

Jersey Competition Regulatory Authority



Decision C865J/12

Concerning Motor Fuels Supply Agreements between Fuel Supplies (C.I.) Limited and the Channel Islands Co-operative Society notified under Article 9 of the Competition (Jersey) Law 2005

Document No: CICRA 12/29

5 April 2012

Jersey Competition Regulatory Authority

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I. INTRODUCTION

1. On 5 March 2012, the JCRA received an application for an exemption under Article 9 of the *Competition (Jersey) Law 2005* (the “**Law**”) concerning Motor Fuel Supply Agreements between Fuel Supplies (C.I.) Limited (“**FSCI**”) and The Channel Islands Co-operative Society (“**Coop**”) dated 10 February 2012 (the “**Notified Agreements**”).

2. On 8 March 2012, 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 23 March 2012. No comments were received.

II. NOTIFIED AGREEMENTS

3. According to the Notified Agreements, the Coop agrees to purchase exclusively from FSCI its total requirements of motor fuels for its two En Route fuel forecourts, located at La Route de Beaumont, St Peter and at La Rue des Buttes, St Mary (the “**forecourts**”). For the St Peter forecourt, the exclusivity period is for five (5) years starting from and including 13 May 2012 or until such time as the Case Volume has been delivered by FSCI to the Coop, whichever is the later. For the St Mary forecourt, the exclusivity period is for five (5) calendar years from and including 10 February 2012 or until such time as the Case Volume has been delivered by FSCI to the Coop, whichever is the later.

4. The Case Volume means the figure agreed between FSCI and the Coop as representing the anticipated volume of all deliveries of motor fuel to the relevant forecourt during the term of the Notified Agreement, being [•] litres for the St Peter forecourt and [•] litres for the St Mary forecourt.

5. Under the Notified Agreements, the St Mary forecourt shall trade jointly under the *Coop En Route* and *Rubis* brands for an initial period. For the remainder of the period of the supply to the St Mary forecourt, and the entire period of the supply to the St Peter forecourt, Coop will be re-sold solely under the *Coop En Route* brand.

III. ANALYSIS UNDER THE LAW

6. The JCRA has considered the contents of the Notified Agreements and assessed their effects on competition in the economic context that was dealt with in detail in prior JCRA decisions regarding motor fuel distribution in Jersey.¹

7. 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 the Island of Jersey.² There is no reason to depart from those conclusions with respect to the Notified Agreements.

¹ See JCRA Decision C105/06 concerning the Motor Fuels Supply Agreement between Esso Petroleum Company Limited and The Coop 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.

8. FSCI is one of three wholesale suppliers of motor fuels in Jersey. FSCI currently supplies 15 forecourts with motor fuels on an exclusive basis, out of a total of 32 forecourts in Jersey. These 15 forecourts include the St Peter and St Mary forecourts that are the subject of the Notified Agreements.

9. The Notified Agreements involve single branding arrangements between FSCI and the Coop in respect of St Peter's and St Mary's forecourts.³ FSCI has an estimated share of the wholesale market for motor fuel supply in Jersey of 25% (not including supply under the Notified Agreements).⁴ The Coop controls two retail forecourts in the Island, with an estimated retail market share of 9%.⁵ Currently the Coop receives its wholesale supplies of motor fuels from Esso which has 46% of the supply of motor fuels in Jersey.⁶

10. Although the Notified Agreements relate to just under 10% 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.⁷ 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 agreements. Furthermore, in prior decisions the JCRA has referenced additional factors which indicate that exclusive distribution agreements for motor fuels significantly affect competition in Jersey.⁸ Based on these circumstances, the JCRA concludes that the Notified Agreements would be likely to infringe Article 8 of the Law, and so require exemption under Article 9. However, given that FSCI is currently the smallest of the 3 motor fuel wholesalers, and the extra proportion of total retail volumes in Jersey that becomes subject to long-term exclusive terms by virtue of the Notified Agreements is only 7%, the overall effect of the Notified Agreements 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 Law⁹ - 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.

12. The Notified Agreements are similar in certain respects to those that the JCRA has examined previously in the motor fuels industry. However, it is not clear from the parties' application as to the manner in which, or the extent to which, the Notified Agreements will "improve the

² 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.

³ See the European Commission's *Guidelines on Vertical Restraints* (2010/C130), paragraphs 129-150

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

⁵ *Ibid.*

⁶ Source: JCRA 2010 report into the 'Review of the Jersey market for motor fuels'

⁷ 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.

⁸ See *ibid*, paragraph 22.

⁹ 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.

production or distribution of goods or services, or to promote technical or economic progress in the production or distribution of goods or services". For example, there is no evidence that the Notified Agreements will give rise to investment in fuel distribution infrastructure, which has been a feature of other fuel supply agreements that have been granted exemptions under Article 9.

13. In the present case, FSCI has agreed to appoint the Coop as a participating outlet in its Rubis Card scheme (although it appears that the scheme will only extend to the St Mary forecourt), which entitles customers to discounts on motor fuel purchases. In addition, the Coop has agreed to promote actively the Rubis Card, to participate in advertising and marketing of the scheme and to train its staff in relation to the Rubis Card. The JCRA considers that such a scheme could satisfy the criteria in Article 9, although the extra benefit arising from the Notified Agreements is limited, given that the JCRA understands that customers currently using the St Mary forecourt are entitled to use the Rubis Card. While the benefits arising from the Notified Agreements appear to be very modest, account must also be taken of the fact that the effect of the Notified Agreements on competition is likely to be less significant than may have been the case with similar exclusive agreements in the motor fuel sector (see paragraph 10 above). On balance, given that it appears to the JCRA that there has been no substantial change in the structure of relevant markets since its previous exemption decisions in the motor fuel sector, the JCRA has concluded on this occasion that there is no reason to depart from its previous practice of granting an exemption under Article 9.

14. 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.¹⁰ Since the Notified Agreements are 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.

IV. DECISION

15. By this Decision, the JCRA grants exemptions to the Notified Agreements under Article 9 of the Law, subject to compliance by FSCI and the Coop with the following conditions:

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

¹⁰ 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.

16. As used herein, the term “Exclusivity Period” means an obligation by the Coop to purchase from FSCI, or FSCI’s nominated supplier, its total requirements of motor fuels for resale.

17. As used herein, an “extended” Exclusivity Period is any period extending beyond (i) 13 May 2017, or (ii) the date on which the Case Volume has been delivered by FSCI to the Coop, whichever is the later, whether by an amendment to the relevant Notified Agreement or by the substitution of the relevant Notified Agreement with a new agreement.

18. FSCI and/or the Coop 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.

19. The effective date of this Decision is 10 February 2012 and it will continue for a maximum period extending to midnight on 13 May 2017; unless the Notified Agreements are otherwise terminated prior to this time, in which case this exemption will expire upon the Notified Agreements’ termination.

20. Compliance with the conditions set forth in paragraphs 15 and 18 is binding on both FSCI and the Coop, as well as on any of their assignees or successors.

5 April 2012

By Order of the JCRA Board