FAIR COMPETITION ACT, CAP. 326C

Application for Approval of the Acquisition of EXXON MOBIL Assets in Barbados by Simpson Oil Limited (SOL)

Summary Report

DOC No: FCD20131024

1.1 An Overview of the Merger Transaction

1. On August 26th 2013, SOL St. Lucia Ltd. (hereafter referred to as "SOL"); and ESSO (Barbados) Holdings Limited, ESSO (Barbados) International Sales Company Limited, and Mobil Oil Barbados Limited (which collectively are referred to as "ESSO Barbados") filed an application with the Fair Trading Commission (the Commission) for approval of a proposed merger.

2. The request for approval was to allow SOL to acquire all of the retail, commercial, marine, aviation and distribution businesses currently being managed by Exxon Mobil under the 'ESSO' brand in Barbados.

3. In its investigation of the application the Commission has been guided by the provisions in the Fair Competition Act CAP 326C. (FCA) Section 20(7). The findings of the Commission are summarised below.

2.1 The Structure of the Markets Likely to be Affected by the Merger

4. It was determined that since liquid fuel products are not generally substitutable[1] the relevant products can be defined according to their specific usage as auto-fuels (gasoline and diesel), kerosene, heavy fuel oil, aviation or Jet A1 fuel, liquefied Petroleum Gas (LPG) and lubricants.

5. The other activity given consideration was that of the 'Backcourt' operations which are typically considered convenience stores or auto marts. This type of activity usually includes the retailing of convenience items such as sodas and snacks. A

[1] For example, the fuels are specific to the vehicles in which they are used. A diesel engine for example would not work efficiently on gasoline (and *vice versa*).

feature of these entities is also the retailing of lottery tickets and mobile phone top-ups.

6. Some of the listed products were excluded from further analysis because it was determined that the proposed transaction would not create competitive concerns. These include:

- Aviation or Jet A1 Fuel: This core activity occurs outside of Barbados in terms of the negotiation of contracts.
- Lubricants: There are a large number of players in the lubricants market. Several brands are sold by other competitors including auto-shops and supermarkets.
- Heavy Fuel Oil: This is a restricted market given that the Barbados Light & Power Co. Ltd (BL&P) is the major consumer and supply is provided through contractual arrangements with the Barbados National Oil Company Ltd. (BNOCL).
- Kerosene: This fuel accounts for, on average, 0.24% of the volume of their entire market. Activities in this market would be inconsequential.
- Liquefied Petroleum Gas: This fuel is supplied by distributors at other locations and is relatively easy for well-established locations with enough space to enter the market.
- Backcourt activities: Convenience stores and the products sold are in direct competition with minimarts, shops and supermarkets and as such the defined market will be very wide with a resulting negligible impact on competition. The range of store sizes could also place limits on how competition could be affected.

Defined Market

7. Having assessed the activities related to the listed products, the primary markets concerned in this matter were determined to be:

- The supply of gasoline and diesel (auto-fuels) at the Retail level in Barbados.
- The supply of gasoline (negligible) and diesel at the Commercial (C&D) level.

Peculiarities within the Liquid Fuels Market

8. Two key peculiarities in particular characterise the liquid fuel market:

a. The individual marketers do not source and/or import their fuels independently. Rather, all fuel is supplied as stock from the BNOCL. Each marketer[2] (with the exception of FIRST FUEL) has his own facility at the BNOCL in which his proprietary formulations (additives) for the fuel are stored.

b. The price of auto-fuel and the margins earned by the marketers are fixed by the Government of Barbados. The regulation of fuel prices is national in scope, and is covered under The Control of Price (General) Regulation 1983 (S.I. 1983 No. 29)[3]. The prescribed retail and wholesale prices of liquid fuels also include the margins earned by all dealers and marketers. The prescriptions detail the maximum that the beneficiaries can apply to the price of fuel which is currently sold at the maximum allowable price.

[2] SOL/SHELL, ESSO, RUBIS and HARVILLE (T/A FARGO), FIRST FUEL

[3] These prices are adjusted according to changes in the international price of petroleum and are published by the Department of Commerce, and the Department of Energy.

2.2 The Degree of Control Exercised by Enterprises Concerned in the Proposed Merger

9. In examining the structure of the markets, consideration was given to the number and relative size of the firms in the market, and the barriers facing new firms seeking to enter the market. Attention was also paid to the level of consumer demand, including the degree of penetration in the market.

Relative Market Share of Firms

10. Retail sales volume figures (*i.e.* volume of product sold) provide the most useful indication of relative market strength because these figures provide market share according to the particular product market (gasoline, diesel), the marketer, and location of the service station for any given period.

11. The number of service stations operated by the individual marketers in Table 1 provides some guidance:

Table 1: Operating Service Stations

<table>
<tr><th>MARKETER</th><th># OF SERVICE STATIONS</th><th>MARKET SHARE PRE-MERGER (%)</th><th>MARKET SHARE POST-MERGER (%)</th></tr>
<tr><td>SHELL</td><td>14</td><td rowspan="2">44</td><td rowspan="3">65</td></tr>
<tr><td>SOL</td><td>5</td></tr>
<tr><td>ESSO</td><td>9</td><td>21</td></tr>
<tr><td>RUBIS</td><td>12</td><td>28</td><td>28</td></tr>
<tr><td>OTHER</td><td>3</td><td>7</td><td>7</td></tr>
</table>

12. Table 2 provides the market shares of the marketers based on reported retail sales volumes of gasoline and diesel over the period June 2012 to August 2013[4].

[4] Owing to the commercially sensitive nature of the data supplied, market shares are presented as percentage bands.

Table 2: Market Shares Based on Average Retail Sales Volume (Jun 2012 – Aug 2013)

	MARKET SHARE BAND (%)			
Product	**ESSO**	**SHELL/ SOL**	**RUBIS**	**OTHER†**
GASOLINE	30 – 40	30 – 40	20 – 30	0 – 10*
DIESEL	50 – 60	20 – 30	10 – 20	0 – 10
TOTAL (AUTO-FUELS)	30 – 40	30 – 40	20 – 30	0 – 10

Source: Sales volume data submitted by the Marketers
† Includes the independent station, as well as the FARGO and FIRST FUEL brands
* FARGO does not participate

13. The data in Tables 1 and 2 above suggest that market share based on the number of stations is not synonymous with market share based on volume. There is therefore a high degree of competition among the major players in the retail market. Further emphasis is placed on the fact that price competition does not feature in the market interactions and this points to other forces (non-price competition) that propel the competitive process therein.

Market Concentration

14. Pre-merger estimates of market concentration, based on sales volume, are notably high and have the propensity to raise competitive concerns. Activities post-merger will lead to further concentration of the market although the number of brands would not change.

Barriers to Entry

15. The Commission sought to identify the features of the market that place an efficient new entrant at a significant disadvantage compared to existing firms. Players in the upstream market as well as downstream players[5] have identified

[5] Upstream players refer to the marketers or those who sell product wholesale to the dealers. Downstream players are represented as the Dealers, who manage the service stations.

several conditions to entry in this market which they consider barriers to entry. The barriers considered in this regard are:

- ***High Sunk Costs:*** Significant capital and financial investments are needed to either outfit or operate a station. Costs are lower for the commercial supply of fuel since a company may only need a fuel truck and a pump.
- ***Legal/Regulatory Requirements:*** The lifting in 2012 of the Government moratorium on the number of service stations signalled that the market is open to potential entrants. Regulatory and administrative requirements related to the commercial and retail supply of fuel are however still present.
- ***Economies of Scale:*** Economies of scale become manifest for larger marketers with regards to their operational costs.

2.3 The Actual or Potential Competition from other Enterprises and the Likelihood of Detriment to Competition.

16. Although it may be intuitive to equate high concentration levels with reduced competition as a result of fewer competitors, it may not automatically apply in this instance as behavioural issues are of more significance. This assertion is supported by ***key characteristics*** that are peculiar to the auto-fuels market in Barbados.

17. The location of service stations and the ease of egress and ingress are key determinants of the sales volumes and play an important role in the level of inter-brand and intra-brand competition.

18. Consideration of price tests[6] and their impacts are of critical importance in merger analysis. In this merger however, prices and margins are regulated and as a result marketers and dealers tend to compete on factors other than price. In practice

[6] Price tests are statistical tests used to identify trends in the movement of market prices in order to determine if such trends are consistent with competition, with a monopoly situation, or with collusion. These tests range from standard descriptive statistics (e.g. average price levels, and sales and price trends) to advanced econometric estimations (e.g. cointegration analysis, causality tests, demand analysis).

prices are set at the maximum allowable level. However, given the current regulatory environment it is unlikely that there would be any detriment to competition and no foreseeable disadvantages to consumers.

2.4 The Availability of Alternatives to the Services or Goods Provided by the Enterprises Concerned in the Merger

19. Consideration is also accorded to the stations that are **dealer owned and operated (DODO)** as they have the potential to shift the balance in terms of volume from one marketer to another. This phenomenon underscores the fluidity within the retail market and is supported by observations that over the past few years two former **company leased dealer operated (CLDO)** branded sites retailed own brand auto-fuels in one instance and non-branded auto-fuels in another instance. In addition, one key DODO station has switched from one major marketer to the other.

2.5 The Likely Effect of the Proposed Merger on Consumers and the Economy

20. Brand plays a role in customers' choice of station because the factors that influence fuel choice are thought to relate to 'power/performance' and 'fuel-efficiency'. Asserting the superiority of one brand over another however becomes a challenge because of an abundance of potential factors that influence engine performance and as a result brand choice cannot in this instance be isolated to a single factor. However, in light of the conditions of the merger it is not envisioned that consumers would be limited in choice of branded fuel. Also, as the market is regulated it is not likely that consumers would be negatively affected by changes in prices initiated by the marketers.

21. The Commission recognises that benefits can accrue at the micro and macro levels such that the Esso branded stations remain and therefore consumer choices are not stymied and there are some efficiencies to be gained in employment and fleet management.

3.0 Conclusion and Findings

22. The Commission took into account the principles of a competitive market, namely:

- freedom of entry and exit by suppliers/sellers;
- no restrictions on consumer/buyer choice;
- no one supplier or consumer having the economic power to influence market prices; and
- good information about the prices and nature of the goods and services being sold.

The Commission considered the effects of the proposed merger on the fuel market in Barbados and notes that post-merger SOL Barbados will have significant market share in terms of sales volume and service stations. There is however no clear evidence that there will be detriments to the consumer or the economy of Barbados arising from the merger. The structure of the market will be changed but the behavioural aspects of the participants will be governed by the provisions of the Fair Competition Act and other regulatory provisions. In light of the foregoing, the merger will be allowed to proceed with one conditional provision.

23. The conditional provision seeks to ensure that consumers' choice of fuel will not be minimised by virtue of the merger. In this regard consumers post-merger will have the option of choosing the ESSO, RUBIS, SOL and SHELL brand as is the current situation. Therefore within the 10-year period if SOL wishes to discontinue the existing ESSO company-owned or company-leased branded outlets it must submit to the Commission a request for permission. In so doing it must cite all of the prevailing circumstances. SOL must also submit annual reports to the Commission.