



Jersey Competition Regulatory Authority

Decision C782/11

PUBLIC VERSION

DECISION

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

I. INTRODUCTION

1. On 5 July 2011, the JCRA received an application for an exemption under Article 9 of the Competition (Jersey) Law 2005 (the “**Law**”) concerning the Motor Fuel Supply Agreement between Esso Petroleum Company Limited (“**Esso**”) and Roberts Garages Limited (“**Roberts Garages**”) dated 31 May 2011 (referred to hereinafter as the “**Notified Agreement**”).
2. On 8 July 2011 the JCRA published details of the application in the Jersey Gazette and on its website, asking interested parties to submit comments on the application to the JCRA by 22 July 2011. No comments were received.

II. NOTIFIED AGREEMENT

3. According to the Notified Agreement, Roberts Garages agrees to purchase exclusively from Esso its total requirements of motor fuels for its three fuel forecourts located at Springfield Road, Bel Royal and Greve D’Azette (the “**forecourts**”). The exclusivity period is five years starting from [REDACTED].
4. Esso is one of three wholesale suppliers of motor fuels in Jersey. Esso currently exclusively supplies 12 independent retailers with motor fuels, out of a total of 34 forecourts in Jersey. This includes the Springfield Road, Bel Royal and Greve D’Azette forecourts that are the subject of the Notified Agreement.
5. In addition to supplying motor fuels to Roberts, Esso agrees to support Roberts Garages in certain ways, including contributing to pump maintenance at the three forecourts.
6. The agreement between Esso and Roberts Garages that immediately preceded the Notified Agreement began on [REDACTED] and ended on [REDACTED].¹

¹ JCRA Decision C105/06 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Roberts Garages Limited, 25 June 2007.

III. CONCLUSIONS OF THE ANALYSIS UNDER THE LAW

7. The JCRA has considered the contents of the Notified Agreement and assessed its effects on competition in the economic context that was dealt with in detail in prior JCRA decisions regarding motor fuel distribution in Jersey.²
8. In these prior decisions, the JCRA concluded that the relevant product market is the wholesale of motor fuels and the relevant geographic market is the Island of Jersey.³ There is no reason to depart from the conclusions with respect to the Notified Agreement.
9. The Notified Agreement involves an exclusive distribution arrangement between, Esso and the three forecourts. Esso is one of three wholesale suppliers of motor fuels in Jersey, with an estimated share of supply of 43%⁴ Roberts Garages controls three forecourts in the Island, with an estimated retail market share of 20% of the total throughput of motor fuel in Jersey.⁵
10. Although the Notified Agreement relates to just under a quarter 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 supply contracts in this sector can have cumulative foreclosure effects in the relevant market.⁶ Furthermore, in prior decisions the JCRA has referenced additional factors which indicate that exclusive supply agreements for motor fuels significantly affect competition in Jersey.⁷ Based on these circumstances, therefore, the JCRA concludes that the Notified Agreement is subject to Article 8 of the Law.

² See JCRA Decision C105/06 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Roberts Garages Limited, 25 June 2007 and 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.

³ 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.

⁴ Based on 2010 throughput figures. JCRA, C695/11 Road Fuels Market Study. July 2011.

⁵ *Ibid.*

⁶ 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.

⁷ *See ibid*, paragraph 22.

11. However, the JCRA has previously found that exclusive supply agreements in the motor fuels industry in Jersey between wholesalers and retailers may satisfy all four exemption criteria listed in Article 9(3) of the Law.⁸ Since the Notified Agreement is substantially similar to those the JCRA has examined previously in the motor fuels industry, and it appears to the JCRA that there has been no substantial change in the structure of relevant markets since those previous decisions, the JCRA concludes that there is no reason to depart from this conclusion on this occasion.

12. To ensure that exclusive contracts for the wholesale supply of motor fuels are not extended prior to their exclusivity period ending, in prior decisions the JCRA has concluded that conditions are necessary to ensure that the exclusivity term does not exceed five years, and that the contract in question is subject to competitive bidding at the end of exclusivity term.⁹ Since the Notified Agreement is substantially similar to those the JCRA has examined previously, the JCRA concludes that these same conditions are warranted in this matter on this occasion. These conditions are set forth below and are intended to avoid the risk of wholesale suppliers effectively isolating retail contracts from ever being subject to competition from other wholesale fuel suppliers.

VII. DECISION

11. By this Decision, the JCRA grants an exemption to the Notified Agreement under Article 9, subject to compliance by Esso and Roberts Garages with the following conditions:
 1. If, at any time during the term of the Notified Agreement, Esso proposes to increase the length of the Exclusivity Period, Roberts

⁸ 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.

⁹ See JCRA Decision C440/09 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and the Jersey Farmers (Trading) Union Limited of 7 September 2009, paragraphs 44-47 and JCRA Decision C105/06 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Roberts Garages Limited, 25 June 2007, paragraphs 56-63.

Garages may contact other suppliers of motor fuels to request competitive quotes.

2. Prior to formally agreeing to any extended Exclusivity Period with Esso, Roberts Garages may serve notice on Esso in writing giving not less than 30 and not more than 60 days notice to terminate the Notified Agreement.
 3. As used herein, the term “Exclusivity Period” means an obligation by Roberts Garages to purchase from Esso, or Esso’s nominated supplier, its total requirements of motor fuels for resale.
 4. As used herein, an “extended” Exclusivity Period is any period extending beyond [REDACTED], whether by an amendment to the Notified Agreement or by the substitution of the Notified Agreement with a new agreement.
 5. Esso and/or Roberts Garages shall provide such information and documents as the JCRA may reasonably require, subject to any legally recognizable privilege and upon written request with reasonable notice, for the purpose of determining, monitoring or securing compliance with this Decision.
12. The effective date of this Decision is [REDACTED] and it will continue for a maximum period extending to midnight on [REDACTED]; unless the Notified Agreement is otherwise terminated prior to this time, in which case this exemption will expire upon the Notified Agreement’s termination.
 13. Compliance with the conditions set forth in Paragraph 11 is binding on both Esso and Roberts Garages, as well as on any of their assignees or successors.

4 August 2011

By Order of the JCRA Board