



**Jersey Competition Regulatory Authority (“JCRA”)**

**PUBLIC VERSION**

**Decision C 524/09**

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

**Law 2005**

## **I. INTRODUCTION**

1. On 23 December 2009, 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 Bel Royal Motor Works Limited (“**Bel Royal Motors**”) dated [REDACTED] (referred to hereinafter as the “**Notified Agreement**”).
2. On 5 January 2010 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 19 January 2010. No comments were received.

## **II. NOTIFIED AGREEMENT**

3. According to the Notified Agreement, Bel Royal Motors agrees to purchase exclusively from Esso its total requirements of motor fuels for its forecourt at Bel Royal Motors in St Lawrence. 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 [REDACTED] independent retailers with motor fuels, out of 32 total forecourts in Jersey. This includes the Bel Royal Corner forecourt at St Lawrence that is the subject of the Notified Agreement.

## **III. CONCLUSIONS OF THE ANALYSIS UNDER THE LAW**

5. 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.<sup>1</sup>

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<sup>1</sup> See, e.g., JCRA Decision C105/06 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Roberts Garages Limited of 25 June 2007; JCRA Decision C416/09 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Crowe Holdings Limited of 17 July 2009 and JCRA Decision C440/09 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and The Jersey Farmers (Trading) Union Limited of 7 Sept. 2009.

6. 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.<sup>2</sup> There is no reason to depart from the conclusions with respect to the Notified Agreement.
7. The Notified Agreement involves an exclusive distribution arrangement between, Esso and Bel Royal Motors. Esso is one of three wholesale suppliers of motor fuels in Jersey, with an estimated share of supply of [40-50%].<sup>3</sup> Bel Royal Motors, controls one forecourt in the Island, with an estimated retail market share of [0-10%] of the total throughput of motor fuel in Jersey.<sup>4</sup>
8. Although the Notified Agreement relates to only a very minor share 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.<sup>5</sup> Furthermore, in prior decisions that JCRA has cited to additional factors which indicate that exclusive supply agreements for motor fuels significantly affect competition in Jersey.<sup>6</sup> Based on these circumstances, therefore, the JCRA concludes that the Notified Agreement is subject to Article 8 of the Law.
9. The JCRA has previously found, however, that exclusive supply agreements in the motor fuels industry in Jersey between wholesalers and retailers satisfy all four exemption criteria listed in Article 9(3) of the Law.<sup>7</sup> Since the Notified Agreement is substantially similar to those the JCRA has examined previously in this industry, this present case provides no reason to depart from this conclusion.

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<sup>2</sup> See, e.g., JCRA Decision C105/06 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Roberts Garages Limited of 25 June 2007, Paragraph 19.

<sup>3</sup> Based on 2008 throughput figures.

<sup>4</sup> Based on 2008 throughput figures.

<sup>5</sup> See, for example, JCRA Decision C416/09 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Crowe Holdings Limited of 17 July 2009, Paragraph 21.

<sup>6</sup> See *ibid.* at Paragraph 22.

<sup>7</sup> See, e.g., JCRA Decision C416/09 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Crowe Holdings Limited of 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 of 7 Sept. 2009, Paragraphs 23-52.

10. However, based on evidence of prior practice in Jersey, whereby exclusive contracts for the wholesale of supply of motor fuels are extended prior to their exclusivity periods coming to an end, in prior decisions the JCRA has concluded that conditions are necessary to ensure that the exclusivity term in practice does not exceed five years, and that the contract in question is subject to competitive bidding at the end of exclusivity term.<sup>8</sup> Since the Notified Agreement is substantially similar to the ones the JCRA has examined previously in this industry, the JCRA concludes that these conditions too also are warranted in this case. These conditions are set forth below and are intended to avoid the risk of suppliers effectively isolating retailer contracts from ever being subject to competition by other 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 Bel Royal Motors 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, Bel Royal Motors may contact other suppliers of motor fuels to request competitive quotes.
  2. Prior to formally agreeing to any extended Exclusivity Period with Esso, Bel Royal Motors may serve notice on Esso in writing giving not less than 30 and not more than 60 days notice to terminate the Notified Agreement.

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<sup>8</sup> See, e.g., JCRA Decision C416/09 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Crowe Holdings Limited of 17 July 2009, Paragraphs 45-47; JCRA Decision C440/09 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and The Jersey Farmers (Trading) Union Limited of 7 Sept. 2009, Paragraphs 44-47; JCRA Decision C105/06 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Roberts Garages Limited of 25 June 2007, Paragraphs 56-63.

3. As used herein, the term “Exclusivity Period” means an obligation by Bel Royal Motors 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 Bel Royal Motors 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 Bel Royal Motors, as well as on any of their assignees or successors.

**05 February 2009**

**By Order of the JCRA Board**