



**Concerning Motor Fuels Supply Agreement between Esso
Petroleum Company Limited and Bel Royal Motors
notified under Article 9 of the Competition (Jersey) Law
2005**

Decision

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A. Introduction

1. On 20 August 2014, the Jersey Competition Regulatory Authority (**JCRA**) received an application for an exemption (the **Application**) under Article 9 of the *Competition (Jersey) Law 2005* (the **Law**) concerning a Motor Fuel Supply Agreement between Esso Petroleum Company Limited (**Esso**) and Bel Royal Motors (**Bel Royal**) (the **Parties**) signed on 2nd August 2014 and commencing from the date of the granting of the exemption from Article 8(1) of the Competition (Jersey) Law 2005 (the **Notified Agreement**).
2. On 29 August 2014, the JCRA published details of the application in the Jersey Gazette and on its website, asking interested parties to submit comments on the application by 12 September 2014. No comments were received.

B. Notified Agreement

3. According to the Notified Agreement, the parties propose to enter a new Motor Fuels Supply Agreement. Under the terms of this agreement, Esso will supply all of its requirements for motor fuels to the premises and land known as Bel Royal Motors and will make payments to Bel Royal in exchange for the exclusivity.
4. The exclusivity period is for five years from the date the exemption is granted by the JCRA (the **Term**).¹
5. Esso is one of four wholesale suppliers of motor fuels in Jersey. Esso currently exclusively supplies 10 independent retailers with motor fuels, out of a total of 34 forecourts² in Jersey. This includes the forecourt that is the subject of the Notified Agreement.
6. In addition to supplying motor fuels to the forecourt, Esso agrees to support it in certain ways, including contributing to pump maintenance up to **[REDACTED]**, at each of the Forecourts.

C. Analysis under the Law

7. The JCRA has considered the contents of the Notified Agreement and assessed its effect on competition in the context that was dealt with in detail in prior JCRA decisions regarding motor fuel distribution in Jersey.³
8. In these prior decisions, the JCRA concluded that the relevant product market is the wholesale supply of motor fuels and the relevant geographic market is Jersey.⁴ There is no reason to depart from those conclusions with respect to the Notified Agreement.

¹ **[REDACTED]**

² Esso calculated this figure using 2010 data from the JCRA *Road Fuel Market Study*, C695/11, August 2011 and comparing it with its own data.

³ See JCRA Decision C105/06 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and the Channel Islands Co-operative Society, 25 June 2007; JCRA Decision C440/09 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and the Jersey Farmers (Trading) Union Limited, 7 September 2009 and JCRA Decision C865/12, Fuel Supplies (C.I.) Limited and the Channel Islands Co-operative Society, 5 April 2012

⁴ See JCRA Decision C105/06 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Roberts Garages Limited, 25 June 2007, paragraph 19.

9. By volume, Esso has an estimated share of the wholesale market for the supply of motor fuel in Jersey of [20-30%].⁵ Channel Island Fuels (formerly Total) and FSCI have an estimated 34% and 34% share of the market respectively.⁶ Bel Royal is a single retail forecourts in the Island, with an estimated market share of less than 5%.⁷ Prior to the Notified Agreement, the forecourt was supplied on an exclusive basis by Esso.⁸
10. Although, the Notified Agreement relates to less than 5% of the retail throughput of motor fuels in Jersey, in prior decisions concerning the supply of motor fuels, the JCRA has previously found that the common use of exclusive contracts in this sector can have cumulative foreclosure effects in the relevant market.⁹ To the best of the JCRA's knowledge, a substantial proportion of motor fuel supplied at a retail level in Jersey remains subject to single branding agreement. Furthermore, in prior decisions the JCRA has referenced additional factors which indicate that exclusive distribution agreement for motor fuels affect competition in Jersey.¹⁰ Based on these circumstances, the JCRA concludes that the Notified Agreement would be likely to infringe Article 8 of the Law, and so require exemption under Article 9. However, given that Esso is now one of the two smallest of the four motor fuel wholesalers,¹¹ and that this is a single forecourt agreement, the overall effect of the Notified Agreement on competition is less significant than may have been the case for other exclusive distribution agreements previously notified to the JCRA.
11. The JCRA has previously found that exclusive agreements in the motor fuels sector in Jersey between wholesalers and retailers may satisfy all four exemption criteria listed in Article 9(3) of the Law¹² - in particular, (a) that the agreement is likely to improve the production or distribution of goods or services, or to promote technical or economic progress in the production or distribution of goods or services; and (b) that the agreement will allow consumers of those goods or services a fair share of any resulting benefit. The Notified Agreement is similar in certain respects to those that the JCRA has examined previously in the motor fuels industry.
12. The commercial and financial advantages conferred by the supplier, Esso, is particularly relevant to a single forecourt due to these exclusive purchasing agreements making it easier to establish, modernise, maintain and operate service stations. Exclusive purchasing agreements are in this industry considered indispensable to maintaining product integrity and quality and provides an efficient and practical solution of how best to present the site to the consumer, including branding of the forecourt.
13. Contributions of £[REDACTED] towards dealer's pump maintenance costs and rebates of [REDACTED] improve the scope for inter brand price competitiveness. Safety and security are enhanced by the investments provided and efficient distribution, facilities and service

⁵ Estimated by Esso using 2013 supply volumes.

⁶ JCRA estimate based on Esso's 2013 supply volumes, JCRA *Road Fuel Market Study*, C695/11, August 2011 and that as of February 2014, CI Fuels draws down ex-rack from FSCI and not Esso.

⁷ JCRA *Road Fuel Market Study*, C695/11, August 2011

⁸ JCRA Decisions C479, C478, C477, C476, C475, October 2009

⁹ See JCRA Decision C416/09 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Crowe Holdings Limited, 17 July 2009, paragraph 21.

¹⁰ See *ibid*, paragraph 22.

¹¹ Esso had 43% of the supply of motor fuels in 2010, JCRA, C695/11, *Road Fuels Market Study*, August 2011

¹² See JCRA Decision C416/09 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Crowe Holdings Limited, 17 July 2009, paragraphs 24-51; JCRA Decision C440/09 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and the Jersey Farmers (Trading) Union Limited, 7 September 2009, paragraphs 23-52.

benefit consumers. Esso is unlikely to make such an investment without the long term exclusive purchase obligation and the assumption is that in the absence of such investment, the full burden of the cost of pump maintenance/repair would be passed onto the customer.

14. The exclusivity agreement provides Esso with a guaranteed outlet for its product for the period of exclusivity, which secures security of supply for Bel Royal. It has the potential to promote inter brand competition as well as intra brand competition.
15. The presence of two other relatively large competitors to Esso suggests the ability to eliminate competition in respect of a substantial part of the goods or services in question is minimal given the agreement relates to one of 34 forecourts with estimated market share of less than 5%, it is therefore not apparent that this exclusive agreement presents material risks to competition.

D. Decision

16. By this Decision, the JCRA grants exemptions to the Notified Agreement under Article 9 of the Law.

October 2014

By Order of the JCRA Board