1966 No. 894

MONOPOLIES AND MERGERS

The Solus Petrol Order 1966

Made - - -	*19th July* 1966
Laid before Parliament	*25th July* 1966
Coming into Operation	*6th August* 1966

The Board of Trade, in pursuance of the powers conferred upon them by section 3 of the Monopolies and Mergers Act 1965(a), and with a view to remedying and preventing mischiefs which in their opinion result and may be expected to result from the things which, according to a report of the Monopolies Commission entitled " A Report on the Supply of Petrol to Retailers in the United Kingdom " as laid before Parliament and ordered by the House of Commons to be printed on 22nd July 1965, operate or may be expected to operate against the public interest, hereby order as follows:—

PART I

SOLUS TIES—PETROL

Maximum period for solus petrol ties

1.—(1) Subject to the provisions of this Article, it shall be unlawful for any company to which this Order applies (hereinafter referred to as a " petrol supplier ") to make an agreement imposing on a petrol retailer a solus petrol tie which will or may have effect for more than five years unless the agreement contains such provision for the determination of the tie as satisfies the appropriate requirements set out in Schedule 1 to this Order:

Provided that nothing in this Article shall apply to any agreement so far as it relates to a petrol filling station situated on company premises or in a motorway service area.

Existing agreements

2.—(1) Subject to the provisions of this Article, a petrol supplier shall before the end of the five year period mentioned in paragraph (2) of this Article determine any agreement made before the commencement of this Order to the extent (if any) that it imposes a solus petrol tie in respect of any time after the expiry of that period.

(2) The five year period mentioned in paragraph (1) of this Article is—

(*a*) a period of five years commencing with the first day following the making of the relevant agreement on which petrol was supplied (whether under the agreement or otherwise) by the supplier in question or any associated company of that supplier for retail sale at the relevant filling station; or

(*b*) a period of five years commencing with the date of operation of this Order,

whichever expires the later.

(a) 1965 c. 50.

(3) This Article shall not apply in respect of a tie affecting a petrol filling station situated on company premises or in a motorway service area or petrol equipment employed at such a station.

(4) Nothing in paragraph (1) of this Article shall preclude a petrol supplier from requiring that a solus tie shall continue to have effect in relation to any petrol filling station—

(*a*) until the retailer has tendered all sums owing to the supplier or an associated company of the supplier in respect of petrol or other goods supplied for resale at that petrol filling station;

(*b*) until the retailer has tendered the whole amount still to be paid under any credit sale or hire-purchase agreement made between him and the supplier or such an associated company and relating to equipment for use by the retailer in the course of his business at that petrol filling station;

(*c*) until the retailer has tendered the amount owing for principal and interest in respect of any loan made to him for the purposes of his business by the supplier or such an associated company;

(*d*) until the retailer permits the supplier to recover any equipment supplied for use at that petrol filling station by the supplier or such an associated company under an agreement of hiring or loan;

(*e*) until the retailer releases the supplier from any obligation to supply petrol to the relevant petrol filling station after the determination of the tie or to do anything connected with the promotion of petrol sales at that station after that time.

Loans—period for repayment

3. It shall be unlawful for any petrol supplier to make an agreement whereby the amount or the date of any repayment of any loan made to a petrol retailer is or may be determined by reference to any quantity, or the price of any quantity, of petrol acquired for sale or sold at any petrol filling station affected by a solus tie other than a petrol filling station situated on company premises.

PART II

LUBRICANT ETC. TIES

Restrictions on sale of lubricants etc.

4. It shall be unlawful for a petrol supplier to make any agreement with a petrol retailer whereby the retailer—

(*a*) is required to limit the brands of lubricants, kerosene or anti-freeze preparations (hereafter in this Part referred to as " goods ") acquired for sale, offered for sale, used, sold, displayed or advertised by him in the course of his retail business;

(*b*) is required to ensure that, of the goods acquired for sale, used or sold in the course of his business, a specified proportion (however expressed) shall be goods of a particular brand;

(*c*) is entitled to a rebate, discount or other advantage (whether financial or otherwise)—

(i) for restricting the goods acquired for sale, offered for sale, used, sold, displayed or advertised in the course of his business to goods of a particular brand;

(ii) for limiting in any way the quantity of goods of any brand acquired for sale or stocked or the manner in which goods of any brand are displayed, offered for sale or advertised in the course of his business;

(iii) calculated by reference to the relative amounts of goods of different brands which are acquired, sold, stocked, used or displayed in the course of his business;

(*d*) is required to take delivery of any specific quantity of goods at a time which is or may be more than three months after the date of the agreement:

Provided that nothing in this Article shall apply to the making of any agreement by a petrol supplier so far as it limits the brands of lubricants in connection with which a retailer may use lubricating equipment supplied by that supplier or an associated company of that supplier.

Hire-purchase agreements etc.

5. It shall be unlawful for a petrol supplier to make an agreement with a petrol retailer restricting the brands of lubricants in connection with which the retailer may use any lubricating equipment supplied by that supplier or an associated company of that supplier unless—

(*a*) in the case of a credit sale or hire-purchase agreement, the agreement contains provisions giving the retailer the right to determine the restriction at any time after all the instalments payable under the agreement have been paid in full and to pay at any time the whole amount of the instalments still to be paid;

(*b*) in the case of a hiring or loan agreement, the agreement contains provisions giving the retailer the right to determine the restrictions at any time by giving three months' notice:

Provided that nothing in this Article shall apply to the making of any agreement so far as it relates to lubricating equipment supplied on hire or loan for use on a petrol filling station situated on company premises.

Existing Agreements

6.—(1) It shall be unlawful for a petrol supplier to carry out any agreement made before the commencement of this Order so far as it requires him to grant to a petrol retailer any such rebate, discount or other advantage as is mentioned in Article 4(*c*) of this Order:

Provided that nothing in this paragraph shall make it unlawful for a supplier to carry out any such agreement in respect of things done by a retailer before 6th August 1966.

(2) A petrol supplier shall—

(*a*) before 13th August 1966 determine any agreement made before the commencement of this Order to the extent that the agreement would if made after such commencement contravene Article 4(*a*), (*b*) or (*d*) of this Order;

(*b*) determine any agreement so made in respect of any such restriction affecting lubricating equipment supplied under a credit sale or hire-purchase agreement as is mentioned in Article 5, upon the petrol retailer so requiring and tendering the whole amount still to be paid under such credit sale or hire-purchase agreement;

(*c*) determine any agreement so made in respect of any such restriction affecting lubricating equipment supplied under a hiring or loan

agreement (otherwise than for use on a petrol filling station situated on company premises) within three months of the petrol retailer so requiring.

PART III

TYRES, BATTERIES, ACCESSORIES ETC.

Commission arrangements

7.—(1) Subject to the provisions of this Article, it shall be unlawful for any petrol supplier to make any agreement which purports to entitle the supplier or any associated company of the supplier to any commission or similar benefit in respect of—

(i) any acquisition for sale of tyres or batteries or other motor vehicle accessories or articles unconnected with motor vehicles; or

(ii) any sales of such goods,

by a petrol retailer in the course of his business at a petrol filling station affected by a solus tie imposed by an agreement made between the retailer and that supplier or an associated company of that supplier.

(2) Subject as aforesaid, it shall be unlawful for a petrol supplier or any other person party with the supplier to such an agreement as is described in paragraph (1) of this Article, being an agreement made before the commencement of this Order, to carry it out.

(3) Nothing in this Article shall apply to—

(*a*) any agreement between a petrol supplier and a petrol retailer so far as it relates to goods acquired by the latter from the former or from an associated company of the former;

(*b*) any agreement between a petrol supplier and a petrol retailer who is a tenant or licensee of premises of the supplier so far as it requires payments to be made by the retailer by reference to his acquisitions or sales in the course of his business of goods generally or of goods of any specified class, not being a class so described as to distinguish between comparable goods of different brands, manufacturers or suppliers.

Restrictions on retailers' business

8. It shall be unlawful for a petrol supplier to make any agreement with a petrol retailer—

(*a*) restricting the acquisition for sale, stocking, exposing for sale or offering for sale of any goods (other than petrol or lubricants) at any petrol filling station affected by a solus tie imposed by an agreement made between the retailer and that supplier or an associated company of that supplier;

(*b*) restricting the advertising at such a station of any goods (other than petrol) ordinarily sold at that station:

Provided that this Article shall not apply to the making of any agreement relating to a petrol filling station situated on company premises so far as it includes restrictions which are not calculated to require the retailer to discriminate between comparable goods of different brands, manufacturers or suppliers, being restrictions which are reasonably necessary in order to avoid or minimize the risk of any breach of any subsisting legal obligation of the petrol supplier.

Existing agreements

9. A petrol supplier shall before 1st September 1966 determine any agreement made by him before the commencement of this Order to the extent that the agreement would if made after such commencement contravene Article 8 of this Order.

PART IV

OPTIONS AND RIGHTS OF PRE-EMPTION

Future agreements

10. It shall be unlawful for a petrol supplier to make, with a person to whom it has lent or is about to lend money for use in connection with the purchase, construction or improvement of a petrol filling station, an agreement giving to the petrol supplier or any associated company of the petrol supplier—

(*a*) an option to acquire any interest in the premises on which the filling station is or will be situated;

(*b*) a right of pre-emption in respect of any interest in those premises;

which is exercisable at any time after the loan has been repaid.

Existing Agreements

11. A petrol supplier party to any agreement made before the commencement of this Order which affords it such an option or right of pre-emption as is mentioned in Article 10 shall before the relevant loan is repaid determine that agreement to the extent that it affords the supplier an option or right of pre-emption exercisable after such repayment.

PART V

COMPANY-OWNED STATIONS

Limitation on supply through new Company stations

12.—(1) If in 1965 or any later calendar year—

(*a*) more than fifty million gallons of petrol is sold by retail in the United Kingdom as petrol supplied by a petrol supplier, that is to say under the supplier's name or brand names belonging to the supplier; and

(*b*) more than fifteen per cent. of that petrol is so sold at petrol filling stations situated on company premises,

it shall be unlawful for the supplier, after the relevant date—

(i) to make or carry out any agreement for the supply of petrol for retail sale at a new company station;

(ii) to sell any petrol by retail at such a station.

(2) In this Article—

" new company station " means a petrol filling station standing on land—

(*a*) in which the supplier or a related company of the supplier has since the relevant date acquired an interest otherwise than as a mortgagee; or

(*b*) in which the supplier acquired an interest before the relevant date with a view to the erection of the petrol filling station but in respect of which planning permission for the erection of the station was not granted until after the relevant date; or

(*c*) in which a company which after the commencement of this Order becomes a related company of the supplier has such an interest;

" relevant date " means—

(*a*) when the conditions described in heads (*a*) and (*b*) of paragraph (1) of this Article were satisfied in the year 1965, 10th February 1966; and

(*b*) in any other case, the last day of the first year after 1965 in which those conditions are satisfied;

" interest ", in relation to any land, includes any interest in that land whether in law or in equity and whether as owner, lessee or licensee;

" related company ", in relation to any supplier, means a company in respect of which the supplier enjoys the right directly or indirectly to determine the manner in which at least one quarter of the votes which could be cast at a general meeting of the company are to be cast on matters and in circumstances not of such a description as to bring into play any special voting rights or restrictions on voting rights.

PART VI

LEASES AND LICENCES OF COMPANY STATIONS

13. It shall be unlawful for a petrol supplier to grant or agree to grant—

(*a*) a lease of any premises on which a petrol filling station stands; or

(*b*) a licence permitting any person to sell any petrol by retail on any such premises,

for a period of less than three years:

Provided that nothing in this Article shall make it unlawful—

(i) to make any agreement, lease or licence determinable if in any specific period any specific quantity of petrol has not been sold;

(ii) to grant or agree to grant a trial lease or licence of any premises, that is to say, a lease or licence under which a person who has not previously sold petrol by retail on any company premises as a petrol retailer may carry on such a business for a period not exceeding 12 months;

(iii) to grant a sub-lease of leasehold premises for a period not significantly less than the unexpired term of the lease held by the supplier;

(iv) at any time after 6th August 1969, to grant or agree to grant a further lease or licence in respect of any premises for a period of less than three years to a person who has been a lessee or licensee of the premises in question for at least three years.

PART VII

DEFINITION, INTERPRETATION AND GENERAL

Definitions

14.—(1) In this Order—

(i) " agreement " includes arrangement;

(ii) " associated company " means, in relation to any petrol supplier, any body corporate which is a member of the same group;

(iii) " company premises " means, in relation to a petrol supplier, any land owned or leased by the supplier or an associated company or in respect of which the supplier or an associated company enjoys any licence which entitles it to sell petrol to the public by retail there, or to permit any other person so to sell petrol there;

(iv) " company to which this Order applies " means the company named in Schedule 2 to this Order and, except where the context otherwise requires, any associated company of that company;

(v) " group " means a body corporate and all other bodies corporate which are subsidiaries thereof within the meaning of section 154 of the Companies Act 1948 (a);

(vi) " kerosene " means kerosene for burning or illuminating;

(vii) " lease " includes a sub-lease;

(viii) " lubricants " means any oil or grease intended for lubricating mechanically propelled road vehicles;

(ix) " lubricating equipment " includes tanks for the storage of lubricants, racks or cupboards for the storage of prepacked lubricants and any equipment, instrument or vessel intended to facilitate the application of lubricants to a vehicle or the insertion in vehicles or removal from vehicles of lubricants and includes a hoist or lift;

(x) " petrol " includes automotive diesel fuel (except for the purposes of Article 12);

(xi) " petrol equipment " means storage tanks, pumping equipment or other articles used in connection with the retail sale of petrol;

(xii) " solus petrol tie " means any provision of an agreement which purports to prohibit or restrict the acquisition for retail sale, or the retail sale, at any petrol filling station, of petrol which is supplied by any person other than a particular petrol supplier; but shall not be taken to include a provision for the payment of rebate by reference to any quantity of petrol supplied or sold or a provision relating to the purchase of a specific quantity of petrol from a petrol supplier.

(2) In the application of this Order to heritable property in Scotland—

(*a*) " leasehold " means held by virtue of a lease;

(*b*) " licence " includes any right to use the property not amounting to the right of a lessee;

(*c*) " mortgagee " means the creditor in an heritable security, however constituted;

(*d*) " owner " includes any person who, under the Lands Clauses Acts, would be enabled to sell and convey the property to the promoters of an undertaking; and

(*e*) " purchase " includes the acquisition, by whatever means, of the interest of an owner;

and cognate expressions shall be construed accordingly.

Territorial Application

15. For the purposes of this Order no account shall be taken of any agreement in so far as it relates to any petrol filling station situated outside the United Kingdom or of any supply of petrol, lubricants or other goods outside the United Kingdom.

Citation and Commencement

16. This Order may be cited as the Solus Petrol Order 1966 and shall come into operation on 6th August 1966.

Douglas Jay,
President of the Board of Trade

19th July 1966.

(a) 1948 c. 38.

SCHEDULE 1

Provisions Required under Article 1 to be Included in Solus Petrol Agreements

The required provisions shall be the following, not being provisions requiring the retailer to give more than twelve months' notice or prescribing any maximum period of notice—

(i) in the case of a loan agreement, a provision entitling the retailer to determine the tie—

(*a*) by giving notice expiring at any time more than five years after the first day following the making of the agreement on which the petrol supplier or an associated company of the petrol supplier supplied petrol (whether under the agreement or otherwise) for retail sale at the relevant filling station; and

(*b*) before the expiry of the notice tendering payment of the amount due for principal and interest in respect of the loan;

(ii) in the case of a credit sale agreement imposing a tie only in respect of petrol equipment the subject of the agreement, a provision entitling the retailer to determine the tie by—

(*a*) giving notice expiring at any time after the end of the period of five years commencing with the date on which that equipment was installed in pursuance of the agreement; and

(*b*) before the expiry of the notice, tendering payment of the whole amount still to be paid under the agreement;

(iii) in the case of a hire-purchase agreement imposing a tie only in respect of petrol equipment the subject of the agreement, a provision entitling the retailer, by giving such notice and tendering such payment within such period as is specified in head (ii)(*a*) of this paragraph, to acquire ownership of the equipment and to determine the tie;

(iv) in the case of any other agreement, a provision entitling the retailer to determine the tie by giving notice expiring at any time after the expiry of the period of five years mentioned in head (i)(*a*) of this paragraph.

SCHEDULE 2

Company to which the Order Applies

Total Oil Products (G.B.) Limited.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order is directed to mischiefs identified by the Monopolies Commission in their Report on the Supply of Petrol to Retailers in the United Kingdom (H.C. 264, Session 1964–1965, published on 22nd July 1965). The provisions of the Order accordingly mainly concern filling stations owned by petrol companies themselves and stations where retailers have entered into " solus " arrangements restricting their sales of petrol to suppliers from individual companies.

Part I deals with solus trading in petrol. Retailers must in future be permitted to end solus ties after 5 years; but special provision is made for ending solus ties in loan agreements, hire-purchase and credit-sale agreements (Article 1) and existing solus ties (Article 2). Articles 1 and 2 do not apply in relation to filling stations belonging to the supplier.

The Order applies to the company named in Schedule 2 and any companies forming part of the same group as that company. The company in question has declined to give undertakings to the Board of Trade in respect of matters dealt with in the Order.

Part II deals with restrictions on a retailer's trading in lubricants, kerosene and anti-freeze and provides that retailers must not be restricted to trading in particular brands or given incentives for restricting their trade. Some limited exceptions are made for restrictions on the use of lubricating equipment furnished by a petrol supplier (Articles 4 and 5).

Provision is made to bring to an end existing agreements.

Part III makes unlawful agreements entitling petrol suppliers to a commission in respect of a solus retailer's trade in tyres, batteries and accessories (Article 7) and limits the restrictions which can be imposed on a solus retailer's freedom to trade in goods other than petrol or lubricants (Article 8). Existing agreements are to be terminated (Articles 7(2) and 9).

Part IV deals with options to purchase and rights of pre-emption over petrol filling stations granted in connection with loans made by petrol suppliers. A petrol supplier cannot obtain an option or a right of pre-emption exercisable after the loan has been repaid (Article 10). Existing agreements to this effect must be terminated (Article 11).

Part V restricts the operation of new company owned stations by a supplier where the retail sales of its petrol in the United Kingdom exceed 50 million gallons a year and more than 15 per cent. is sold at company owned stations. The supplier is prohibited from entering into any agreement or arrangement to supply petrol to a new company station (as defined in the Order).

Part VI deals with leases and licences of company-owned stations: with some exceptions, the minimum period for which a lease or licence may be granted is three years.