



Jersey Competition Regulatory Authority ('JCRA')

Decision C 475/09

PUBLIC VERSION

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

I. INTRODUCTION

1. On 30 September 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 Drury Limited dated [REDACTED] (referred to hereinafter as the ‘**Notified Agreement**’).
2. On 8 October 2009 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 21 October 2009. No comments were received.

II. NOTIFIED AGREEMENT

3. According to the Notified Agreement, Drury Limited agrees to purchase exclusively from Esso its total requirements of motor fuels for its Marks and Spencer forecourt in St John. 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 about 32 forecourts in Jersey.
5. SandpiperCI Ltd, through its subsidiaries Drury Limited and Citriche Limited, controls five of the aforementioned retailers in Jersey. These include the Marks and Spencer forecourt in St John that is the subject of the Notified Agreement.

III. CONCLUSIONS OF THE ANALYSIS UNDER THE LAW

6. 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 decisions in the motor fuel industry in Jersey.
7. 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.¹ There is no reason to depart from the conclusions with respect to the Notified Agreement.
8. The Notified Agreement involves an exclusive distribution arrangement between Esso and SandpiperCI Ltd, through its subsidiary Drury Limited. Esso is one of three wholesale suppliers of motor fuels in Jersey, with an estimated share of supply of [40-50]%.² SandpiperCI Ltd, through its subsidiaries Drury Limited and Citriche Limited, controls five forecourts and is one of the largest retail motor fuel suppliers in Jersey, with an estimated market share of [10-20]%.³ In addition, the JCRA has previously found that the common use of exclusive supply contracts for the wholesale supply of motor fuels in Jersey can have cumulative foreclosure effects in the relevant market.⁴ Based on these circumstances, 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.⁵ 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.
 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

¹ *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.

² Based on 2008 throughput figures.

³ *Ibid.*

⁴ JCRA Decision C440/09 Concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and Crowe Holdings Limited of 17 July 2009, Paragraph 21.

⁵ *See, e.g.*, JCRA Decision C440/09 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.

bidding at the end of exclusivity term.⁶ 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 Drury Limited 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, Drury Limited may contact other suppliers of motor fuels to request competitive quotes.
2. Prior to formally agreeing to any extended Exclusivity Period with Esso, Drury Limited 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 Drury Limited 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

⁶ *Se, e.g.*, JCRA Decision C440/09 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.

Notified Agreement or by the substitution of the Notified Agreement with a new agreement.

5. Esso and/or Drury Limited 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 Drury Limited, as well as on any of their assignees or successors.

16 November 2009

By Order of the JCRA Board