429] See https://locations.applegreen.com/?_gl=1%2Apf9fee%2A_gcl_au%2AOTY0NTI1MjcwLjE3NTAzNTA4ODA.%2A_ga%2ANjczNTk4MzIwLjE3NTAzNTA4ODE.%2A_ga_CJB7EGYWLQ%2AczE3NTAzNTA4ODEkbzEkZzAkdDE3NTAzNTA4ODEkajYwJGwwJGgw

[430] See https://locations.applegreen.com/?_gl=1%2Apf9fee%2A_gcl_au%2AOTY0NTI1MjcwLjE3NTAzNTA4ODA.%2A_ga%2ANjczNTk4MzIwLjE3NTAzNTA4ODE.%2A_ga_CJB7EGYWLQ%2AczE3NTAzNTA4ODEkbzEkZzAkdDE3NTAzNTA4ODEkajYwJGwwJGgw

considers relevant in determining whether the Proposed Transaction would likely give rise to an SLC is the importance of out-of-market constraints in relation to the Two Local Catchment Areas.

5.263 As outlined in Section 3, local geographic markets tend, by their nature, not to be suitable for binary distinctions between competitors being inside or outside the market depending on whether they are on one side of a line or the other. Rather, it is more accurate to consider that pressures between suppliers grow softer as the distance between them increases.

5.264 Out-of-market constraints refer to the competitive constraints that would be exerted by suppliers outside of the Two Local Catchment Areas on Circle K following the implementation of the Proposed Transaction.[431] In this section, the Commission considers the extent to which such constraints would be exerted by out-of-market suppliers on Circle K following the implementation of the Proposed Transaction, and whether these constraints would be sufficient to prevent an SLC arising in the Two Local Catchment Areas.

Parties' views on out-of-market constraints

5.265 The Parties have identified potential out-of-market constraints from service stations located outside of catchment areas as being sufficient to constrain Circle K in the catchment areas following the implementation of the Proposed Transaction.

5.266 The Parties have submitted that service stations on commuter routes may exercise a competitive constraint even if they are some distance from the catchment areas:

> *"For example, in Batterstown, the primary competitor is Maxol Kiltale, as well as service stations in Trim and beyond, as this area experiences significant commuter traffic to and from the greater Dublin area daily. Maxol Kiltale is approximately 11 km from the Purchaser's site in Batterstown, while Trim is about 20 km away."* [432]

[431] Commission's Merger Guidelines, paragraph 2.1

[432] Circle K Phase 1 RFI Response, question 20.

5.267 Similarly, Pelco commented that:

> *"In our experience, customers are* [redacted]*. In the last 20 years with the expansion of the road networks, and increased cost of house prices in the greater Dublin area,* [redacted] *This means that* [redacted]
>
> *We would give the example of* [redacted]*, where we believe our local competitors are up to* [redacted]*"*[433]

5.268 Circle K stated in the Circle K Written Response:

> *"There are a number of operators operating forecourt service stations in the Dublin area with strong offerings and competitive prices. Neighbouring micro-markets to a catchment area will continuously have an effect on decisions in respect of fuel pricing as fuel prices may be reduced. This has potential to cause a ripple effect from fuel prices in neighbouring markets influencing decisions in respect of reducing fuel prices from one micro market to the neighbouring market."*[434]

5.269 Pelco stated in the Pelco Written Response:

> *"The Assessment appears to argue that proximity of competitors is more important than competitors based outside the Parties' catchment areas and that this undermines the likelihood that out-of-market competitors might act as constraints on the merged entity."*[435]

[433] Pelco Phase 2 RFI Response, question 12.

[434] Circle K Written Response, paragraph 4.4.8.

[435] Pelco Written Response, paragraph 5.71.

Views of Third Parties

5.270 As previously outlined in more detail, competitors generally were of the view that proximity is a key factor of competition within the retail sale of motor fuels. For example, **Applegreen** stated the following: "*proximity is the main factor that determines which service stations it monitors. Applegreen stated that it monitors service stations that are* [redacted] *depending on the area.*"[436] **Certa** also expressed a similar view, stating "*proximity to its own service stations is the main factor which determines which service stations it monitors and that this varies on a site-to-site basis*."[437] **Maxol** noted how distance between two service stations does not necessarily mean they compete closely, stating "*for example, if a consumer is coming from a commuter town, Maxol's competitors are those stations* [redacted]*. Maxol stated that the* [redacted]*. Maxol stated that, for example, if its site is on* [redacted]*. Maxol stated that some consumers will travel further for cheaper fuel. Maxol stated that consumers around the border with Northern Ireland will travel into Northern Ireland to buy fuel as it is cheaper than in the State, as there are differences in excise duties which has an impact on prices".*[438]

Commission's views

5.271 When considering out-of-market constraints in this case, the issue to be considered is the extent to which the competitive behaviour of service stations outside the catchment areas would act as a sufficient constraint on Circle K such as to prevent an SLC following the implementation of the Proposed Transaction.

5.272 The sensitivity analysis discussed earlier in this section has also taken account of the impact of competitors outside the catchment areas (by extending these catchment areas) on market shares and concentration. As outlined in more detail above, Circle K's

[436] Applegreen Call Note, dated 5 February 2025, page 2.

[437] Certa Call Note, dated 6 February 2025, page 2.

[438] Maxol Call Note, dated 5 February 2025, page 2.

share following the Proposed Transaction remains very high in the Two Local Catchment Areas when the catchment areas are expanded.

5.273 The Commission notes that Pelco's price monitoring activity clearly demonstrates that it primarily assesses the competitive constraint exerted by stations within the catchment areas, not outside of them. Across the six catchment areas, Pelco only monitors out-of-market service stations in Batterstown—which the Commission has accounted for as part of its competitive assessment of the Batterstown Catchment Area. Circle K monitors more service stations than Pelco and monitors more service stations outside of the catchment areas. The Commission considers this is likely due to its large presence across the catchment areas and Dublin more generally. The Commission considers that, in respect of the Two Local Catchment Areas, this does not demonstrate that such out-of-market service stations will constrain Circle K to prevent an SLC following the implementation of the Proposed Transaction.

5.274 The Commission now assesses the extent to which out-of-market constraints in each of the catchment areas are sufficient to prevent an SLC.

Potential Relevant Markets where the Commission has identified material out-of-market constraints

5.275 As outlined above in paragraphs 5.36 to 5.60, the Commission has identified that out-of-market constraints are a material factor in relation to three Local Catchment Areas, namely (i) the Airside Catchment Area, (ii) the Batterstown Catchment Area and (iii) the Rathfarnham Catchment Area, and form a part of the Commission's basis for not having SLC concerns in those markets.

Potential Relevant Markets where the Commission has not identified material out-of-market constraints

5.276 The Commission has not identified out-of-market constraints sufficient to ameliorate SLC concerns in three Local Catchment Areas, namely in relation to (i) the Rolestown Catchment Area; (ii) the Artane Catchment Area; and (iii) the Newtown Catchment Area. However, as detailed above, the Commission considers that the Proposed Transaction does not give rise to an SLC in the retail sale of motor fuels in the Rolestown Catchment Area. Therefore, the Commission does not consider out-of-market constraints in relation to the Rolestown Catchment Area further in this Determination.

Artane Catchment Area

5.277 As outlined above, Pelco does not monitor any service station outside of the Artane Catchment Area in relation to the Artane Target Station. Pelco did not provide information to the Commission which demonstrated that it faces sufficient competitive constraints from out-of-market service stations such as to prevent an SLC in this area.

5.278 Circle K raised the concept of a "*ripple effect*" in the retail sale of motor fuel, whereby certain stations influence pricing beyond their immediate local area. As set out its sensitivity analysis, the Commission considers that high concentration in the catchment areas surrounding the Circle K stations which compete most closely with the Artane Target Station mean that such an effect is not sufficient to ameliorate SLC concerns in the Artane Catchment Area.[439]

5.279 The Commission considered the extent to which specific service stations outside of the Artane Catchment Area exert a competitive constraint on the Parties such as to prevent an SLC in this area. The Commission has considered the specific service stations identified by the Parties in this regard.

Amiens Street service station

5.280 The Parties identified Amiens Street service station as exerting an influence on pricing on stations within the Artane Catchment Area.[440]

5.281 Amiens Street service station is located approximately 4km from the Artane Target Station (centroid of the Artane Catchment Area). The Commission notes that Pelco does not monitor the Amiens Street service station. Of Circle K's service stations in the Artane Catchment Area, Circle K monitors the Amiens Street service station in relation to Circle K Richmond (one of its seven service stations in the Artane Catchment Area)

[439] For clarity, these Circle K stations are Circle K Artane, Circle K Maypark and Circle K Beaumont.

[440] Circle K Phase 2 RFI Response, Compecon Written Response, paragraph 3.54. Circle K also refer to this station as "GO East Wall".

which is located approximately 1km from Amiens Street service station. The Commission notes that none of Circle K's stations which compete closely with Pelco monitor the Amiens Street service station.[441]

5.282 The Commission notes that no information was provided to the Commission by the Parties that demonstrated that this service station exerted a sufficient competitive constraint on the Parties such as to prevent an SLC in the Artane Catchment Area.

5.283 As outlined above, the Commission considers that the following Parties' service stations compete closely:

- the Artane Target Station competes closely with Circle K Artane, Circle K Maypark and Circle K Beaumont.
- the Newtown Target Station competes closely with Circle K Artane and Circle K Maypark.

5.284 Neither of the Parties monitors Amiens Steet service station when setting prices at these stations, as would be expected if it had the material impact on pricing that the Parties submit.[442]

5.285 In any case, Amiens Street service station was accounted for within the sensitivity analysis conducted by the Commission, where it was shown to have an approximately [0-5]% share within the extended 10-minute drivetime catchment area in Artane. Therefore, Amiens Street service station holds a relatively small presence in this area.

5.286 The Commission has not seen information to demonstrate that Amiens Street service station exerts such a competitive constraint on the Parties so as to prevent an SLC in the Artane Catchment Area. Therefore, the Commission has not identified sufficient out-of-market constraints in relation to the Artane Catchment Area which would prevent an SLC in relation to the retail sale of motor fuels in the Artane Catchment Area following the implementation of the Proposed Transaction.

[441] For clarity, these stations include Circle K Artane, Circle K Maypark and Circle K Beaumont.

[442] For example, Pelco monitors such out-of-market service stations in relation to its station in the Batterstown service station.

Newtown Catchment Area

5.287 As outlined above, Pelco does not monitor any service station outside of the Newtown Catchment Area in relation to the Newtown Target Station. Pelco did not provide information to the Commission which demonstrates that it faces sufficient competitive constraints from out-of-market service stations such as to prevent an SLC in this area.

5.288 The Commission considered the extent to which service stations outside of the Newtown Catchment Area exert a competitive constraint on the Parties such as prevent an SLC in this area. Circle K and the Economic Reports identified Amiens Street service station and the East Wall service station as exerting an influence on pricing of stations within the Newtown Catchment Area.[443]

Amiens Street service station

5.289 Amiens Street service station is located approximately 6.10km from the Newtown Target Station (centroid of the Newtown Catchment Area). The Commission notes that neither Pelco nor Circle K monitors the Amiens Street service station in relation to their service stations within the Newtown Catchment Area.

5.290 There is no evidence available to the Commission that demonstrates that Amiens Street service station exerts a competitive constraint on the Parties such to prevent an SLC in the Newtown Catchment Area. As outlined above, the Commission considers that the following Parties' service stations compete closely: (i) Artane Target Station, (ii) Newtown Target Station, (iii) Circle K Artane, (iv) Circle K Maypark and (v) Circle K Beaumont. Neither of the Parties monitor Amiens Street service station when setting prices at these stations (or any other stations in the Newtown Catchment Area), as would be expected if it had the material impact on pricing that the Parties have submitted.

East Wall service station

[443] Circle K Phase 2 RFI Response, Compecon Written Response, paragraph 3.54. Circle K also refer to this station as "GO East Wall".

5.291 Circle K also identified the East Wall service station as an out-of-market station exerting a competitive constraint on stations within the Newtown Catchment Area. Circle K stated the following with respect to the East Wall Service Station:

> *"This service station effectively establishes a local price benchmark which then influences pricing decisions at other stations further afield. For instance, while service stations located at a greater distance such as Certa service station Clarehall, located approximately 7 km from East Wall service station may set higher prices, they still consider the pricing dynamics of competitors near East Wall when determining their own rates."*[444]

5.292 East Wall service station is located approximately 5.20km from the Newtown Target Station (centroid of the Newtown Catchment Area). Pelco does not monitor the East Wall service station. Circle K monitors the East Wall service station in relation to two of its six service stations in this area, namely: Circle K Artane and Circle K Maypark.[445] Circle K monitors the following service stations in relation to these two service stations:

Figure 17: Circle K' monitored stations in relation to Circle K Artane and Maypark

CIRCLE K ARTANE	CIRCLE K MAYPARK
[redacted]	[redacted]
Certa Clarehall	[redacted]
Applegreen Clontarf	Certa Clarehall
Independent / East Wall - Dublin (LCC)	Applegreen Clontarf
	Independent / East Wall - Dublin (LCC)

Source: Circle K

5.293 In light of this price monitoring activity, the Commission considers that the East Wall service station likely exerts some competitive constraint on these Circle K service stations in the Newtown Catchment Area prior to the Proposed Transaction. However, the Commission does not consider that this existing competitive constraint is sufficient to prevent an SLC in the Newtown Catchment Area for the following reasons.

[444] Circle K Written Response, paragraph 5.1.4.

[445] The Commission notes that East Wall Service Station is located within the Artane Catchment Area.

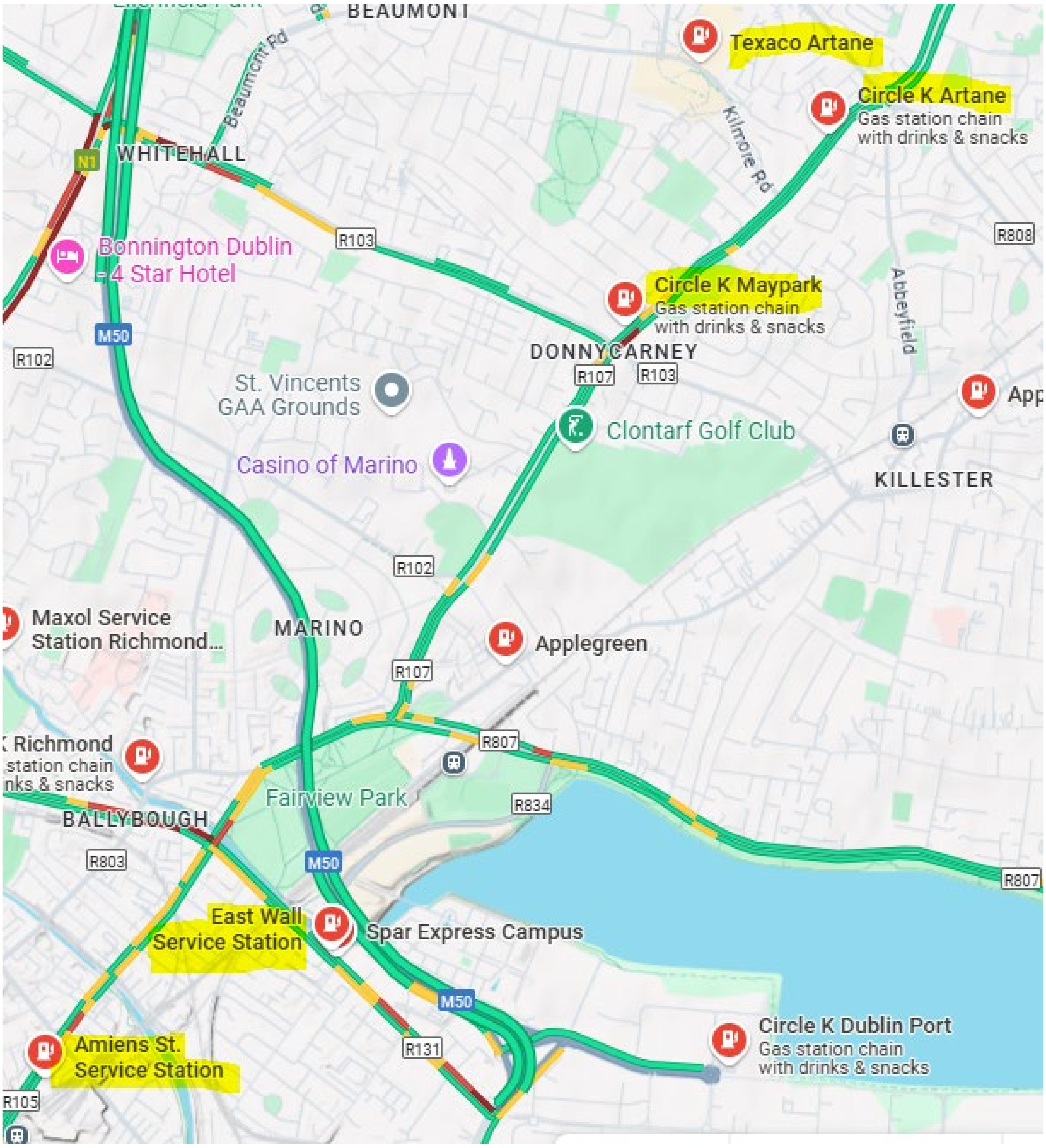
5.294 **First, the extent of Circle K's presence across the Newtown Catchment Area and across north Dublin city generally makes it unlikely that a single, small service station such as the East Wall service station would be able to prevent an SLC following the implementation of the Proposed Transaction.** Circle K would have a [60-65]% share in the Newtown Catchment Area following the implementation of the Proposed Transaction. Furthermore, Circle K owns numerous service stations across north Dublin city generally. If the East Wall service station was included within the Newtown Catchment Area, it would hold an estimated share of approximately [5-10]%.

5.295 **Second, in terms of geographic proximity, the East Wall service station is located to the south of the Parties' service stations in this area and is further away from Circle K than Pelco's stations.**[446] Customers of the Artane Target Station, the Newtown Target Station, Circle K Artane, and/or Circle K Maypark would need to switch their purchases to the East Wall service station in sufficient numbers to prevent an SLC in the Newtown Catchment Area.[447] This would require customers, depending on which station they normally use, to switch to a station that is between 2.2km and 5.18km away and located off the R105 toward Dublin Port. Figure 18 shows the location of the East Wall Service station.

Figure 18: East Wall Service Station

[446] Circle K Artane, Circle K Maypark.

[447] Or the Artane Catchment Area.



Source: The Commission

5.296 Therefore, while Circle K monitors the East Wall service station, Pelco does not, and taking into account other relevant factors—i.e. competitive scale and location—the Commission does not consider that East Wall Service Station exerts a sufficient constraint to prevent an SLC in relation to the retail sale of motor fuels in the Newtown Catchment Area following the implementation of the Proposed Transaction.

Commission's conclusion on out-of-market constraints

5.297 Having considered the impact of service stations outside the catchment areas, the Commission has come to the view that out-of-market constraints would not prevent an SLC in either of the Two Local Catchment Areas.

Mavericks and remaining competitive constraints

Parties' views

5.298 The Parties submitted that there are mavericks operating, either within or outside of the catchment areas, which exert a considerable influence on other service stations which would prevent Circle K from raising prices following the implementation of the Proposed Transaction.

5.299 In this regard, Pelco made the following observations:

> *"The Assessment seriously understates the competitive role that mavericks play in the retail motor fuel sector. As explained above* [i]*n* [sic] *Paragraph 5.66, Go, in particular, is a very aggressive price discounter.*
>
> *As also explained in Paragraph 5.67, Certa is also an aggressive price discounter.*
>
> *In addition to Go and Certa which operate on a national basis, there are individual aggressive price discounting mavericks such as Airport Energy in Airside and Amiens Street SC in Artane.*
>
> *This maverick behaviour, and the extent of it, would operate as a serious competitive constraint on the combined entity post-merger."*[448]

5.300 Circle K stated the following with respect to mavericks:

> *"At the meeting facilitated by the CCPC on 22 January 2025, Circle K discussed the concept of the "ripple effect" in respect of fuel pricing, using the Go service station on Crumlin Road and East Wall Service Station as key examples. It was*

[448] Pelco Written Response, paragraphs 5.73 – 5.76.

noted that pricing strategies at certain "maverick" sites often influence a much broader area than the 3.2 km catchment area typically used in assessments"[449]

"Additionally, Circle K highlighted a similar phenomenon in motorway fuel pricing, which does not necessarily involve "maverick" operators. By way of example, Circle K M6 Athlone monitors pricing at Applegreen Motorway Services in Enfield (approximately 74km to the east) and Texaco Kiltullagh on the M6 (around 63km to the west). This illustrates that competitive pricing considerations can span significant distances, even in the absence of atypical pricing behaviour."[450]

5.301 The First Economic Report and the Compecon Written Response also raised the issue of mavericks.

5.302 After citing the European Commission's, the Commission's and the Competition Authority's merger guidelines with respect to mavericks, the First Economic Report quoted from Circle K's Phase 2 RFI response:

"[Additionally,] the ripple effect of a low-market competitor in one area can impact neighbouring areas, as service stations must remain competitive to retain their customer base. For instance, in Artane, the GO site on the East Wall [redacted]*, and its* [redacted] *the Artane and Newtown Catchment Areas due to their proximity. This is despite the fact that the GO site on East Wall Road is 4.4 km from Texaco Artane and 6.8 km from Texaco Newtown."*[451]

"In the Airside Catchment Area, a newly developed low-cost operator called 'Airport Energy' has opened. It is approximately 3.6 km from the Purchaser's Airside site and is on the same side of the road and feeder road in and out of Dublin. There are two other sites near Airport Energy: Applegreen Santry (4.2 km from the Purchaser's Airside site) and Certa Santry (3.8 km from the Circle

[449] Circle K Written Response, paragraph 5.1.4.

[450] Circle K Written Response, paragraph 5.1.4.

[451] Circle K Phase 1 RFI Response, question 20.

K Airside site). All three are [redacted] *on the route where the Purchaser's Airside site is located."*[452]

"There are also service stations that sell fuel at [redacted] *that are not feasible to the Purchaser. In this regard, these service stations would be considered a 'unique competitor'. An example of this is the Campus site in Ashbourne within the Rolestown Catchment Area. "Unique competitors within the Catchment Areas include: ▪ Batterstown: GO Dunshaughlin (low-price operator) ▪ Airside: Airport Energy Santry & Certa Santry (outside the Catchment Area and low-price operators) ▪ Rolestown: Campus Ashbourne (high-price operator) ▪ Artane: GO East Wall (outside the Catchment Area and low-price operator) ▪ Newtown: Certa Clare Hall & GO East Wall (outside the Catchment Area and low-price operators) ▪ Rathfarnham: GO Kylemore and Certa Dundrum (low-price operators) (these sites located outside the Catchment Area)"*[453]

5.303 Having quoted from Circle K's Phase 2 RFI Response, the First Economic Report stated that "*There is evidence of maverick operators affecting prices in several of the catchment areas*".[454]

5.304 The Compecon Written Response stated that:

"The Assessment states that the case team found no evidence of maverick behaviour. This is also inconsistent with evidence showing fluctuations in market shares between 2023 and 2024 in several catchment areas, which was not mentioned at all in the Assessment. This is particularly true of areas where new low cost entrants opened during 2024. The parties have also cited examples of competitive pressures from low cost operators located within or

[452] Circle K Phase 1 RFI Response, question 20.

[453] Circle K Phase 1 RFI Response, question 26.

[454] First Economic Report, paragraph 4.4(iii).

close to certain catchment areas as defined by the case team. Again, the Assessment fails to recognise this."[455]

Role of mavericks

5.305 The Commission's Merger Guidelines state that:

> *"So-called "maverick" behaviour involves competing more vigorously (e.g., in terms of price, quality, innovation etc.) relative to other firms. For example, maverick behaviour by a small firm may have a disproportionately large impact on competition and, as a consequence, that particular firm may be better able (in comparison to other firms) to constrain a merged entity from increasing prices. Therefore a merger involving a firm that acts as a maverick could imply a disproportionate reduction in competition, depending on (i) the significance of the maverick in the market and (ii) the extent to which the merged entity will compete less vigorously than the maverick firm prior to the merger."*[456]

5.306 As noted in the Commission's Merger Guidelines, the consideration of so-called maverick firms in merger review is typically relevant in the context of mergers which may lead to the removal of a maverick from the market, and thus the loss of an important competitive force in that market. Moreover, so-called maverick firms are also considered within the context of potential coordination between competitors, as maverick firms by their nature can constrain coordinated behaviour.[457]

5.307 In this case, the Commission understands that the Parties are referring to mavericks in a different sense. The Parties identified third party service stations/suppliers as potential mavericks and consider that the presence of such service stations/suppliers selling fuel at lower prices may extend competitive constraints outside of the catchment areas and mitigate any competition concerns.[458]

Commission's view

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[455] Compecon Written Response, page 76.

[456] Merger Guidelines, paragraph 4.22

[457] Commission's Merger Guidelines, paragraph 4.33(c).

[458] Circle K Phase 2 RFI response, question 20. Circle K Phase 2 RFI response, question 26. First Economic Report, paragraphs 3.16-3.18.

5.308 In the Commission's view, the Parties have identified a broad range of service stations as mavericks based solely on the fact that they charge lower prices for motor fuel than the Parties.

5.309 While there is no single definition of a maverick firm, solely charging lower prices than other suppliers does not make a firm a maverick. Discussing the concept a maverick firm, Gore et al (2013) stated the following:

> *"Specifically, the fact that a company has adopted a different business model from the other suppliers or that it charges a much lower price does not automatically make it a 'maverick firm'. Indeed, if one merging firm is following a different pricing policy to its rivals, (for instance, a low price/low quality business model), this may suggest a degree of differentiation between it and other firms that would imply an absence of important competitive constraints between it and other suppliers."*[459]

5.310 The Commission considers that the fact that a firm offers lower prices does not, in itself, make it a maverick.

5.311 The Commission notes that the Parties identified a broad range of service stations as mavericks which [redacted] following the implementation of the Proposed Transaction:

- Airport Energy and Certa Santry in relation to the Airside Catchment Area;
- Amiens Street service station, Certa Clarehall and the East Wall service station in relation to the Artane and Newtown Catchment Area;
- Go Fuels Dunshaughlin in the Batterstown Catchment Area;
- Go Fuels Kylemore and Certa Dundrum in relation to the Rathfarnham Catchment Area; and

[459] Gore, D., Lewis, S., Lofaro, A., and Dethmers, F. (2013). *The Economic Assessment of Mergers under European Union Competition Law,* pg.162-163, Cambridge University Press.

- Campus in relation to the Rolestown Catchment Area.

5.312 The Parties have not provided information that demonstrates that these service stations are mavericks. Furthermore, the Commission examined competitive constraints on the Parties' stations in the Two Local Catchment Areas and did not find any outsized competitive constraint exerted by the stations identified by the Parties as mavericks.

Conclusion with respect to mavericks

5.313 Having considered the impact of the service stations identified by the Parties as mavericks (see the closeness of competition and barriers to expansion analysis above), the Commission has come to the view that it has not seen evidence that would indicate that these stations are mavericks. Furthermore, the Commission considers that it has not seen evidence that would indicate that the identified mavericks would constrain Circle K post-Proposed Transaction such to prevent an SLC in either of the Two Local Catchment Areas.

Parties' view with respect to the effect of price increases on their non-fuel offering

5.314 Compecon stated the following in response to the Commission's Assessment:

> *"A further error in the case team's analysis is that it ignores the relationship between the two parts of the parties' businesses, motor fuel and convenience store retailing. To an extent these two elements have become complementary. Consumers, for example, purchase a coffee or a snack when they purchase fuel. Increasing the price of one of the products reduces demand for both. Thus, increasing the price of motor fuel, post-merger, will affect not only motor fuel sales but will also affect convenience store sales as consumers who decide they are not prepared to pay the higher fuel price will not visit the filling station. As the Assessment accepts that the convenience stores are subject to competitive constraints from non-forecourt retail outlets, such sales will not necessarily be captured by the other merging party. In other words, it cannot be assumed that a fuel price increase would be profitable simply because a sufficient proportion of any fuel sales lost would be captured by the other merging party. It would*

also be necessary to recoup potential profits lost on related lost convenience sales. The case team has simply failed to consider this."[460]

"In arguing that a post-merger price increase of motor fuel would be profitable, the Assessment ignores the fact that increasing the price of fuel at a filling station will lead to a decline in both and convenience sales [sic]. *In claiming that the price increase would be profitable, the Assessment has failed to take into account the loss of convenience sales."*[461]

5.315 The Commission understands that Compecon's view is that any price rise in relation to motor fuels by Circle K following the Proposed Transaction will result in a corresponding decrease in sales with respect to Circle K's non-fuel offering (due to a decrease in demand for Circle K's non-fuel offering). With respect to this view, the Commission notes the following.

5.316 **First, the Parties have provided no information to demonstrate that they experience a decrease in non-fuel sales when they increase motor fuel prices**. The Commission notes that Compecon has raised the hypothetical possibility that any price increase by Circle K will result in a decrease in non-fuel sales, such as to make a motor fuel price increase unprofitable. No information has been provided to support this view. Furthermore, such a view seems to imply that any price increase will automatically be unprofitable due to lost non-fuel sales. Such a view does not align with market reality, which has seen motor fuel prices increase and could equally be seen to apply to the market prior to the Proposed Transaction. The Commission notes that neither Compecon nor the Parties raised this view with respect to any specific local area nor provided information in this regard.

5.317 **Second, the Commission notes that the Parties monitor each other's prices when setting the price of motor fuel.** The Parties' consistently monitor and account for each other's prices when setting the price they charge for motor fuels. While service stations also compete based on their non-fuel offering, the Parties clearly focus on

[460] Compecon Written Response, paragraph 3.61.

[461] Compecon Written Response, page 77.

their competitors' fuel prices when setting their own prices – not their competitors' non-fuel offering. The Commission has seen no evidence to demonstrate that the Parties' account for how price changes in fuel affect their non-fuels sales to the same extent that they consider their competitors' fuel prices.

5.318 **Third, Circle K's [redacted] clearly account for the [redacted].** Internal documents provided by Circle K to the Commission demonstrate that Circle K has previously conducted [redacted]. These [redacted]. If, as Compecon suggests, price increases in fuel would be unprofitable due to potential lost non-fuels sales, it would be expected that such an effect would be assessed [redacted].

Overall conclusion on horizontal unilateral effects

5.319 In light of the analysis and evidence set out in this section, the Commission has concluded that the Proposed Transaction will, on the balance of probabilities, result in an SLC in the Two Local Catchment Areas, namely the retail sale of motor fuels in the (i) Artane Catchment Area; and (ii) Newtown Catchment Area compared to the Relevant Counterfactual.

The Commission's overall conclusion on its theory of harm

5.320 Taking all of the factors and evidence discussed above into account, and having regard to the Relevant Counterfactual set out in section 4 above, the Commission considers that:

a) **Increased market concentration**: The Two Local Catchment Areas are highly concentrated. Following the implementation of the Proposed Transaction, Circle K would be the largest supplier in each of these areas, with a share of [60-65]% and [65-70]% respectively. These Two Local Catchment Areas are highly concentrated, and on the basis of the evidence available to the Commission, the likely effect of the Proposed Transaction will be to increase that concentration further;

b) **Parties are close competitors**: The Commission's view is that, owing to the distance between their respective service stations, the location of their respective service stations, and their monitoring activity, the Parties compete closely with each other in the Two Local Catchment Areas;

c) **Most remaining providers are all significantly smaller than the merged entity in the Two Local Catchment Areas:** Most of the suppliers which will remain in the Two Local Catchment Areas following the implementation of the Proposed Transaction are all significantly smaller than Circle K;

d) **New entry and expansion are unlikely to prevent SLC:** The Commission's view is that, while possible, it has not seen any evidence that entry would be likely, timely and sufficient to constrain Circle K in the Two Local Catchment Areas following the implementation of the Proposed Transaction. Furthermore, the Commission does not consider that expansion by existing service station operators would sufficiently constrain Circle K following the implementation of Proposed Transaction; and

e) **Out-of-market constraints are unlikely to prevent SLC:** The Commission's view is that potential out-of-market constraints, namely service stations located outside of the catchment area and service stations identified as mavericks by the Parties, are not sufficient (to the extent that they are present) to prevent an SLC in the Two Local Catchment Areas.

5.321 Taking all this into account and having regard to the Relevant Counterfactual, the Commission considers that its Theory of Harm supports a conclusion that the Proposed Transaction will, on the balance of probabilities, result in an SLC in the potential markets for (i) the retail sale of motor fuels within a 3.2km radius of the Artane Target Station; and (ii) the retail sale of motor fuels within a 3.2km radius of the Newtown Target Station i.e. the Two Local Catchment Areas.

6. REMEDIES TO ADDRESS SLC CONCERNS

Introduction

6.1 The Commission's concerns that the Proposed Transaction would, on the balance of probabilities, result in an SLC, were communicated to the Parties on a preliminary basis (see paragraph 1.26) in advance of issuing the Assessment, and set out in full in the Assessment.[462]

6.2 As explained in section 1, on each of 20 March 2025, 26 March 2025, and 6 June 2025, Circle K submitted a set of proposals (the First, Second and Third Proposals collectively the "Initial Proposals"), within the meaning of section 20(3) and 20(4) of the Act. However, following full consideration of the Initial Proposals and extensive engagement with the Parties, for the reasons set out below, the Commission considered that the Initial Proposals would not address the SLC arising as a result of the Proposed Transaction.

6.3 Where the Commission considers that proposals submitted by notifying parties do not adequately address the SLC concerns it has identified through its in-depth investigation, one of the options open to the Commission is – where it considers it appropriate to do so – to make a determination pursuant to section 22(3)(c) of the Act that the merger or acquisition may be put into effect subject to conditions, on the ground that the result of the merger or acquisition will not be to substantially lessen competition, if such conditions are complied with.

6.4 The Commission sets out below:

- The Commission's approach to evaluating proposals;
- The Initial Proposals;
- The Draft Conditions;

[462] As noted previously, the Commission identified preliminary competition concerns in six Local Catchment Areas in the Assessment. Following the receipt of further information from the Parties and subsequent analysis, the Commission's competition concerns were limited to the Two Local Catchment Areas.

- The Final Proposals; and
- Conclusion.

The Commission's approach to evaluating proposals

6.5 Parties to a notified transaction may enter into discussions with the Commission pursuant to section 20(1)(b) of the Act with a view to identifying measures which would ameliorate any effects of the notified transaction on competition in any relevant market(s). Where the Commission considers that proposals submitted by the notifying parties within the meaning of section 20(3) and (4) of the Act adequately address the relevant SLC concerns identified by the Commission, the Commission may take such proposals into account and, in light of the said proposals (which form part of the basis of its determination), determine, in accordance with section 22(3)(a) of the Act, that the result of the notified merger will not be to substantially lessen competition in any market for goods or services in the State. In such cases, the proposals submitted by the parties become "commitments" that are binding on the parties in accordance with section 26 of the Act. The result is that the Commission clears the notified merger under section 22(3)(a) of the Act subject to the commitments given by the parties.

6.6 In assessing proposals submitted to the Commission pursuant to section 20(3) of the Act to determine whether they would ameliorate the effects of the notified transaction on competition in any relevant market(s), the Commission has regard to the Act and to the Merger Guidelines. The Commission also takes into account the analytical framework set out in the European Commission's Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ("EC Remedies Notice").[463] As part of this evaluation and having regard to the analytical framework set out in the EC Remedies Notice, the Commission considers three key criteria when assessing proposals:

[463] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC1022(01).

(i) Are the proposals comprehensive and effective?;

(ii) Are the proposals capable of being implemented effectively within a short period of time?; and

(iii) Do the proposals eliminate the competition concerns entirely? [464]

6.7 The Commission notes, in particular, the basic condition for acceptable commitments/proposals set out in the EC Remedies Notice:

> *"Under the Merger Regulation, the [European] Commission only has power to accept commitments that are deemed capable of rendering the concentration compatible with the common market so that they will prevent a significant impediment of effective competition. The commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view. Furthermore, commitments must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled."* [465]

The Initial Proposals

The First Proposals

6.8 On 20 March 2025, Circle K submitted the First Proposals to the Commission pursuant to section 20(3) of the Act (see paragraph 1.29 above). At the time the First Proposals were submitted, the Commission's preliminary competition concerns were focussed on the retail sale of motor fuels in the six Local Catchment Areas where both Pelco and Circle K were active.

6.9 The First Proposals consisted of:

[redacted];

[464] EC Remedies Notice, paragraph 9.

[465] Paragraph 9.

[redacted]

[redacted]

[redacted].[466]

The Commission's evaluation of the First Proposals

6.10 During a call on 21 March 2025, the Case Team informed the Parties that the First Proposals, which largely amounted to [redacted] in the six Local Catchment Areas, were unlikely to address the competition concerns raised by the Proposed Transaction.

6.11 At that meeting, the Case Team explained the Commission's general preferences is for structural remedies in cases where potential structural competition concerns have been identified. The Case Team also outlined the shortcomings of behavioural remedies of the type set out in the First Proposals in the context of this investigation. It was noted in particular that the First Proposals were (i) time-limited behavioural commitments which did not address the structural nature of the Commission's competition concerns; and (ii) presented serious implementation risks.

6.12 On the basis of the above, the Commission reached the view that the First Proposals would not ameliorate the Commission's SLC concerns in the six Local Catchment Areas.

Second Proposals

6.13 On 26 March 2025, Circle K submitted the Second Proposals to the Commission pursuant to section 20(3) of the Act (see paragraph 1.30 above). Circle K provided further details in respect of the Second Proposals on 31 March 2025, and again on 1 May 2025.

6.14 At the time the Second Proposals were submitted, the Commission's competition concerns remained, at that stage, focused on the retail sale of motor fuels in the six Local Catchment Areas where both Pelco and Circle K were active.

6.15 In summary, the Second Proposals consisted of:

[466] Circle K email to the Commission, dated 20 March 2025.

A. A BEHAVIOURAL REMEDY

- [redacted], which was also submitted in the First Proposals, the shortcomings of which had been explained to the Parties in the feedback given by the Case Team in respect of the First Proposals.

B. STRUCTURAL REMEDIES

- **An** [redacted]. Circle K considered that this would address the competition concerns identified with respect to both the Artane Catchment Area and the Newtown Catchment Area.
- **The** [redacted]
- **A** [redacted].
- **A** [redacted].[467]

The Commission's evaluation of the Second Proposals

[467] Circle K email to the Commission, dated 26 March 2025.

6.16 The Case Team used the framework of analysis outlined above in assessing the Second Proposals and continued its engagement with the Parties. On 31 March 2025, the Parties made further submissions[468] which the Case Team considered. The further submissions focused on the definition of catchment areas without referring directly to the Second Proposals. A virtual meeting was held on 1 April 2025 to discuss the Second Proposals.

6.17 At the meeting of 1 April 2025, the Case Team informed the Parties that, having considered the Second Proposals and the further submissions, it was of the view that the Second Proposals were unlikely to address the competition concerns raised by the Proposed Transaction. The Commission's evaluation of the Second Proposals was further articulated in a letter to the Parties on 14 May 2025 (the "14 May Letter").

6.18 The Case Team reiterated the Commission's evaluation and concerns with respect to the behavioural commitment, i.e. [redacted], which was the same as that submitted in the First Proposals.

6.19 With regard to the proposed [redacted] the Case Team explained that the [redacted], did not address the Commission's competition concerns. First, the [redacted] would not be capable of replacing the competitive constraint exercised by the Pelco site in the relevant Local Catchment Area on Circle K and that would be lost as a result of the Proposed Transaction. Second, [redacted] which also did not address the Commission's competition concerns in respect of the investigation. The Case Team emphasised the need for a remedy that could lead to the creation of a viable business that, if operated by a suitable purchaser, would compete effectively with Circle K on a lasting basis.

[468] On 31 March 2025, Circle K submitted an economist's note (the Second Economic Report) and an additional submission was made by Pelco.

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6.20 With regard to the proposed [redacted], the Case Team noted the Commission's preliminary concerns regarding the effectiveness of a [redacted].

6.21 The Parties' initial proposal had been that [redacted], but it was subsequently indicated that Circle K would be willing to offer [redacted]. The Commission noted that [redacted] had been acceptable as a structural divestment in the United Kingdom in the motor fuel sector,[469] but that the European Commission has not considered [redacted] as a suitable remedy in recent mergers in this market.[470]

6.22 The Commission informed the Parties that at that time and absent further evidence or substantiation, it did not believe that the Second Proposals would be capable of replacing the competitive constraint that would be eliminated as a result of the Proposed Transaction. In particular, the Commission was not able to conclude with the requisite degree of certainty that it would be possible to implement the Second Proposals, nor that it was likely that the new commercial structures resulting from them would be sufficiently workable and lasting to ensure that the competition concerns identified would be addressed.

Third Proposals

6.23 On 6 June 2025, following the issuance of the Assessment, the Parties' Response to the Assessment and the Parties' Oral Submissions, Circle K submitted the Third Proposals to the Commission pursuant to section 20(3) of the Act.

[469] See, for example, the UK Competition and Markets Authority's ("CMA") 2023 determination in respect of Asda / Arthur (Co-op), and the CMA's 2022 determination in respect of CD&R / Morrisons.

[470] See for example, Case M.10438 - MOL / OMV SLOVENIJA, Case M. 9014 - PKN ORLEN / GRUPA LOTOS and Case M.7603 -STATOIL FUEL AND RETAIL / DANSK FUELS.

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6.24 At the time the Third Proposals were submitted, the Commission's competition concerns were focussed on the retail sale of motor fuels in three specific Local Catchment Areas, namely Artane, Newtown and Rathfarnham.

6.25 The Third Proposals consisted of the following:

- **An** [redacted] which was also submitted in the Second Proposals, the shortcomings of which had been explained to the Parties in the feedback given by the Case Team in respect of the Second Proposals**;**

- **The** [redacted]. For the [redacted]; and

- **A** [redacted]

The Commission's evaluation of the Third Proposals

6.26 As with the First Proposals and Second Proposals, in considering the Third Proposals the Commission had regard to the Act, the Merger Guidelines, and the EC Remedies Notice. In the period since its assessment of the Second Proposals, the Commission had continued its analysis of the likely competitive effects of the Proposed Transaction, which it took into account in its assessment of the Third Proposals and continued its engagement with the Parties.

6.27 On 11 June 2025, in a meeting with the Parties, the Case Team updated the Parties on its further analysis, which indicated that the Commission's competition concerns now related to the retail sale of motor fuels in three of the Local Catchment Areas: Artane, Newtown and Rathfarnham. The Case Team also provided detailed feedback to the Parties with respect to the Third Proposals.

6.28 The Commission further articulated its view on the Third Proposals in a letter to Circle K on 19 June 2025 (the "19 June Letter").

6.29 With respect to the proposed [redacted], the Commission's views in relation to this proposed [redacted], which was the same as that put forward by the Parties as part of the Second Proposals, remained unchanged. The Parties were asked to provide any evidence that would demonstrate that, contrary to the Commission's position, [redacted] would address the competition concerns the Commission had identified and communicated to the Parties in the Assessment.

6.30 With respect to the proposed [redacted], the Commission informed the Parties that, in the circumstances of this particular case, and in view of the particular characteristics of the Two Local Catchment Areas, a [redacted] could be an acceptable structural remedy. [redacted] may be an appropriate term. However, the Commission considered that a [redacted] would significantly dilute the efficacy of the remedy, effectively creating a [redacted].[471] In particular, it would impact the structural effect and the lasting basis of the remedy.

6.31 Further, in the 19 June Letter, the Commission continued to express concerns that a [redacted]

[471] Reference was made to cases of competition authorities in other jurisdictions that have considered a [redacted] which typically include a [redacted]. See, for example, the CMA 2023 determination in respect of Asda / Arthur (Co-op).

[redacted], was likely to impact the independent operator's commercial freedom and its ability and incentive to compete effectively with Circle K.

6.32 On 20 June 2025, the Commission received a joint response from the Parties, which addressed, among other things, the Commission's approach to the Initial Proposals and in particular their view that the Commission's views were not commercial and that the Commission's position with respect to the Proposals was [redacted] On 23 June 2025, the Commission was informed that Circle K has [redacted]".[472]

6.33 On 27 June 2025, the Commission responded to the Parties' joint response of 20 June 2025 and set out the next steps in its process in light of (i) the impending statutory deadline of 8 July 2025 by which the Commission must make a determination, and (ii) the fact that Circle K had indicated that it [redacted] (the "Commission's 27 June Letter"). In that letter, the Commission reminded the Parties that the commercial attractiveness of proposals is not its primary concern in a case where an in-depth investigation has identified a potential SLC. Rather, as explained in detail on numerous occasions, proposals need to address the potential SLC.

6.34 The Commission's 27 June Letter reiterated the Commission's position in relation to the Third Proposals and updated the Parties in respect of its assessment of the likely competitive impact of the Proposed Transaction. In particular, the Parties were informed that, following its extensive discussion with the Parties, consideration of further written and oral submissions and further analysis, the Commission's competition concerns now related only to the retail sale of motor fuels in the Two Local Catchment Areas – that is, the Artane and Newtown Catchment Areas.

Conclusion with respect to the Initial Proposals

[472] See email of 23 June 2025 from Sean Ryan of Eversheds, counsel for Circle K.

6.35 The Commission evaluated the Initial Proposals according to its analytical framework, which is based on the Act, the Commission's Mergers Guidelines and, in particular, the EC Remedies Notice, and found that:

- The Initial Proposals were not comprehensive and effective; and
- The Initial Proposals did not eliminate the competition concerns entirely.

6.36 In the Commission's 27 June Letter, it was explained to the Parties that the Commission did not consider that the Initial Proposals were capable of ameliorating and thereby addressing the competition concerns identified. The Parties were informed that, while no final decision had been made at that time, in the absence of appropriate proposals, the Commission would consider whether it should make a determination pursuant to section 22(3)(c) of the Act subject to conditions, on the ground that the result of the Proposed Transaction will not be to substantially lessen competition, if such conditions are complied with.

Market testing of potential remedies

6.37 The Commission conducted market testing in order to explore remedy options.

6.38 During the period 24 June 2025 to 30 June 2025, the Commission market tested potential remedies. This also formed part of its assessment as to whether conditions could be appropriate, proportionate and effective in ameliorating the SLC concerns in the Two Local Catchment Areas.

6.39 The Commission conducted nine calls with service station operators. The interviewees were provided with a non-confidential version of background information about the Proposed Transaction, and a list of topics to be covered during the call. Feedback from the market testing has been considered below in the Commission's formulation of proposed conditions.

Conditions

Legal framework

6.40 The Commission's power to impose conditions derives from section 22(3)(c) of the Act, which provides:

> *"On completion of a full investigation in relation to the merger or acquisition concerned, the [Commission] shall make whichever of the following determinations it considers appropriate, namely that the merger or acquisition—*
>
> *(a) may be put into effect,*
>
> *(b) may not be put into effect, or*
>
> *(c) may be put into effect subject to conditions specified by it being complied with,*
>
> *on the ground that the result of the merger or acquisition will or will not, as the case may be, be to substantially lessen competition in markets for goods or services in the State or, as appropriate, will not be to substantially lessen such competition if conditions so specified are complied with."*

6.41 The Commission may impose conditions pursuant to section 22(3)(c) of the Act following an in-depth investigation and where it has reached the view that, without the specified conditions, the notified merger or acquisition will result in an SLC.

Remedies process

6.42 As set out above, the parties to a notified merger may submit proposals in accordance with section 20(3) of the Act. If those proposals adequately address the relevant SLC concerns identified by the Commission, the Commission may take such proposals into account and, in light of the said proposals (which form part of the basis of its determination), determine, in accordance with section 22(3)(a) of the Act, that the result of the notified merger will not be to substantially lessen competition in any market for goods or services in the State.

6.43 As set out in detail above, the Commission engaged extensively with the Parties with a view to identifying appropriate proposals which could form part of the basis of a determination in accordance with section 22(3)(a) of Act, that the result of the Proposed Transaction will not lead to an SLC in any market for goods or services in the State. However, despite extensive engagement, the Parties had not, by 23 June 2025, submitted proposals that would ameliorate the competition concerns identified by the Commission. On 23 June 2025, Circle K informed the Commission that it had "[redacted]".[473]

6.44 On 27 June 2025, the Commission wrote to the Parties, reiterating its position with respect to the Initial Proposals and informing them that it would consider whether it would be appropriate to impose conditions pursuant to section 22(3)(c) of the Act. The Commission provided the Parties with a draft of the conditions that it was considering (the "Draft Conditions"), together with an outline of the key terms of the Draft Conditions and the Commission's reasoning as to the necessity of each. The Parties were requested to respond with any observations on the Draft Conditions by 2 July 2025. The Commission was mindful of the need to take a proportionate approach to the formulation of Draft Conditions and sought to address its competition concerns in an appropriate and proportionate manner. The Draft Conditions tracked the approach taken by the Parties in submitting their Initial Proposals where appropriate and diverged only on discrete areas where the Parties' Initial Proposals failed to address competition concerns.

6.45 On 2 July 2025, the Parties submitted joint observations on the Commission's 27 June Letter and the Draft Conditions (the "Parties' Observations of 2 July"). The Parties' Observations of 2 July are considered in the section below.

Assessment of appropriate section 22(3)(c) conditions

6.46 The Commission is committed to ensuring that any conditions it considers would be necessary, proportionate, reasonable and capable of implementation.

6.47 As noted above, at the time of the Commission's Letter of 27 June, which included a copy of the Draft Conditions and the Commission's rationale, the Commission's competition concerns were limited to the retail sale of motor fuels in the Two Local

[473] See email of 23 June 2025 from Sean Ryan of Eversheds, counsel for Circle K.

Catchment Areas: namely, (i) the Artane Catchment Area and (ii) the Newtown Catchment Area.

6.48 For the reasons explained in detail above, the Commission considers that a divestment to a suitable remedy taker, i.e., one that would continue to operate the divested site in competition with Circle K, was required to ameliorate the competition concerns identified by the Commission. A divestment "[redacted]" would not be sufficient to address these concerns. As such, the Draft Conditions did not provide for the divestment of [redacted].

6.49 To identify the potential divestment stations to be included in the Draft Conditions, the Commission conducted further analysis on each of the Artane Catchment Area and the Newtown Catchment Area, considering, among other things, the sales volumes and competitive relationships of each of the Parties' service stations in these two catchment areas. From this analysis, the Commission identified the following two combinations of stations, the divestment of either of which would be sufficient to address the competition concerns identified in the Artane Catchment Area and the Newtown Catchment Area:

(i) Circle K Artane Service Station & Circle K Beaumont Service Station (as defined in the Draft Conditions); or

(ii) Circle K Artane Service Station & Circle K Maypark Service Station (as defined in the Draft Conditions).

6.50 As the Commission considered that the divestment of either of these combinations of service station would be sufficient to address the competition concerns identified in the Artane Catchment Area and the Newtown Catchment Area, the Draft Conditions allowed Circle K to elect its preferred option for divestment.

6.51 In the Parties' Observations of 2 July, the Parties noted that "[redacted]."[474]

[474] Parties' Letter to the Commission, 2 July 2025, paragraph 21.

Leasing arrangement

6.52 The Commission had previously indicated to the Parties in the context of the Initial Proposals that, in the specific circumstances of this case and in view of the particular characteristics of the Two Local Catchment Areas, it was prepared to consider a long-term lease on standard commercial terms, with appropriate safeguards, as appropriate for the purposes of divestment. Therefore, rather than require divestment through an outright sale, the Draft Conditions sought to align where appropriate with Circle K's Initial Proposals and provided for Circle K to choose to divest to a suitable remedy taker, approved by the Commission, through a long-term lease, or an asset or share sale.

6.53 Market testing participants expressed a range of views with respect to whether they would be interested in acquiring the stations to be potentially divested. Certain market testing participants expressed an interest in acquiring the stations to be potentially divested irrespective of whether it would be through a lease or freehold acquisition. Other market testing participants expressed a preference for (i) a lease only or (ii) a freehold acquisition only.

6.54 Participants also discussed the advantages and disadvantages associated with freehold and leasehold. One participant noted that, when a dealer acquires a freehold interest, it is under no obligation to source its fuel from any fuel supplier ensuring that the dealer would have complete independence to operate.[475]

6.55 In explaining the advantages of a lease, a participant noted that it could be a useful strategy for market entry or expansion as the financial outlay for a lease is lower than acquiring a freehold.[476] Participants noted that a decision on whether to consider a lease was contingent on factors such as the terms of the lease, length of the lease, site location, lease value, break clauses, branding requirements, fuel supply agreements, and rent rates.[477]

[475] [redacted] Call Note, dated 30 June 2025.

[476] [redacted] Call Note, dated 24 June 2025.

[477] The Commission's calls with market testing participants.

6.56 The Commission considered that while it has a preference for a clear-cut divestment for the reasons discussed above, given the specific circumstances of this case and in view of the particular characteristics of the Two Local Catchment Areas, it would include in the Conditions the option to divest to a suitable remedy taker either by way of (i) a long-term lease, or (ii) by way of asset or share sale.

Break-clause

6.57 While the Commission and the Parties were in agreement as to the length of any such long-term lease, i.e. for a period of not less than 20 years in duration, the Third Proposals required that the lease must include a break clause at year [redacted] of the lease, which could be exercised by either party to the lease, without restriction. This effectively would have reduced the term of the 20-year remedy to a [redacted]-year remedy in the event that Circle K or the remedy taker were to exercise the break clause; and there seemed to be no disincentive to Circle K exercising a break clause.

6.58 In the Commission's Letter of 27 June, the Commission explained, for the avoidance of doubt, that given the structural nature of competition concerns identified by the Commission, it considered the 20-year duration of the remedy to be necessary, taking into account its analysis and precedents in other jurisdictions.[478] Therefore, if a break clause were to be exercised, the Draft Conditions provided that Circle K would be obliged to procure an alternative remedy taker to enter into a long term lease for at least the remainder of the 20-year period, unless otherwise agreed with the Commission. This would safeguard the duration of the structural remedy, while leaving open the possibility that the Commission could at the time agree to an alternative arrangement, for example if market conditions had changed so significantly in the interim that the remedy were no longer necessary.

6.59 Further, the Draft Conditions provided that while any break clause could be exercised at the option of the remedy taker without restriction, it could be exercised at the option of Circle K only with the prior approval of the Commission, which would not be

[478] See for example, the CMA's 2023 determination in respect of Asda / Arthur (Co-op), and the CMA's 2022 determination in respect of CD&R / Morrisons, cited previously (footnote 469), where such remedies have typically required that any leases be for a term of at least 25 years, with a minimum 15-year break clause, at the purchaser's option, not the divesting party's.

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unreasonably withheld. Similar remedies involving long term leases in service station-related determinations of other jurisdictions have not provided the divesting party with an option to exercise a break clause at all.[479] Market testing confirmed that, in general, remedy takers would expect a lease to be long-term and would expect a lease to contain a break clause.

6.60 The Commission considered, in the interests of ensuring proportionality, that it could allow Circle K to exercise a break clause with the safeguard of Commission approval.

Wholesale supply agreement

6.61 The Third Proposals provided that a remedy taker would be [redacted] years. In circumstances where the Commission was prepared to accept divestment by way of a long-term lease rather than an outright sale, appropriate safeguards were considered essential to protect the commercial freedom on any remedy taker and the effectiveness of the remedy. The Commission considered that, given the significance of wholesale supply to the operation of a service station business, an obligation on a remedy taker to accept Circle K as its wholesale supplier of fuel for an initial period of [redacted] years was likely to impact a remedy taker's commercial freedom and its ability and incentive to compete effectively with Circle K and ultimately to undermine the effectiveness of the remedy. The Commission's approach was confirmed by market testing, in that some potential remedy takers may choose wholesale supply by Circle K but some would not.

6.62 The Parties were of the view that a wholesale supply arrangement between Circle K and a remedy taker would not raise competition concerns given that Circle K would not set the remedy taker's retail prices and the commercial realities of the market.

6.63 In respect to the point that Circle K would not set the remedy taker's retail prices, the Commission notes that this is a general requirement of competition law and does not preclude or negate the risks that a significant supply relationship between the remedy

[479] See footnote 469.

taker and Circle K would impact on the latter's ability to influence the commercial freedom and independence of the former.

6.64 In the interests of ensuring proportionality, the Commission considered that, subject to certain protections, the Draft Conditions provided that, while a remedy taker could not be under any obligation to accept Circle K as its wholesale supplier of fuel, it could choose to source its wholesale supply of fuel from Circle K, or from any other supplier.

6.65 In terms of appropriate and proportionate protections, the Draft Conditions provided that, if a remedy taker were to choose to enter into a supply arrangement with Circle K for any period during the 20-year remedy, Circle K would be required to comply with a number of ongoing obligations for so long as it supplied the remedy taker, including:

[redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[480] Taking into account points made in the Parties' Observations of 2 July, the Final Proposals provided for a price that is [redacted]

(v) [redacted]; and

(vi) [redacted]

6.66 The Commission considered that the protections outlined above would be the minimum necessary to ensure, to the extent possible, that Circle K could not influence the independence and commercial freedom of any remedy taker through its position as a supplier of an essential input to the business of the remedy taker.

6.67 The Draft Conditions also set out the standard provisions such as interim protections for the service stations that are to be divested, monitoring trustee, reporting and review provisions.

The Final Proposals

6.68 On 7 July 2025, the Parties requested a call with Case Team, which was held that day. During this call, the Parties informed the Case Team that they intended to submit a fourth set of proposals to the Commission, which substantially aligned with the Draft Conditions (the "Final Proposals"). The Parties stated that they were willing to [redacted] in accordance with the terms outlined in the Commission's Draft Conditions. Furthermore, Circle K stated that it was also willing to [redacted] as part of these Final Proposals. The Parties submitted the Final Proposals on 8 July 2025.

The Commission's evaluation of the Final Proposals

6.69 The Final Proposals contained the following Commitments:

6.70 First, Circle K undertook "[redacted]."[481]

[481] Appendix 1, paragraph C1.

6.71 By [redacted]. As outlined in detail in Section 5, the Commission determined that the Parties compete closely within the Artane Catchment Area, with the Artane Target Station competing closely with the following three Circle K stations: (i) Circle Artane; (ii) Circle Maypark; and (iii) Circle K Beaumont. As Circle K committed to [redacted], the Commission's competition concerns in the Two Local Catchment Areas now related to the loss of the competitive relationship between Pelco's Artane Target Station and these three Circle K stations.

6.72 Second, Circle K committed to "[redacted]."[482] [redacted]. In this way, the Commission's concerns that a [redacted] are addressed.

6.73 As detailed in Section 5, the Commission determined that Circle K Beaumont competes closely with Pelco's Artane Target Station. By [redacted], the competitive relationship between the Artane Target Station and Circle K Beaumont can be maintained and the market share increment arising as a result of the Proposed Transaction is removed.[483]

6.74 The Final Proposals followed the Commission's Draft Conditions in that Circle K undertook that "[redacted]."[484]

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[482] Appendix 1, paragraph C5

[483] Circle K Beaumont is of a [redacted] to the Pelco Artane Target Station [redacted]). For clarity, Circle K Beaumont sold [redacted] motor fuels than the Pelco Artane Target Station between January to September 2024, meaning that Circle K's share will [redacted] as a result of the Proposed Transaction, notwithstanding the [redacted].

[484] Annex 1, paragraph C8.

6.75 If a remedy taker chooses to source all or substantially all of its fuel from Circle K, a number of obligations mirroring those set out in the Draft Conditions come into force. In particular, "*Circle K shall ensure that any Supply Arrangement between Circle K and the Remedy Taker includes provisions that:*

i. [redacted]*;*

ii. [redacted]

iii. [redacted]*;*

iv. [redacted]*;*

v. [redacted]

[redacted]."[485]

6.76 The Final Proposals also provided for the implementation of the remedies, including a mechanism for selecting a Trustee and for selecting a suitable remedy taker. Again, these implementation measures mirrored those set out in the Draft Conditions.

Conclusion

6.77 The ability of the Commission to consider and accept the Final Proposals at this late stage was made possible only by a combination of exceptional circumstances. In particular, the Commission was only able to consider the Final Proposals at this very late stage because the Final Proposals closely tracked the remedies that had been considered by the Commission in the Draft Conditions. Given the substantial similarity between the Final Proposals and the Commission's Draft Conditions, the Commission had already satisfied itself that its competition concerns would be properly resolved by such measures and it therefore did not need to undertake an additional analysis. Furthermore, the Commission's earlier market testing of potential remedies, which informed the Draft Conditions, meant that the substantive content of the Final Proposals had largely been market tested.

6.78 Despite the Commission's sustained engagement with the Parties, their decision to withhold the Final Proposals until this very late stage of the merger review process represents an approach that is very high risk for the Parties. It could only be contemplated because of the extensive work carried out by the Commission in market testing remedies and formulating Draft Conditions. The Commission cannot guarantee that it will facilitate the consideration of proposals that are submitted so late in the process, and notes that it expects parties to respect the time needed for the detailed analysis that is required of measures that are intended to address competition concerns.

6.79 For the reasons outlined above in relation to the Draft Conditions, the Commission considered that the Final Proposals addressed its SLC concerns in the retail sale of

[485] Annex 1, paragraph C9b

motor fuels in the Two Local Catchment Areas. Therefore, taking the Final Proposals into account, the Commission considered the Proposed Transaction would not lead to a substantial lessening of competition in the Two Local Catchment Areas.

7. COMPETITIVE ASSESSMENT COORDINATED EFFECTS

7.1 Coordinated effects can occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Thus, the key question is whether a proposed transaction would materially increase the likelihood that firms in the relevant markets or potential markets would successfully coordinate their behaviour or would strengthen existing coordination between firms in this market. A merger may give rise to an SLC through coordinated effects. Coordinated effects arise when a merger enables or strengthens coordination.

7.2 The Commission's view is that there is no plausible coordinated effects theory of harm. Therefore, no further discussion of coordinated effects is carried out for the purposes of assessing the likely effects of the Proposed Transaction.

CCPC

8. VERTICAL RELATIONSHIP

8.1 The Commission has identified one potential vertical relationship between Circle K and Pelco. Circle K is active in the wholesale supply and distribution of motor fuels to service stations, while Pelco owns and operates service stations in the State.

8.2 The Commission has considered whether the Proposed Transaction gives rise to vertical foreclosure concerns in the State, namely input foreclosure and/or customer foreclosure.

8.3 In the Merger Notification Form, the Parties noted that:

> *"the Parties believe that there is no prospect of any foreclosure effects since the Purchaser will have no ability or incentive to foreclose rival wholesale suppliers or distributors of motor fuel in the State. Following completion of the Proposed Transaction, the Purchaser will continue to face a competitive constraint from a number of wholesale suppliers of motor fuel in the State, including Applegreen Limited, Maxol, Valero Energy (Ireland) Limited and DCC plc;"* [486]

Input foreclosure

8.4 Input foreclosure may arise where a merger involves one party that supplies an input to rivals of the other party, and following the implementation of a merger, the merged entity may restrict these rivals' access to this input or offer it on worse terms, directly harming the rivals' competitiveness and therefore competition in the downstream market.

8.5 The Commission considers that the Proposed Transaction does not result in Circle K gaining the ability or incentive to engage in input foreclosure.

8.6 The Commission considers that there will remain a range of wholesale suppliers and distributors of motor fuels in the State following the Proposed Transaction. Circle K's share in the wholesale supply and distribution of motor fuels in the State will not materially change as a result of the Proposed Transaction, as the Proposed Transaction

[486] Merger Notification Form, page 37. The Commission considers the potential vertical relationship between the Parties in Section 7 below.

would enable Circle K to supply motor fuels to an additional nine service stations. The Commission considers that this increase is unlikely to result in Circle K gaining the ability or incentive to engage in input foreclosure. Furthermore, non-Circle K owned service stations in the State will continue to be able to purchase motor fuels from a range of wholesale suppliers, such as Maxol, Applegreen, Texaco and Top Oil.

Customer foreclosure

8.7 Customer foreclosure may arise where a merger involves one party that buys inputs from rivals of the other party, and following the implementation of the merger, the merged entity may restrict its purchases from these rivals. Customer foreclosure would harm the rivals' competitiveness and therefore competition in the upstream market.

8.8 The Commission considers that the Proposed Transaction does not result in Circle K gaining the ability or incentive to engage in customer foreclosure.

8.9 Pelco holds a small share in the downstream retail sale of motor fuels in the State. The Commission notes that Circle K currently has an estimated 26% share in the retail sale of motor fuels in the State.[487] Circle K's acquisition of the nine Target Stations as part of the Proposed Transaction will therefore result in a minimal increase in Circle K's overall share in the retail sale of motor fuels at the national level. Other wholesale suppliers will continue to be able to sell motor fuels to a large number of service stations. Furthermore, the Commission notes that several motor fuel suppliers, such as Maxol and Applegreen, also own and operate service stations across the State. Therefore, the Commission considers that the Proposed Transaction is unlikely to result in Circle K gaining the ability or incentive to engage in customer foreclosure.

Commission's conclusion on vertical relationship

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

[487] By number of branded service stations. The Commission notes that some service stations within the *Circle K*-branded network are not owned by Circle K. Circle K's share in terms of stations it directly owns and operates itself is lower.

9. EFFICIENCIES

Introduction

9.1 The Commission has structured its analysis in this section as follows:

a) The Commission's approach to evaluating efficiencies;

b) The Parties' submissions with regard to efficiencies; and

c) The Commission's evaluation of the efficiencies arguments submitted by the Parties.

Commission's approach to evaluating efficiencies

9.2 Paragraphs 8.1 and 8.2 of the Commission's Merger Guidelines state that:

"A merger may generate various efficiencies for the merged entity. The Commission's analysis of efficiencies goes beyond the impact of efficiencies on the merged entity and focuses on whether verifiable efficiencies mitigate adverse competitive effects and prevent an SLC".

"The onus rests on the parties to show that claimed efficiencies are (i) merger-specific, (ii) verifiable and (iii) benefit consumers sufficiently to prevent an SLC".

9.3 Paragraph 8.8 of the Commission's Merger Guidelines further states:

"The evidence provided to the Commission must demonstrate that efficiencies will be of sufficient size and/or scope and will occur in a sufficiently timely fashion to prevent an SLC. The Commission requires that a claimed efficiency meets all three of the following conditions, namely, the efficiency:

(a) is merger-specific, and

(b) is verifiable, and

(c) benefits consumers."

9.4 The Commission's Merger Guidelines provides further detail on efficiencies which are considered to be merger specific and non-merger specific as follows:

> *"The Commission's analysis of efficiencies distinguishes between efficiencies that are*
>
> > *• merger-specific - those that would occur only as a result of the merger and could not be attained by feasible alternative scenarios that raised less serious competition concerns, and*
> >
> > *• non-merger-specific – those that could practicably occur anyway in the absence of the merger."*[488]

9.5 Paragraphs 8.11 to 8.13 of the Commission's Merger Guidelines discuss the evidence for efficiency claims and state:

> *"The onus rests with the merging parties to provide reliable evidence to show that any efficiencies:*
>
> > *(a) are directly achieved by the merger,*
> >
> > *(b) cannot be achieved by another feasible means less restrictive of competition, and*
> >
> > *(c) will be achieved within a reasonable timeframe.*
>
> *Verification of efficiency claims requires that the Commission has access to accurate information concerning each of:*
>
> > *(a) the nature of the efficiency,*
> >
> > *(b) whether the efficiency is merger-specific, and*

[488] Commission's Merger Guidelines, paragraph 8.9.

(c) the magnitude, likelihood and timing of the efficiency.*

Efficiency claims are necessarily prospective and hence subject to some degree of uncertainty, particularly with respect to dynamic efficiencies claims. It is also likely that most of the information supporting efficiency claims will be in the possession of the merging parties. It is therefore incumbent on the merging parties to provide the Commission with reliable information concerning the likelihood and quantified magnitude of efficiency claims. Vague and speculative claims will not be credited. The Commission may require evidence from various sources including, but not limited to:

- *All sources listed in paragraph 1.20 particularly as they relate to efficiencies.*
- *Statements by the managers and/or owners of the merging parties to external audiences (including financial markets and regulatory agencies).*
- *Relevant examples of efficiencies resulting in benefits to consumers*."

9.6 The Commission also notes paragraph 84 of the European Commission Notice on the definition of the relevant market for the purposes of Union competition law, [489]which states:

"The incentive on the part of the merged entity to pass efficiency gains on to consumers is often related to the existence of competitive pressure from the remaining firms in the market and from potential entry. The greater the possible negative effects on competition, the more the Commission has to be sure that the claimed efficiencies are substantial, likely to be realised, and to be passed on, to a sufficient degree, to the consumer. It is highly unlikely that a merger leading to a market position approaching that of a monopoly, or leading to a similar level of market power, can be declared compatible with the

[489] European Commission's notice on the definition of the relevant market for the purposes of Union competition law.

common market on the ground that efficiency gains would be sufficient to counteract its potential anticompetitive effects."

The Parties' views on efficiencies

9.7 The Commission did not receive any submission from the Parties on efficiencies which meets the criteria set out in paragraph 8.2 of the Commission's Merger Guidelines prior to issuing the Assessment.

9.8 The Parties and Compecon, in their respective responses to the Assessment, cited that the Proposed Transaction could give rise to the elimination of double marginalisation.[490]

Parties' views on 'double marginalisation'

9.9 Circle K stated the following in the Circle K Written Response:

> *"At paragraph 8.1 of the Assessment, the Commission states that it has not to date received any submission from the Parties on efficiencies which meet the criteria set out in paragraph 8.2 of the Commission's Merger Guidelines. However, as referenced in Circle K's response to its RFI dated 23 December 2024 (Q32 (d)) Circle K is a fuels importer and benefits from* [redacted]*. Therefore, Circle K can* [redacted] *(the status quo preserves a scenario whereby Pelco's prices at the target stations* [redacted]*, compared to a scenario whereby (based on the available evidence, and notwithstanding the Second Proposal(s)) the Proposed Transaction would likely* [redacted] (emphasis added)*. Other potential efficiencies include, customers will have access to a* [redacted]*; customers will have access to* [redacted] *with potential services for the Pelco sites including the* [redacted]

[490] Pelco Written Response, paragraph 5.15; Circle K Written Response, paragraph 4.8.8; First Economic Report, paragraph 3.23 and paragraph 4.7; and the Compecon Written Response, paragraph 3.55 to 3.58.

[redacted]; and access to improved [redacted], ensuring that fuel prices are kept competitive for the customer."[491]*

9.10 Pelco stated the following in the Pelco Written Response:

> *"As noted in Paragraph 5.14 of the Executive Summary of the Reply, the Proposed Transaction involves vertical overlaps. In this regard, the Pat Massey Report noted that it was widely recognised that vertical integration will lead to the [redacted] in Pelco outlets, thereby offsetting the likelihood of any [redacted]* (emphasis added). *There is no mention of this consideration in the Assessment."[492]*

9.11 The Compecon Written Response stated the following with respect to double marginalisation:

> *"Economics generally regards vertical mergers as efficiency enhancing unless one of the parties has market power in either the upstream or downstream market.* (emphasis added) *This would not appear to apply to the present case. To the extent that the proposed transaction generates any efficiencies through vertical integration then these are likely to have a positive effect of [redacted]. It is widely recognised that vertical integration can eliminate double marginalisation."[493]*

> *"Circle K has stated in its RFI 2 response: "The Purchaser is a fuels importer and benefits from a [redacted]. Therefore, the Purchaser can [redacted]." (Q32).*

[491] Circle K Written Response, paragraph 8.8.

[492] Pelco Written Response, page 53.

[493] First Economic Report, paragraph 3.22 - 3.23.

Thus, any possible horizontal price increasing effects, which appear unlikely, need to be weighed against the price reducing effects of vertical integration".[494]

"The proposed transaction has both horizontal and vertical aspects. Vertical efficiencies, particularly the [redacted]*, would tend to reduce prices, thereby offsetting any potential horizontal price increasing effects, which in our opinion are anyway unlikely."*[495]

"There is no mention of this point in the Assessment. This is an issue which is widely recognised in the relevant economic literature and acknowledged by competition agencies in other countries. The case team has ignored it in their Assessment. To be clear, it is widely recognised that vertical integration may lead to the elimination of double marginalisation and that this may offset any price raising effect due to horizontal elements of the merger. The case team simply did not consider this point in purporting to reach a provisional conclusion that the proposed transaction would result in an SLC."[496]

Efficiencies in the Commission's merger guidelines

9.12 The Commission notes that it did not receive any submission from the Parties on efficiencies which meets the criteria set out in paragraph 8.2 of the Commission's Merger Guidelines.

9.13 The Commission acknowledges, as is referred to in its Merger Guidelines, that vertical mergers can give rise to efficiencies. However, as outlined above, the Commission's Merger Guidelines state that:

"The onus rests on the parties to show that claimed efficiencies are (i) merger-specific, (ii) verifiable and (iii) benefit consumers sufficiently to prevent an SLC".[497]

[494] First Economic Report, paragraph 3.24 - 3.25.

[495] First Economic Report, paragraph 4.6.

[496] Compecon Written Response, paragraph 3.58.

[497] Commission's Merger Guidelines, paragraph 8.2

9.14 The Parties did not provide any submissions which sought to meet these three criteria or provide information that would demonstrate the same. In light of the lack of such information, the Commission asked the Parties if they could identify relevant information in this regard during the Oral Submission:

> *"CCPC CHAIRPERSON: Okay, next question is probably for Pat. You talked about double marginalisation Pat, so as you will know our merger guidelines in terms of efficiency arguments state that the onus rests on the parties to show a claim of efficiencies are merger specific, verifiable and benefit consumers sufficiently to prevent an SLC. So, in terms of that test, can you just point us to the evidence that we should look at in considering whether efficiency analysis is applicable in this case?*
>
> *[COMPECON]: Well, I'd have to disagree, Brian, it's not part of an efficiency test. Okay. It's a question of you've got two factors pushing price in opposite directions. It's not an efficiency standard that's relevant; it's a question that the vertical integration because it will remove the propensity for double marginalisation is exerting a downward push on price. Thereby offsetting any possible upward price pressure as a result of the horizontal integration. That's not an efficiency issue and the point I was making is, that this was not considered in the assessment* (emphasis added).
>
> *CCPC CHAIRPERSON: So, you don't consider it would fall, that there is anything for us to analyse in terms of an efficiency analysis in this particular case?*
>
> [COMPECON*]: It's not an efficiency test, it's a part of the competition test. Not the efficiency test* (emphasis added).
>
> *CCPC CHAIRPERSON: Okay.*

[COMPECON]: Again, I can cite… I can give you follow up literature on that point."[498]

9.15 The Commission notes that its consideration of efficiencies forms part of its competitive assessment. Efficiencies are considered to ascertain if efficiencies (to the extent they are demonstrated) "*will be of sufficient size and/or scope and will occur in a sufficiently timely fashion to prevent an SLC*".[499]

9.16 The Commission notes that the Parties did not provide any evidence to demonstrate that the Proposed Transaction would give rise to efficiencies which would prevent an SLC, either (i) prior to the issuing of the Assessment; (ii) when requested during the Oral Submission; or (iii) subsequent to the Oral Submission.

9.17 The Parties, as expressed in their submissions as well as in the Economic Reports, appear to consider that the very fact that there is a vertical aspect to the Proposed Transaction means that the Proposed Transaction gives rise to efficiencies which would offset the competition concerns identified by the Commission. The Commission does not consider that a transaction which raises horizontal competition concerns (as outlined in Section 5) should be considered not to give rise to an SLC because one of the merging parties is also active in an upstream market. As outlined above, and as is typical of the approach taken by other competition authorities,[500] efficiencies arguments must be supported by evidence which demonstrates that the efficiencies are (i) merger-specific, (ii) verifiable and (iii) benefit consumers sufficiently to prevent an SLC. The Parties have not provided, and have not sought to provide, such evidence to the Commission.

Conclusion

9.18 Paragraph 8.8 of the Commission's Merger Guidelines sets out that the Commission requires all three conditions (merger specific, verifiable and benefits consumers) to be

[498] Oral Submission, page 61-62, line 21-5.

[499] Commission's Merger Guidelines, paragraph 8.8.

[500] See paragraphs 76 to 88 of the European Commission Notice on the definition of the relevant market for the purposes of Union competition law.

fulfilled in relation to efficiencies claimed by parties to a notified transaction. The Commission notes that the Parties did not provide information which demonstrates that the Proposed Transaction gives rise to such efficiencies. The Commission concludes that the efficiencies claim by the Parties (namely, the elimination of double marginalisation) does not meet the outlined criteria. Therefore, the Commission concludes that the claimed efficiencies do not mitigate the adverse competitive effects resulting from the Proposed Transaction and prevent an SLC.

10. ANCILLARY RESTRAINTS

10.1 The Parties notified Clause 14.3 of the SPA as directly related and necessary to the implementation of the Proposed Transaction.

10.2 The Commission notes that Clause 14.3 of the SPA contains a [redacted].[501] The Commission considers that the duration and scope of these obligations do not exceed the maximum duration and scope acceptable to the Commission.[502]

[501] Paul and Lynda Fitzgerald.

[502] In this respect, the Commission follows the approach adopted by the European Commission in paragraph 20 of its Commission Notice on restrictions directly related and necessary to concentrations [(2005) OJ C56/03. For more information, available at: https://eurlex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29.

11. CONCLUSION

11.1 In the light of its analysis as set out in this Determination, and taking the Final Proposals into account (which from part of the basis of this Determination) the Commission has formed the view that the result of the Proposed Transaction will not be to substantially lessen competition in the retail sale of motor fuels in any of the following potential Relevant Markets:

- The retail sale of motor fuels in the State;
- The retail sale of motor fuels within a 3.2km radius of each urban Target Station; and,
- The retail sale of motor fuels within an 8km radius of each rural Target Station;
- The operation of forecourt convenience stores within a 3.2km radius of each urban Target Station;
- The operation of forecourt convenience stores within an 8km radius of each rural Target Station;
- The sale of fuel cards in the State; and
- The wholesale supply and distribution of motor fuels in the State.

12. DETERMINATION

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), Circle K Ireland Holding Limited (“Circle K”) has submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on Circle K.

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 22(3)(a) of the Act, that the result of the proposed acquisition whereby Ard Services Limited, which is a subsidiary of Circle K, would acquire sole control of Pelco Holdings 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.

Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

Brian McHugh

Chairperson

Competition and Consumer Protection Commission

CONFIDENTIAL
8 July 2025

M/24/042 – Circle K Ireland / Pelco Holdings Limited

APPENDIX 1

PROPOSALS SUBMITTED BY CIRCLE K IRELAND HOLDING LIMITED TO THE COMPETITION AND CONSUMER PROTECTION COMMISSION

A. RECITALS

I. On 18 July 2024, the proposed acquisition by Ard Services Limited, a subsidiary of Circle K Ireland Holding Limited (**"Circle K"**), of sole control of Pelco Holdings Limited was notified to the Competition and Consumer Protection Commission (the "**Commission**") in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the "**2002 Act**") (the "**Proposed Transaction**").

II. Following a full investigation pursuant to section 22 of the 2002 Act, the Commission reached the view that, absent structural remedies that would address the competition concerns identified by the Commission, the Proposed Transaction will give rise to a substantial lessening of competition in the market for the retail sale of motor fuels in each of the [redacted] Catchment Area and the [redacted] Catchment Area, as set out in the Determination.

III. Circle K has submitted the following proposals pursuant to section 20(3) of the 2002 Act, for the purposes of ameliorating any potential effect the Proposed Transaction could have on competition in markets for goods or services in the State (the "**Proposals**") with a view to the Proposals becoming binding on Circle K on the date of a determination of the CCPC pursuant to section 22(3)(a) of the 2002 Act that the Proposed Transaction may be put into effect, taking into account these Proposals, which form part of the basis of the determination.

IV. Under these Proposals, Circle K undertakes to irrevocably abandon its proposed acquisition of [redacted] with a view to addressing the competition concerns identified by the Commission in respect of the market for the retail sale of motor fuels in the [redacted] Catchment Area. Further, with a view to ameliorating the competition concerns identified by the Commission in respect of the market for the retail sale of motor fuels in the [redacted] Catchment Area, Circle K commits to divest Circle K [redacted] Service Station by way of a [redacted], for a period of at least [redacted] subject to the terms of these Proposals.

B. DEFINITIONS

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

"**2002 Act**" means the Competition Act 2002, as amended;

"[redacted]" means the catchment area within a [redacted] m distance of [redacted] as described in section 5 of the Determination;

[redacted]

[redacted]

"**Circle K**" means Circle K Ireland Holding Limited, a company incorporated in the State (registered number 573184) which has its registered office at Circle K House, Beech Hill, Clonskeagh, Dublin 4 and its successors;

"**Circle K** [redacted] **Service Station**" means Circle K [redacted];

"**Circle K CoCo**" means a service station that is both owned and operated by a member of the Circle K Group;

"**Circle K DoDo**" means a service station that is both owned and operated by an entity that is not a member of the Circle K Group but which has a Supply Agreement with a member of the Circle K Group;

"**Circle K Group**" means Circle K and any member of its Group;

"**Commission**" means the Competition and Consumer Protection Commission and its successors;

"**Compliance Certificate**" means a written certificate in the form set out in Schedule 1 to be signed by an executive director of Circle K, in accordance with paragraph 32, confirming that Circle K has complied with the Ongoing Obligations under the Proposals;

"**Couche-Tard Group**" means Alimentation Couche-Tard Inc, a company whose shares are publicly traded on the Toronto Stock Exchange, together with all its subsidiaries and all the undertakings they control either directly or indirectly, solely or jointly from time to time. For the purposes of this definition, "control" and its variants have the meaning ascribed by section 16(2) of the 2002 Act;

"**Determination**" means the determination of the Commission pursuant to section 22(3)(a) of the 2002 Act that the Proposed Transaction may be put into effect, taking into account these Proposals, which form part of the basis of the determination;

"**Divestment**" means the divestment of [redacted] to a Suitable Remedy Taker, that shall be approved in advance by the Commission pursuant to paragraphs 12 and 13 by way of a [redacted];

"**Divestment Manager**" has the meaning ascribed to it in paragraph 18;

"Greater Dublin Area" means the city of Dublin, the county council areas of South Dublin, Fingal and Dun Laoghaire-Rathdown, and counties Meath, Kildare and Wicklow.

"**Group**", in relation to a company, means that company together with any subsidiary of that company for the time being, and any holding company of that company for the time being;

"**Long Stop Date**" means the date that is 6 months from the date of the Determination, unless otherwise agreed by the Commission;

[redacted]

[redacted]

"**Material Change**" means a change whereby a Remedy Taker no longer fulfils each of the criteria required to be a Suitable Remedy Taker;

[redacted] **Catchment Area**" means the catchment area within a [redacted] distance of Pelco [redacted] as described in section 5 of the Determination;

"**Ongoing Obligations**" means the supply obligations set out in paragraphs 8 to 9 (inclusive); and the ongoing obligations and reporting requirements set out in paragraphs 32 to 37 (inclusive);

"**Parties**" means Circle K and Pelco;

"**Pelco**" means Pelco Holdings Limited, a company incorporated in the State (registered number 463811) which has its registered office at Unit 278, Blanchardstown Corporate Park 2, Dublin 15, Dublin, Ireland;

"[redacted]" means the Pelco service station located at [redacted];

"[redacted]" means the Pelco service station located at [redacted];

"**Proposed Transaction**" means the proposed acquisition by Ard Services Limited, a subsidiary of Circle K, of sole control of Pelco which was notified to the Commission on 18 July 2024 in accordance with section 18(1)(a) of the 2002 Act;

"**Remedy Taker**" means an entity that is independent of the Couche-Tard Group and that meets the Suitable Remedy Taker Criteria and has been approved by the Commission pursuant to paragraphs 12 and 13;

"**Share Purchase Agreement**" means the share purchase agreement dated [redacted] Ard Services Limited (as buyer) and Circle K (as guarantor);

"**State**" means the Republic of Ireland;

"Suitable Remedy Taker" means an entity that is independent of the Couche-Tard Group and who satisfies the Suitable Remedy Taker Criteria of paragraph 10 and is approved by the Commission pursuant to paragraphs 12 and 13;

"**Suitable Remedy Taker Criteria**" means the criteria identified in paragraph 10 ;

"**Supply Agreement**" means a supply agreement with a member of the Circle K Group for the supply of motor fuel and ancillary services;

"**Trustee**" has the meaning ascribed to it in paragraph 21; and

"**Working Days**" means a day (other than a Saturday or a Sunday or a public holiday) on which banks are open for retail business in the State.

C. THE PROPOSALS

Abandonment of acquisition of [redacted]

1. Circle K hereby undertakes to the Commission to abandon irrevocably its proposed acquisition of [redacted].

2. Circle K must submit evidence to the Commission that demonstrates that its proposed acquisition of [redacted] has been irrevocably abandoned. The Commission will confirm, in writing, within 5 Working Days of receipt of such evidence whether it is satisfied that the undertaking in paragraph 1 has been complied with.

3. Pending the Parties' compliance with the undertaking in paragraph 1 and the Commission confirming in writing in accordance with paragraph 2 that it is satisfied that the undertaking has been fulfilled, the Parties may not put the Proposed Transaction into effect.

4. For the avoidance of doubt, Circle K undertakes that it shall not in any circumstances put the Proposed Transaction into effect insofar as it includes the acquisition of [redacted].

Divestment of [redacted]

5. Circle K undertakes to complete the Divestment to a Suitable Remedy Taker, who shall be approved in advance by the Commission pursuant to paragraphs 12 and 13 , by way of a [redacted] and provided that there has been no Material Change since the Commission's approval of the Suitable Remedy Taker and [redacted] with the Suitable Remedy Taker.

6. Circle K shall ensure that the Divestment is completed by the Long Stop Date at the latest, unless otherwise agreed by the Commission in writing.

7. If the Divestment is not completed by the Long Stop Date (or other date agreed by the Commission in writing), the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the Divestment to a Suitable Remedy Taker at no minimum price and upon such terms and conditions as it considers appropriate to ensure that the Divestment is as expeditious as possible to a viable and independent third party (subject to the CCPC having approved (i) the prospective remedy taker as a Suitable Remedy Taker, (ii) [redacted] In such circumstances the Trustee shall have regard to the legitimate financial interests of Circle K, subject to Circle K's unconditional obligation to complete the Divestment at no minimum price.

Supply Arrangements

8. Circle K undertakes that no Remedy Taker shall be [redacted].

9. [redacted]:

a. [redacted]

b. Circle K shall ensure that any [redacted]:

i. [redacted];

ii. [redacted]

iii. [redacted]s;

iv. require Circle K to agree in a timely manner to [redacted];

v. [redacted].

Suitable Remedy Taker

10. Circle K shall identify a prospective remedy taker(s) in respect of the Divestment which shall satisfy the following criteria:

    a. is unconnected to and independent of the Couche-Tard Group;
    b. has access to sufficient financial resources and proven experience to be capable of operating a service station in the [redacted] as a viable and active business;
    c. can demonstrate to the Commission that it has the incentive to maintain Circle K [redacted] and to become a viable and active competitive force of a kind that would address the competition concerns identified by the Commission in the [redacted]
    d. [redacted] will not create prima facie competition concerns;
    e. it will be likely to obtain all authorisations and consents required from any regulatory or other authority; and
    f. [redacted];

    (together "the Suitable Remedy Taker Criteria").

11. Circle K shall inform the Commission and the Trustee in writing, with a single fully documented and reasoned proposal, of how the prospective remedy taker(s) would meet the Suitable Remedy Taker Criteria and of what wholesale motor fuel supply arrangement the prospective remedy taker intends to enter into in respect of Circle K [redacted].

12. On receipt of such a proposal, the Trustee will provide a report to the Commission in writing on whether it considers the prospective remedy taker(s) to be a Suitable Remedy Taker(s) within ten (10) Working Days of receipt of Circle K's fully documented and reasoned proposal. On receipt of the Trustee's report, the Commission will inform Circle K in writing of whether it approves the prospective remedy taker(s) as a Suitable Remedy Taker(s) within twenty (20) Working Days of receipt of the Circle K's fully documented and reasoned proposal and such approval will not be unreasonably withheld.

13. If the Commission does not communicate its approval or non-approval within thirty (30) Working Days of receipt of a fully documented and reasoned proposal submitted pursuant to paragraph 11, such approval shall be deemed to have been given unconditionally, unless the timeframe is subject to any extension in accordance paragraph 38.

14. If the Commission approves multiple prospective remedy takers as [redacted]

15. Prior to entering into any Divestment with a Suitable Remedy Taker, [redacted].

16. [redacted].

Interim Position of [redacted]

17. Following the Determination and until Circle K has completed the Divestment in accordance with paragraph 5, [redacted].

18. In this regard, Circle K shall appoint a senior executive within the Circle K Group as the person with responsibility for the continued day-to-day management of all operations relating to [redacted].

Trustee Appointment

19. Within ten (10) Working Days of the Determination, Circle K will propose to the Commission a trustee, who is independent of both the Couche-Tard Group and Pelco (the "Proposed Trustee"). Circle K shall furnish to the Commission sufficient information to enable the Commission to assess the suitability of the person so proposed, including (without limitation) a curriculum vitae.

20. The appointment of the Proposed Trustee is subject to the approval of the Commission (such approval not to be unreasonably withheld or delayed). If the Commission has not approved the Proposed Trustee within twenty (20) Working Days of the date of the Determination, the Commission shall without delay nominate a suitable trustee (the "Commission Trustee") which Circle K shall appoint or cause to be appointed.

Trustee Mandate

21. Within five (5) Working Days of the date on which the Commission has approved or nominated either the Proposed Trustee or the Commission Trustee (the "Trustee"), Circle K shall submit to the Commission a draft mandate agreement for approval by the Commission, which the Commission shall approve or reject in writing within ten (10) Working Days of receipt. The terms of the draft mandate agreement shall be consistent with the terms of the Proposals. If the Commission rejects the draft mandate agreement by notice in writing, the Commission shall

within five (5) Working Days of the date of rejection, propose an alternative draft mandate agreement acceptable to the Commission, which shall be accepted by Circle K.

22. Within five (5) Working Days of the date on which the Commission has approved a draft mandate agreement, or proposed an alternative draft mandate agreement acceptable to the Commission pursuant to paragraph 21, Circle K shall enter into a mandate agreement (the "Mandate") with the Trustee, which shall confer on the Trustee all the rights and powers necessary to permit the Trustee to carry out the Mandate and to monitor Circle K's compliance with the terms of the Proposals.

23. The terms of the Mandate may not be extended or varied, save with the written approval of the Commission.

24. The Trustee shall be independent of the Couche-Tard Group and Pelco, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed during its mandate to a conflict of interest. The Mandate shall provide for a mechanism to resolve any conflicts of interest that may arise during the term of the Mandate (including, if necessary, the replacement of the Trustee).

25. Throughout the duration of the Trustee's appointment, the Trustee shall, in respect of the Proposals:

    a) provide written reports (the "Trustee Reports") to the Commission on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one (1) month after the date of the appointment of the Trustee, or at such other times or time periods as the Commission may specify and are notified in writing to Circle K. Circle K shall receive a non-confidential copy of such Trustee Reports;

    b) shall assess the compliance or otherwise of Circle K with these Proposals during the period since the date of the previous Trustee Report (or, in the case of the first Trustee Report, since the date of the Determination);

    c) monitor and advise the Commission as to the progress for selecting a Suitable Remedy Taker(s) and as to the conduct of the negotiations with a prospective remedy taker(s);

    d) monitor and advise the Commission on whether any prospective Remedy Taker with whom Circle K intends to negotiate is likely to satisfy the Suitable Remedy Taker Criteria;

    e) pursuant to paragraph 12, provide a written report to the Commission regarding whether it considers the prospective remedy taker(s) to be a Suitable Remedy Taker(s);

    f) monitor the economic viability, marketability and competitiveness of Circle K [redacted] and ensure that it is managed by the Divestment Manager in the ordinary course of business, pursuant to good business practice;

g) [redacted]

h) pursuant to paragraph 39, provide a written report to the Commission regarding whether it considers Circle K has complied with the undertaking it has provided to [redacted].

26. Circle K shall provide the Trustee with all reasonable assistance and will procure (within its powers of procurement) that all relevant third parties provide such assistance required to ensure compliance with the Proposals. Circle K will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Circle K as the Trustee may require in carrying out its Mandate and will pay reasonable remuneration for the Trustee's services.

27. Circle K shall ensure that the Trustee shall have full and complete access to the Divestment Manager, and any other employee of Circle K requested by the Trustee, in order to ensure compliance by Circle K with its obligation to maintain and preserve the economic viability, marketability and competitiveness of [redacted].

28. The Trustee's duties and functions as set out above shall not be extended or varied in any way by Circle K, save with the express written consent of the Commission. Any instruction or request to the Trustee from Circle K which conflicts with the terms of the Mandate, and the duties and functions as set out above, will be considered null and void.

29. The Commission may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the Proposals so long as Circle K is first given an opportunity to comment on any such orders or instructions.

30. [redacted].

31. The Trustee and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

Ongoing Obligations and Reporting Requirements

32. [redacted].

33. The Commission may require Circle K to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission reasonably requires in order for the Commission to verify compliance with the Ongoing Obligations under these Proposals in the preceding period. Circle K shall promptly comply with any written direction issued by the Commission pursuant to these Proposals.

34. Circle K shall nominate an executive who will have responsibility for monitoring compliance with the Ongoing Obligations under these Proposals in the preceding period and for responding to any request for information received from the Commission in this regard. Circle K shall provide the name and contact details of such executive to the Commission and shall promptly inform the Commission of any change of executive so nominated, including the name and contact details of the new executive.

35. [redacted].

36. [redacted].

37. [redacted]

Review Provision

38. The Commission may at its sole discretion extend any of the time periods provided for in these Proposals. The Commission may further, at its sole discretion, or in response to a reasoned request from the Parties or the Trustee showing good cause, waive, modify or substitute any provision in these Proposals.

Fulfilment / Discharge of Proposals

39. [redacted]

CONFIDENTIAL
8 July 2025

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]
[redacted] [redacted]
[redacted]

SCHEDULE 1: COMPLIANCE CERTIFICATE

To be drafted on Circle K headed paper

[Date]

Director of Mergers
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Merger Notification M/24/042 – Circle K / Pelco – Compliance Certificate

Dear Sir,

We refer to Merger Notification M/24/042 in relation to the proposed acquisition by Ard Services Limited, a subsidiary of Circle K Ireland Holding Limited (**"Circle K"**), of sole control of Pelco Holdings Limited which was notified to the Competition and Consumer Protection Commission (the **"Commission"**) on 18 July 2024 (the **"Proposed Transaction"**) in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the "**2002 Act**").

On 8 July 2025 the Commission issued its determination pursuant to section 22(3)(a) of the 2002 Act that the Proposed Transaction may be put into effect, taking into account the proposals submitted by Circle K on the same date, pursuant to section 20(3) of the 2002 Act (the "**Proposals**"), and which form part of the basis of the determination approving the Proposed Transaction (the "**Determination**").

Circle K hereby confirms compliance with the terms of the Ongoing Obligations, as defined in the Proposals, during the period commencing on the [date of the Determination] [or] [date of the previous certificate issued by Circle K] and ending on the date hereof.

Yours faithfully,

____

Name
Executive Director
Duly authorised for and on behalf of Circle K Ireland Holding Limited
Date

CCPC

Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission