



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

**Decision C 481/09**

**PUBLIC VERSION**

**Concerning a Motor Fuels Supply Agreement between Fuel  
Supplies (C.I) Limited and Plouasne Investments Limited  
notified under Article 9 of the Competition (Jersey) Law 2005**

## **I. INTRODUCTION**

1. On 2 October 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 Fuel Supplies (C.I) Limited (“**FSCI**”) and Plouasne Investments Limited (“**Plouasne**”) concerning the forecourt at Oakhurst Garage (referred to hereinafter as the “**Notified Agreement**”).
2. On 7 October 2009 the JCRA published details of the application in the Jersey Gazette and on 8 October the JCRA published details of the application on its website asking interested parties to submit comments on the application by 21 October 2009.<sup>1</sup> No comments were received.

## **II. NOTIFIED AGREEMENT**

3. According to the Notified Agreement, Plouasne agrees to purchase exclusively from FSCI its total requirements of motor fuels for its forecourt at Oakhurst Garage in St. Helier. The exclusivity period is less than 3 years.
4. FSCI is one of three wholesale suppliers of motor fuels in Jersey. FSCI is ultimately owned by Vitogaz SA, incorporated in France. The ultimate parent company of Vitogaz SA is Rubis SCA, incorporated in France.
5. FSCI currently exclusively supplies 13 independent retailers with motor fuels out of about 32 forecourts in Jersey. In addition, FSCI owns a site at St Mary’s selling motor fuels directly to end customers at the forecourt, rather than to independent dealers for resale.
6. The owner of Plouasne controls both the forecourt at Oakhurst Garage, the subject to the current Decision, and the forecourt at Three Mile Garage, that was subject of JCRA Decision C416 of 17 July 2009.

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<sup>1</sup> On 9 October 2009 the JCRA published a revised notice in the Jersey Gazette detailing the correct address of the forecourt.

### 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 decisions in the motor fuel industry in Jersey.
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.<sup>2</sup> 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 two independent undertakings, FSCI and Plouasne. FSCI is one of three wholesale suppliers of motor fuels in Jersey, with an estimated share of supply of [20-30]%.<sup>3</sup> The forecourt at Oakhurst Garage has an estimated market share of [0-10]%.<sup>4</sup> According to JCRA Decision C416/09, the estimated market share of the other forecourt controlled by the same owner is [0-10]%. While the market shares of the forecourts controlled by Plouasne are relatively small, 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.<sup>5</sup> Based on these circumstances, the JCRA concludes that the Notified Agreement is subject to Article 8 of the Law.
10. 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>6</sup> Since the Notified

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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> *Ibid.*

<sup>5</sup> 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.

<sup>6</sup> *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.

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.

11. 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 three years, and that the contract in question is subject to competitive bidding at the end of exclusivity term.<sup>7</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**

12. By this Decision, the JCRA grants an exemption to the Notified Agreement under Article 9, subject to compliance by FSCI and Plouasne with the following conditions:

1. If, at any time during the term of the Notified Agreement, FSCI proposes to increase the length of the Exclusivity Period, Plouasne may contact other suppliers of motor fuels to request competitive quotes.
2. Prior to formally agreeing to any extended Exclusivity Period with FSCI, Plouasne may serve notice on FSCI in writing giving not less than 30 and not more than 60 days notice to terminate the Notified Agreement.

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<sup>7</sup> *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.

3. As used herein, the term 'Exclusivity Period' means an obligation by Plouasne to purchase from FSCI, or FSCI's nominated supplier, its total requirements of motor fuels for resale [at Oakhurst Garage].
  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. FSCI and/or Plouasne 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.
13. 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.
  14. Compliance with the conditions set forth in Paragraph 12 is binding on both FSCI and Plouasne, as well as on any of their assignees or successors.

**16 November 2009**

**By Order of the JCRA Board**

