

CHAPTER 14. CONCLUSIONS AND RECOMMENDATIONS

I. CONCLUSIONS AS TO THE CONDITIONS DEFINED IN THE ACT

344. We are required by paragraph 3 of the reference to investigate and report on whether the conditions to which the Act of 1948 (as amended) applies in fact prevail as respects the supply of petrol from places situated within the United Kingdom by delivery elsewhere in the United Kingdom to persons carrying on the business of selling petrol to the general public by retail. Under the Act the conditions are deemed to prevail, as respects the supply of goods of any description, if at least one-third of all the goods of that description which are supplied in the United Kingdom are supplied by or to (a) one person or two or more inter-connected bodies corporate, or (b) two or more persons who (other than by an agreement which is required to be registered with the Registrar of Restrictive Trading Agreements) so conduct their respective affairs as in any way to prevent or restrict competition in connection with the production or supply of any of the goods.

345. We are concerned with one particular form of supply, namely supply to persons carrying on retail petrol businesses. It is implicit in the reference that the "supplier" and the retailer should be separate persons. This is in fact the general pattern of the trade, the suppliers being the petrol companies which sell petrol on wholesale terms to the operators of the retail petrol stations. There are, however, cases where a petrol company itself (though its main distributing business is wholesaling) operates a small number of petrol stations, and one case of an importer whose policy it is to operate himself all the retail outlets for his petrol. These cases are strictly not within our reference, but the total gallonage involved is so small as to be negligible, and accordingly for convenience we have ignored the distinction and based our conclusions on the total gallonage delivered to all retail stations in the United Kingdom.

346. As we have shown in paragraph 25, until July, 1964 all the major petrol companies and nearly all of the smaller suppliers recommended the prices at which each grade of their own brands of petrol should be sold by retail. After that date the Esso group and Regent abandoned the practice, but the rest continued to make recommendations and the Esso group has now resumed doing so. Although, as has been pointed out to us, such recommendations create no obligation on the part of retailers and are not always observed by them, up to July, 1964 there was, as far as we were able to ascertain, only a small minority of retailers who did not sell at the prices recommended for the zones in which their stations were situated.

347. We have no reason to think that the practice of retailers selling the brands of those suppliers who have continued to recommend retail prices has altered materially since that date; and in the absence of guidance from the Esso group and Regent retailers of their brands appear, in general, to have continued to charge approximately the same prices as their competitors selling the brands of the S.M. & B.P. group, Mobil and Petrofina. Thus all the leading brands, except Jet, and many of the minor brands were and are sold at retail prices not differing significantly grade for grade and zone for zone. We think that such a degree of uniformity as existed until July, 1964 could not have prevailed without the recommendations, and that subsequently retailers have been largely influenced not only by the recommendations which continued to be made but also by those which were abandoned in July, 1964. One

result, therefore, of such recommendations is, in our view, to restrict competition amongst retailers. We do not, of course, suggest that they prevent competition, and indeed where a "cut" price is recommended (e.g. by Jet) the recommendation increases competition with the petrol supplied by the major companies, although as between the retailers of any one cut-price petrol it may restrict competition. As explained above, we consider that the recommendations which were abandoned in July, 1964 continued to have this effect after that date, but in any event we regard our reference as entitling and indeed obliging us to take into account the situation which existed at the date when it was made as well as subsequent developments.

348. We show in the table below the total volume of petrol supplied to retailers in the four years 1961 to 1964 together with the volume so supplied by (i) the S.M. & B.P. group and (ii) the suppliers referred to in paragraph 346 who now recommend or were recently recommending retail prices:

	1961	1962	1963	1964
Total supplied—m. gal.	2,041	2,184	2,341	2,644
Supplied by S.M. & B.P. group:				
—m. gal.	984	1,030	1,080	1,191
—% of total	48	47	46	45
Supplied by suppliers recommending retail prices (including the S.M. & B.P. group):				
—m. gal.	2,039	*	*	2,641
—% of total	99.9	*	*	99.9

349. We conclude that the conditions to which the Act applies prevail because more than one-third of all the petrol supplied within the terms of reference is supplied by (i) the S.M. & B.P. group of interconnected bodies corporate and (ii) a number of petrol suppliers (including the S.M. & B.P. group) who have been so conducting their respective affairs as to restrict competition inasmuch as each of them at the date of our reference and subsequently has recommended to his retailing customers the prices at which his petrol should be sold to the general public.

II. CONCLUSIONS AS TO THE "THINGS" DESCRIBED IN PARAGRAPH 4 OF THE REFERENCE

350. Under paragraph 4 of the reference we are required, having found that the conditions prevail, to investigate whether and to what extent the things set out in sub-paragraphs (a), (b) and (c) of that paragraph are done by the parties concerned as a result of, or for the purpose of preserving, those conditions.

- (a) **Whether and to what extent "agreements or arrangements are made under which restrictions are accepted by persons, other than the suppliers themselves, carrying on the business of selling petrol to the general public by retail in respect of the supply or acquisition of petrol or of any other goods or substances or in respect of the acquisition or disposal of any premises or any interest therein".**

* Not ascertained exactly, but the percentage figures would not be materially different from those for 1961 and 1964.

351. Most of the petrol suppliers who are parties concerned with the conditions which we have found to prevail (see paragraph 349) have agreements with retailers under which the latter undertake to deal exclusively in the supplier's brand or brands of petrol. The agreements in question include some loan and tenancy agreements as well as the more ordinary type of petrol retailer agreement (see paragraphs 79-86). Under some of these agreements the retailers concerned also accept some form of restriction in respect of the supply of goods or substances other than petrol (including lubricants) and/or in respect of the acquisition or disposal of their premises (see Chapter 5).

352. The petrol suppliers concerned do not dispute that the agreements referred to in the preceding paragraph are covered by the description in sub-paragraph (a) of paragraph 4 of the reference. The S.M. & B.P. group, moreover, acknowledges that in so far as it is a party concerned with the conditions by virtue of its individual share of the total trade its solus agreements may be said to be made for the purpose of preserving the conditions. The remaining suppliers do not accept that their agreements restrict competition in themselves or are made either as a result of or for the purpose of preserving the conditions. It is clear, however, that the agreements preclude the retailers who are parties to them from dealing in any petrol other than the brand or brands of the supplier concerned at the premises (or part of the premises) specified in the agreements; and we are satisfied that in this sense the making of the agreements is a thing done by those suppliers for the purpose of preserving the conditions, that is to say of preserving a state of affairs in which nearly all the petrol supplied to retailers is supplied by persons who, in the way described in paragraph 347, restrict competition in connection with such supply.

353. We have referred in paragraph 351 to cases where the exclusive petrol agreement incorporates also restrictive provisions relating to other goods and particularly to lubricants. Some petrol suppliers, however, keep their agreements relating to lubricants separate and distinct from those relating to petrol. Where the supplier adopts this latter practice as his normal policy retailers are free to undertake an exclusive obligation with regard to petrol without committing themselves with regard to the supplier's lubricants;* or they may, even, undertake some obligation for lubricants but not for petrol. Some of the petrol suppliers argue that such independent agreements concerned with lubricants, although falling within the terms of sub-paragraph (a) of paragraph 4 of the reference, cannot be said to result from or to be intended to preserve the conditions which prevail in relation to the supply of petrol. We agree that they are not made in order to preserve the conditions. One effect of an exclusive petrol agreement, however, is to establish a site where the petrol supplier's name and brands are advertised and where promotion of the sale of the supplier's other products is to that extent facilitated. The retailer, having decided to undertake exclusive supply of one supplier's petrol, is predisposed to enter into a further agreement with the same supplier for lubricants. We have no doubt that these lubricants agreements are intended primarily to attract the supplier's exclusive petrol retailers. In fact the majority of the latter do enter into restrictive lubricants agreements with their petrol

* The petrol agreement in such cases may contain a provision to the effect that the retailer will do his best to promote the sale of the supplier's lubricants but this, by itself, is not a very effective commitment.

suppliers, while it is comparatively rare for the retailer to accept such an agreement with a supplier to whom he is not contracted for petrol. Thus the existence of the conditions which prevail in relation to petrol exerts an influence and probably a decisive influence on the attitude of the retailers to the proposals which their petrol suppliers make to them in relation to lubricants, and we are satisfied that the making of these separate lubricants agreements is a result of the conditions.

354. There remain to be considered under this head the agreements which are primarily concerned with the supply of equipment by petrol suppliers to retailers on hire purchase or loan terms (see Chapter 6). Under these agreements the retailer undertakes to use the equipment which is the subject of the agreement exclusively for dispensing the supplier's petrol or lubricants, as the case may be; and this restrictive provision clearly brings the agreements within the terms of sub-paragraph (a) of paragraph 4 of the reference. The more important of these agreements are those concerned with the supply of petrol equipment (tanks and pumps). The terms offered to the retailer under such agreements are in most cases more favourable than he would be able to obtain from any other supplier except another petrol company; indeed in the case of loan agreements for petrol tanks the effect is that the equipment becomes a gift provided that the exclusive condition is observed over the full period. We are told that these favourable terms are granted in order to encourage retailers to modernise their stations with consequent benefits, by way of economy and increased turnover, to both retailer and supplier. However this may be, one of the benefits the supplier obtains in return for the favourable terms allowed is the exclusive undertaking, and we therefore conclude that these agreements, like those referred to in paragraphs 351 and 352, are made for the purpose of preserving the conditions.

355. The agreements concerned with the supply of equipment for lubricants are of considerably less importance; in particular, no major lubricating equipment is supplied under "loan" agreements of the kind commonly used for petrol tanks. Some of the arguments which we have found relevant to agreements dealing with the supply of lubricants (see paragraph 353) might be held to apply to these agreements also; but we think that the connection with the conditions prevailing in relation to petrol is more tenuous and we do not find that the agreements are made as a result of those conditions.

(b) Whether and to what extent "supplies of petrol are withheld from persons carrying on the business of selling petrol to the general public by retail".

356. Very few instances of refusal to supply petrol to a retailer have been brought to our notice (see Chapter 10). Where they have occurred they appear to have been due to one or another of the following circumstances: (i) that the retailer was known to have an exclusive commitment to another supplier, (ii) that the supplier had granted some form of exclusive territorial franchise to another retailer in the area, (iii) that the supplier was already adequately represented in the area, and (iv) that there were considerations of a kind that in ordinary commercial practice would deter any supplier from supplying (e.g. known bad payers, sites which could only discredit the supplier's name etc.). Category (i) does not raise any issue which is not dealt with under head (a); refusal in this case is a direct consequence of the making of exclusive agreements and we are not in any doubt that if such agreements are to be made

they should be honoured. Categories (ii) and (iii) are rather more open to question. Very few franchise arrangements are now in existence and the practice of granting them is not an essential or characteristic feature of the suppliers' arrangements. Most suppliers, on the other hand, reserve the right to refuse supply if they consider themselves already adequately represented in the area. It is, of course, natural that any supplier should pay some regard to this matter on economic grounds and also for the sake of preserving good relations with his existing customers. It may be said that the question of adequate representation is likely to arise more frequently when the supplier has embarked on a policy of exclusive outlets, but the evidence suggests that cases of outright refusal of supply for this reason only occur when a retailer approaches a supplier from whom he has not previously been buying petrol and, even so, are rare. So far as category (iv) is concerned, refusals of this type would be liable to occur from time to time in any event and have no connection with the conditions referred to in our reference. We conclude that the practice of withholding supplies of petrol from retailers, so far as it exists, is not a thing done as a result of, or for the purpose of preserving, the conditions.

(c) **Whether and to what extent "premises are acquired or used or permitted to be used for the purpose of there being carried on thereon the business of selling petrol to the general public by retail".**

357. Most of the petrol suppliers who are parties concerned with the conditions acquire premises for the purpose specified under sub-paragraph (c) of paragraph 4 of the reference (see Chapter 7). In these cases the purpose is not merely that a retail petrol business shall be carried on on the premises, but also that the business shall be an exclusive outlet for the supplier's petrol. The considerations involved are therefore the same as those which we have found relevant to the making of exclusive petrol agreements (see paragraph 352), and we find accordingly that these premises are acquired for the purpose of preserving the conditions.

358. The terms of head (c) also cover the manner in which retail premises are used or permitted to be used, but we do not find that there is anything of this nature under this head which is done by the petrol companies as a result of or for the purpose of preserving the conditions which is not already covered under head (a).

III. CONCLUSIONS ON THE PUBLIC INTEREST

359. The question we now have to consider is whether those practices which we have found to be "things done" within the terms of our reference operate or may be expected to operate against the public interest. The practices are not concerned with the production of petrol but are in the field of distribution. The principal question we have to answer is whether these practices are in any way detrimental to cheap, efficient and convenient distribution of petrol or of the other goods involved. If a system of distribution is to be efficient it must, of course, provide opportunities for the distributors themselves to earn a satisfactory return for their services, and to this extent the public interest includes the interests of the petrol suppliers and retailers and, so far as they may be affected, of the independent suppliers of other goods, such as lubricants. The overriding interest, however, is that of the general public. Some but not all of the general public have a direct interest as buyers of petrol from retailers, but over and above this consideration it is in the interest of the general public

that in the distribution of these goods the national resources shall be used as economically as possible and with the maximum regard for such factors as amenity, road safety and the avoidance of road congestion.

360. We have inevitably taken a great deal of evidence from the parties to the solus arrangements. We have recorded in preceding chapters the views of both suppliers and retailers about various aspects of the system, and we must take these views into account. So far as the motoring public is concerned, a few motorists have communicated with us direct but our principal sources of evidence have been the motoring associations and certain other witnesses who have themselves collected information from motorists and passed it on to us. The evidence of the motoring associations was generally to the effect that to the best of their knowledge their members had no particular views, critical or otherwise, about the solus arrangements; the associations themselves considered that the interest taken by the petrol companies in their solus sites had led to some desirable improvements in petrol stations but that some safeguard might be needed to ensure a reasonable choice of brands on motorways and other roads where the building of new petrol stations was affected by statutory restrictions (see paragraph 296). Esso submitted the results of a survey in 1963 of the views of a sample poll of 2,000 motorists. It would appear from the replies obtained (see paragraphs 302-304) that, although a majority of the motorists concerned thought "the idea" of stocking only one make of petrol was "a bad thing", comparatively few of them had any specific complaints to make about the services provided by petrol stations generally or the solus arrangements in particular. This survey, as far as we can judge, was conducted on a more impartial and scientific basis than that made by Castrol in 1961 (see paragraph 301). That company issued some 600,000 questionnaires to motorists, of which slightly more than 10 per cent were completed and returned; and, according to the company, 90 per cent. of those who replied wanted free choice and display of lubricants at petrol stations and 50 per cent. of them had been inconvenienced by stations which did not stock Castrol lubricants. We think that the general view of motorists may fairly be expressed by saying that there is no strong objection to the solus system as applied to petrol but that there is marked opposition to the extension of that system to the point at which the brand of petrol sold at a particular station limits the motorist's choice, at the place at which he buys petrol, of brands of other motoring requisites which he may wish to buy. One of the purposes of this inquiry is, of course, to form a judgment on the public interest in the light of all the information available to us, some of which (such as matters of efficiency and costs) is not available to the general public.

361. Under agreements which fall within sub-paragraph (a) of paragraph 4 retailers operating some 37,000 outlets undertake to sell exclusively the brand or brands of petrol of one or another of more than twenty suppliers. Most of these retailers, either under the same or under separate agreements, also undertake to give some form of preference to other products of the petrol suppliers, in particular lubricants. These arrangements vary widely in scope and terms. Under many of them the principal consideration received by the retailers in return for their undertakings is a special rebate off the wholesale price of petrol and, where appropriate, a special rebate or other allowance off the wholesale prices of lubricants. Sometimes there is a complementary arrangement by which the retailer receives a loan from the supplier. In other

cases the relationship between supplier and retailer, as expressed in the agreement, is influenced by the fact that the supplier owns the retail site and the retailer is his tenant. Broadly, what we are called upon to consider under head (a) is the effect on the public interest of practically the whole of what may be termed the solus system as applied to petrol and, in a modified form, to lubricants and other products. The only feature of the system which does not fall under this head is the practice on the part of suppliers of acquiring retail sites; but this is covered by head (c) and so far as the public interest is concerned must clearly be considered in conjunction with the suppliers' agreements, under head (a), with their tenants.

362. Apart from the fact that some retailers have entered into a special relationship with their suppliers by accepting a loan or becoming the supplier's tenant, there are many other variations in the provisions of the solus agreements, for instance in the length of term, in the amount of rebate, in the undertakings concerned with products other than petrol. With this in mind we think it proper to consider first of all whether exclusive trading undertaken by petrol retailers in return for a special rebate from their chosen suppliers is, in itself, a practice which operates against the public interest.

363. In the recent case of *Petrofina (Gt. Britain) Ltd. v. Martin and Another* referred to in the footnote to paragraph 256 it was held that a solus agreement between the plaintiffs and the first defendant was a contract in restraint of trade and was not binding on the defendants. As we have pointed out, there are many different forms of solus agreement embodying a wide variety of terms and we have not considered it part of our function to assess the legal validity of any of them. We have conducted our inquiry and reached our conclusions on the basis that they were generally accepted and acted upon by the parties concerned.

The Solus System in Principle

364. Each of the petrol suppliers concerned has advanced his own arguments in defence of his own arrangements. Although these arguments naturally differ in some respects the companies in general are agreed in asserting that the main purposes of their solus arrangements are to obtain secure outlets for their products and to reduce costs. By achieving these two primary aims, it is said, they are enabled to provide benefits both to retailers and to the public such as would not be attainable without the arrangements.

365. As the companies point out, the refining of oil products requires heavy capital investment. Since the war a number of the leading suppliers have undertaken very considerable capital investment in new refineries in this country. They argue that if they were to be able to look forward to obtaining a reasonable return on this investment they had to strive by every means to reduce their distribution costs and they had to be able to rely on a reasonably assured market. Distribution costs could be reduced by larger deliveries and more intensive utilisation of transport. The size of deliveries could be increased by concentrating them as far as possible upon the stations of those retailers who were prepared to deal with one supplier exclusively. But in 1950, when petrol rationing came to an end, the condition of the retail trade was such that this measure was not, by itself, sufficient for the companies' purpose. The retailers had also to be induced to install larger petrol tanks and to improve their stations in other ways which would give them increased turnover. The

retail business was largely in the hands of small traders who could not themselves provide the capital to finance the necessary improvements. Thus the solus system, it is said, came into being as a means of providing the suppliers with security of outlet, of enabling them to concentrate their deliveries and of affording the retailers concerned some financial benefit to be used for immediate improvements; in these conditions of contractual security, moreover, the petrol companies could afford themselves to provide on generous terms capital for more fundamental improvements, such as the complete reconstruction of stations or the building of new stations.

366. The petrol companies go on to argue that the solus system benefits not only themselves and the retailers who participate in it but also the public as buyers of petrol. The saving in cost must, it is said, be reflected in reduction in retail price because the suppliers are competing with one another for their shares of the market, and the solus arrangements, by associating brand names with particular stations, make this competition all the sharper. The petrol companies claim, too, that their competitive efforts to obtain custom for their products by improving the stations from which these are sold have had a very great effect in producing more efficient and attractive layout of premises and forecourt and better amenities and service. In their view, moreover, the system actually assists the motorist to find more readily the particular petrol he wants; for no multi-brand station could sell all grades of all brands but a solus station selling the required brand can (if the brand is sold on a national scale) be found at reasonable intervals and can normally be relied on to supply the required grade of that brand. Finally the companies deny that the system leads to a wasteful proliferation of petrol stations. Such a development, they say, would cancel the economies they set out to achieve, and they point to the marked increase in average annual turnover of petrol stations (see paragraph 62) as evidence that there has in fact been no excessive building of new stations.

367. Though we have found it necessary to examine the petrol companies' motives in entering into the solus arrangements we are called upon to judge not the motives but the effects of those arrangements. Thus the question we have to answer is not whether it is right that the companies should seek security of outlet by entering into solus arrangements but whether under those arrangements petrol is distributed as conveniently, efficiently and cheaply as it would be under any alternative system.

368. Over a wide field of consumer goods it would obviously be wasteful and against the public interest to set up retail distributing points each devoted wholly or mainly to selling one brand of one commodity. Some of the criticism of the solus system derives from the assumption that petrol is within this field and that the consumer, in this case the motorist, has a natural right to expect that there will normally be available at any petrol station a wide choice of brands and grades. The retailing of petrol, however, presents special problems. Each grade of each brand must ordinarily be stored separately and dispensed through its own separate pump* on a forecourt giving access and egress for vehicles. In the unlikely event that a petrol station should

* Blending pumps—which can be used to deliver different grades of petrol by mixing petrol of high and low octane rating in varying proportions—have been introduced into this country but are not so far in wide use (see paragraph 272). They may enable a petrol station to provide all grades of a given brand with fewer pumps and fewer tanks.

undertake to sell all grades of the five major groups alone it would need to install as many as 28 pumps and tanks; while comprehensive coverage of all brands now being marketed in this country would involve a far higher figure. At present, though the number of pumps per station varies fairly widely the average over the whole country appears to be about three. It is obvious, therefore, that under a mixed site system the stations offering a wide choice of brands would be few and far between and that in the foreseeable future the average petrol station could not in any event be expected to offer more than a small proportion of the available grades and brands.

369. In these circumstances it is natural and economical for a great many stations to confine the grades they offer to those of one brand or of the brands of one supplying group. As a result of the solus arrangements this practice has now been adopted by more than 95 per cent. of all retail stations and has been made contractual for periods varying from one to twenty or more years. Our main concern is with the merits of the petrol companies' claim that this contractual basis is essential not only as a means of securing their outlets but also to enable them to achieve economies in distribution and to improve and develop retail stations in a situation of rapidly growing demand.

370. Four of the leading petrol companies have submitted detailed calculations, supported in two cases by independent evidence, of the saving in cost they claim to have been able to achieve through solus trading (see Chapter 9 and paragraphs 319 to 323). As they all point out such calculations, involving as they do comparisons between actual and hypothetical positions, must be based on a number of assumptions which are not capable of proof or disproof. After taking account of all these qualifications and of the various methods of approach to the problem adopted by the different companies it may be said that, very roughly, these companies have all arrived independently at figures in the region of 1d. per gallon as the net saving on distribution cost attributable to solus trading. They assert that this is a true net saving which is not offset by increases in cost also arising from the solus arrangements. Thus they argue that the solus rebate—which if treated as an additional cost would approximately cancel out the estimated saving—is the equivalent of sales promotion expenditure or of a sacrifice of immediate profit or of a reduction of wholesale price for the sake of increased turnover and reduced cost, and that allowances or expenditure for this purpose would be no less in the absence of solus arrangements. Where they receive a low return on their investments—in purchase of stations or by way of loan—they advance similar arguments against the suggestion that the difference between the return an independent investor would expect and that actually received might be regarded as an additional cost. They assert, too, that competition between suppliers, and between retailers selling their products, ensures that the saving in cost resulting from the solus arrangements will be passed on to the public.

371. We are satisfied that single-brand petrol stations result in greater concentration of deliveries with the possibility of larger average drops and that any such development must provide opportunities for savings in the cost of distribution. We are also satisfied that since the introduction of solus arrangements the size of the average drop has increased substantially. Figures obtained from S.M. & B.P., for instance, show that its average drop to retailers was 2.4 times as large in 1963 as it had been in 1951, while Esso gives a figure of average drop to solus retailers in 1962 which is 2.6 times the corres-

ponding figure for 1951* (see footnote † to paragraph 319). It remains very much a matter for argument, however, how far this increase in the size of deliveries and the consequent saving in cost can be attributed to the solus arrangements. The companies themselves recognise that post hoc ergo propter hoc is not an acceptable argument in the circumstances and in general have attempted, in their calculations of savings resulting from the solus arrangements, to eliminate savings which, in their view, they could have achieved in any event. They argue, in effect, that the very large increase in total demand which has taken place over the period in which the arrangements have been in operation would not have resulted in savings in delivery costs unless at the same time the retail stations were so improved as to enable them to cope with this growing traffic. The security provided by the solus contracts, it is said, not only makes it worth while for the supplying companies to finance improvements but also makes possible the orderly planning of deliveries which is responsible for much of the saving.

372. While we see some force in these arguments it does not follow that the savings attributable to the solus arrangements have been properly quantified. Having regard to what has been said about the increase in the average drop it is also relevant that total sales of petrol to retailers in 1963 were 2.2 times as large as in 1951 and that, although there was some increase in the number of petrol stations, this increased demand was met very largely by increased average turnover per petrol station. Thus it appears, at any rate in the cases of S.M. & B.P. and Esso, that the size of deliveries has risen rather faster than turnover but not strikingly so. It may be said, of course, that but for the solus arrangements the size of deliveries would not even have been able to keep pace with the increase in demand. There is undoubtedly some justice in this contention so far as it is concerned with the introduction and earlier development of the solus system. The report of the Waleran Committee in 1949 (see paragraph 61) had pointed to the need to modernise the existing system of petrol stations if they were to be able to meet the demand which might be expected as both vehicles and petrol become more freely available. At that time, however, it would have been difficult for the retail trade to obtain from sources other than the petrol companies the capital necessary for this development, and to this extent we think that the petrol companies are justified in contending that the solus arrangements helped materially to bring it about and thereby to reduce the cost of distribution. In the longer term, however, the effects of the solus arrangements on the development of the retail trade and on the cost of distribution are less clear. The total retail turnover in petrol is now in the region of £700 million per annum (including duty), and it seems to us likely that this trade, with its obvious potential growth, would in the long run have attracted capital for development from other sources if the petrol companies had not been first in the field. The extent to which the economies which have already been achieved and any further savings which may be made in future can be attributed to the solus arrangements cannot therefore be ascertained with any degree of certainty. We are, nevertheless, satisfied that some net savings in the petrol companies' costs of distribution have been achieved as a result of the solus system.

373. The contention that competition ensures that all savings in distribution

* Esso's average drop to multi-brand sites increased over the same period by only 1.4 times.

are passed on to the consumer does not appear to us entirely tenable. The petrol companies have produced figures which show that retail prices, exclusive of duty, were approximately the same in October, 1963 as in October, 1953. Having regard to the general inflation of prices over the period we must agree that there are few other commodities of which the same could be said. The relation between price and cost is, however, extraordinarily difficult to elucidate in the case of petrol. We have not attempted to make a full examination of costs; and we doubt whether anything short of a complete analysis of costs for all refinery products, coupled with an examination of changes in the balance of demand for the various products and of conditions in the various markets, would throw much light on the subject. Without such an examination we cannot say how far the comparative stability of retail petrol prices may be due to the change in the balance of supply and demand, to the large growth in turnover not only of petrol but of other petroleum products, to changed conditions in the oilfields and to improvements in technique and efficiency there, in transport and at the refineries.

374. We think it significant, moreover, that the net buying prices of solus retailers were substantially lower in October, 1963 than in October, 1953. In 1953 these prices, excluding duty and after allowing for normal solus rebate, were 1s. 3½d. per gallon for standard grade and 1s. 6½d. for premium grade, but in 1963 (except for cut-price brands) they were 1s. 0¾d. and 1s. 4¾d. respectively. That there were not corresponding reductions in retail prices is attributable to increases in the costs incurred and the margins obtained by retailers. The retail prices at which the different brands are sold have not, it is true, remained entirely uniform, grade for grade and zone for zone. The appearance on the market since 1960 of petrol sold at lower retail prices than those of the leading suppliers' brands was naturally a disturbing factor for retailers of the established brands. The leading suppliers, while relaxing to some extent their control of the retail prices of their own brands (see paragraph 68), nevertheless continued to recommend retail prices which at any given time were the same or very similar as between the different suppliers.* These recommended prices were very largely observed by retailers; and even in recent months, when some suppliers have not been making any recommendations, it appears that, subject to small variations, the recommendations made by the largest supplier, S.M. & B.P., have served to establish the general level of retail prices. Although we are satisfied that the tendency towards uniformity of retail price is a result of price leadership and not of any agreement or understanding between the suppliers concerned, it is clear that each of them has pursued a policy which has permitted, and has been intended to permit, retailers to take an increasing margin which has largely offset the fall in wholesale prices. Thus if, as was generally the case, the solus retailer sold at recommended prices his margin on standard grade rose in the ten years to October, 1963 from 4¾d. per gallon (on a buying price of 1s. 3½d.) to 6¼d. (on a buying price of 1s. 0¾d.), and that on premium grade from 4¾d. (buying price 1s. 6½d.) to 7¼d. (buying price 1s. 4¾d.). The margins available to retailers without solus agreements also rose though not to quite the same extent. From July, 1964 most retailers have obtained a further rise of ½d. in their margins on some or all grades, and these margins have not been affected by the

* The main variation was a difference of ¼d., as between the Esso group and other leading suppliers, in the recommended retail price for premium grade at certain times (see Table X).

reductions in prices which took place in April, 1965; thus at present (subject to some small variations between brands) the solus retailer's margin on standard grade is 6½d. (on a buying price of 1s. 0½d.) and on premium grade 7½d. (on a buying price of 1s. 3¼d.).*

375. It seems clear, therefore, that the consumer has not obtained the benefit of all savings achieved, since the retailer, and more particularly the solus retailer, has obtained a quite substantial increase of margin on a much higher turnover. It may well be that the retail trade could not in any event have been maintained on an economic basis without a considerable increase in the margin; and we do not think it should be inferred that the solus rebate or any other part of the retailer's margin is an additional cost attributable to the solus arrangements and borne by the consumer. While we are not satisfied in the light of the facts set out above that it can be said that the solus arrangements have led to lower retail prices, we think that a cost reduction must over the years have exercised some downward pressure upon petrol prices.

376. In discussing the effect of the solus arrangements on costs and prices we have necessarily dealt to some extent with the complementary claim that the arrangements lead to better petrol stations giving better service. The petrol companies have clearly made a considerable effort to bring about improvements not only of the kind that lead to reduction in cost but also in regard to the provision of amenities, to convenience and safety of approach and egress and to attentive and efficient service. We think there can be no doubt that there has been a substantial degree of improvement and that the petrol companies under solus conditions have made a major contribution by accepting a large measure of direct responsibility in these matters and giving a lead by encouragement and financial help at independently owned solus stations and by example at the stations which they own themselves.

377. We do not accept that the solus system has had any appreciable effect in restricting the motorist's freedom to buy the petrol of his choice. As we have said in paragraph 368, no petrol station could offer more than a small minority of all the grades and brands which are on the market. Under the solus system the motorist undoubtedly gets better advance warning of the brand on sale at the station he is approaching. In many cases he may be more concerned to find a desired grade of petrol than any particular brand, but if the brand advertised is one that he is prepared to buy he may normally expect that the grade of his choice will be available there. If he wants a different brand he can expect to find a station selling that brand within a reasonable distance provided that it is one which is sold on a national scale. If he should prefer the brand of one of the smaller suppliers he would know in any event that there were only a few stations at which he could obtain it. Thus single-brand stations are normally convenient to the motorist because he is mobile; if he has ceased to be mobile because he has run out of petrol the choice of brand is likely to be a very secondary consideration in any event.

378. The allegation that the solus system must lead to over-proliferation of petrol stations also appears to us to be unfounded in the light of experience of the system up to the present. There is, no doubt, a theoretical danger that the petrol companies will tend to follow one another in creating exclusive

* Solus retailers of Esso petrol may obtain a further 3d. per gallon in the current year on the amount by which their gallonage exceeds that of the previous year (see paragraph 72).

outlets on particular stretches of road or within small districts; and if carried to excess this could have the result that some five or six stations would be set up in a district where demand was only sufficient to provide a living for one or two. We have seen no evidence that the system has in fact brought about such a state of affairs as this or is likely to do so in the near future. Our attention has been drawn to certain roads and areas where the numbers of petrol stations have increased in recent years (see paragraphs 184 and 185), but in the light of the petrol companies' explanations (see paragraph 189) we see no reason to believe that in general the new stations are not justified by the traffic. Although statistics of petrol stations and pumps are not entirely reliable, it is clear that neither stations nor pumps have multiplied in proportion to the increase in total sales of petrol since the solus arrangements were introduced. The average annual gallonage of petrol stations in this country is more than twice what it was before the war and is probably increasing year by year; and the same is probably true of annual gallonage per pump installed. While we do not accept that this is entirely a result of the solus system we think that the petrol companies are justified in pointing to it as evidence that the system has not produced that effect of proliferation which has been alleged. The situation here is very different in this respect from that which was reported upon in 1961 by the Fair Trade Commission in the Irish Republic;* there both throughput per station and throughput per pump were shown to have been falling over the years 1951 to 1959. Apart from the fact that traffic conditions are very different in this country, we think it unlikely that the petrol companies, which themselves have a stake in the retail trade, would willingly see the creation of conditions under which the plant and premises they have invested in would be under-employed. Moreover, our reading of the Irish report does not suggest that planning legislation played any part in determining the numbers or siting of new petrol stations in that country. If, in spite of what has been said above, competition for secure outlets were to impel the petrol companies towards a course which might lead to over-proliferation of stations in the United Kingdom, it appears to us that, in practice, sufficient regard is and would be paid by planning authorities to the question of need to prevent such a situation from developing.

379. To summarise our views as expressed so far, we consider that the solus system for petrol, as such, has led to some reduction in suppliers' costs which has exerted a downward pressure on prices, had some beneficial effect in producing improvements in petrol stations, does not restrict the motorist's choice of petrol and does not, in practice, lead to the setting up of excessive numbers of petrol stations. It follows from this that we think it perfectly possible to have a system of solus trading in petrol which does not operate against the public interest. In arriving at this preliminary conclusion we have left out of account a number of features of the system as now practised in this country. These are features which are capable of being altered or eliminated without destroying the basis of solus trading. It remains for us to consider whether any of these features should be altered or eliminated, or in other words whether the solus arrangements, as they exist at present, operate or may be expected to operate against the public interest in any particular

* Fair Trade Commission: Report of Enquiry into the Conditions which obtain in regard to the supply and distribution of motor spirit and motor vehicle lubricating oil (March, 1961).

respects. Broadly the questions which arise in this connection are concerned with the effects upon the public interest of:

- (i) the length of term of solus agreements;
- (ii) the terms and conditions of the loans which are made by petrol suppliers to retailers;
- (iii) the provisions of agreements concerned with the supply of petrol equipment by petrol suppliers;
- (iv) the provisions under which petrol retailers accept restrictions on their trade in other petroleum goods, in particular lubricants;
- (v) the degree of control which is, or may be, exercised by the petrol suppliers over the general conduct of their exclusive retailers' businesses, including trade in tyres, batteries and accessories;
- (vi) provisions which restrict the retailer in relation to the sale of his premises, including option clauses and undertakings to obtain the purchaser's acceptance of the exclusive obligations;
- (vii) the acquisition and ownership of retail premises by petrol suppliers and the terms upon which these premises are let to tenants;
- (viii) arrangements at motorway petrol stations.

Length of Term of Agreements

380. We are concerned here with the length of term of ordinary solus agreements between petrol suppliers and retailers who neither are tenants of their suppliers nor have entered into loan or mortgage arrangements with them. In the case of a company-owned station there is, in effect, a permanent solus tie whoever may be the tenant and whatever the term of his agreement. The length of term of tenancy agreements is a matter which requires to be discussed but it involves quite different considerations from those arising in other cases, and we deal with it among other matters arising from the company ownership of petrol stations (see paragraphs 416-419). The term of the solus tie where there are loan arrangements also involves some special problems which we deal with when considering loan arrangements generally (see paragraphs 387 and 388).

381. The length of term of solus agreements varies from one year to twenty or more. None of the companies has a particularly rigid policy but most of them, while willing to treat the term as a matter for negotiation, prefer—except where they own the station—to obtain as long a commitment as possible. The companies say, in effect, that they could not recoup the cost of providing training and technical advice or achieve those economies which result from planned distribution if the pattern were to be constantly interrupted by the termination of short-term agreements; or, in other words, that long-term agreements give more security and, therefore, more opportunity for saving in cost.

382. As will be evident from what we have said in paragraphs 364 to 379, although we do not regard solus trading in petrol as being, in principle, against the public interest we are less confident than are the petrol companies that it brings the public substantial benefits by way of reduction in price. We are, therefore, less impressed by the need for the exclusive tie to be of long duration; and in our view, indeed, the longer the term of the solus tie the greater are the disadvantages of the system. Long-term commitments give the suppliers concerned a greater measure of security of outlet. This additional security,

though desirable no doubt from the suppliers' point of view, does not appear to us to be in the public interest. Given sufficient security, the apportionment of the trade between the various suppliers would tend to become rigid and it would be increasingly difficult for new suppliers to enter the market except by building new stations. The established suppliers in such conditions would also feel freer to pursue what they regarded as their own interests and to control the trade of the retailers more strictly. As we make clear elsewhere (see paragraphs 396-400 and 405-407) we think that the suppliers are already exercising too much control over the retailers' trade in lubricants and that there is a danger that they may interfere with their trade in other goods.

383. We consider therefore that long-term agreements are against the public interest and that, subject to the exceptions mentioned below, the term of a solus agreement for petrol should not exceed five years, though it may provide for continuation thereafter on an annual basis if neither party wishes to terminate it. The exceptional cases, where the retailer has a loan arrangement with a petrol supplier for a period exceeding five years or is the tenant of his petrol supplier, are dealt with in paragraphs 388 and 419.

Loan Arrangements

384. The granting of loans by petrol suppliers to retailers is not, as such, a practice about which we are required to form a judgment. The terms of nearly all loan agreements, however, contain restrictive provisions of the kind with which we are concerned, that is to say they commit the retailer to exclusive trading; and in the few cases where there is no such provision in the loan agreement itself there is a complementary solus agreement between the same parties. The question we have to consider is whether the petrol suppliers, or any of them, make use of their ability to provide finance for retailers by way of loans to obtain commercial advantages for themselves in a way which operates, or may be expected to operate, against the public interest.

385. That the loans are made to obtain commercial advantages for the petrol suppliers is, of course, obvious and not disputed by them. A considerable proportion of the total of all advances by the companies is interest-free, and according to the latest figures we have received from the major companies (relating, approximately, to the position in 1964—see Table XV) the highest net overall return on investments in loans to retailers obtained by any of them was 4.4 per cent., while most of them showed a substantially lower figure. The companies submit that it is quite irrelevant to compare this return with the return an independent investor would expect. Apart from the facts that the companies can themselves borrow money on cheaper terms than retailers could obtain from other sources and that the retailer is a better credit risk to his supplier than to any independent investor, it is said that the loans lead to increased turnover and reduced cost and that these results are not only to the advantage of the petrol suppliers and the retailers concerned but are also in the public interest.

386. As we have already indicated, we accept that the retail trade has needed capital for development. We are not satisfied that the terms on which the petrol suppliers provide this capital do not involve any additional cost on their part, but we think that any increase that there may be at this point is offset by a saving to the retailer who gets the necessary capital more cheaply than he would from any other source. We do not think, therefore, that in general the

low return obtained on loans is itself an indication that the companies are pursuing their own interests at the expense of the public interest; but there may be occasions when loans at uneconomic interest rates are used by suppliers as a means of obtaining control of sites where cut-price petrol would otherwise be sold. We would regard loans made in such circumstances as operating against the public interest, and if such cases should arise we think they should receive consideration by the Board of Trade with a view to applying preventative measures for the future.

387. Apart from this matter the principal criticisms levelled against the loan arrangements are, first, that the terms of many loan agreements preclude early repayment, and secondly, that loans are frequently used to obtain very long-term commitments to exclusive trading. Several of the petrol companies have acknowledged that they regard a mortgage agreement as affording them far greater security in respect of the exclusive tie than a simple solus agreement. They argue that, having advanced money on generous terms, they are entitled to secure that they, rather than their competitors, should obtain the benefits accruing from the investment over the contractual period of repayment; and this advantage is not one that they can lightly forego if the retailer—possibly by approaching a competitor company—should find himself in a position to make premature repayment. As to the length of term, they agree that the exclusive tie is, on average, longer when there is a loan, but this is principally because the retailer could not afford to repay over a shorter term. The companies say that, in practice, they are not inflexible and do not necessarily refuse to accept early repayment if satisfied that the exclusive tie will remain intact.*

388. As we have made clear in paragraphs 382 and 383 we think that exclusive commitments over very long terms are normally against the public interest. Where, however, a retailer accepts a loan from a petrol supplier which he cannot undertake to repay except over a long period, we do not think it unreasonable that he should be asked to accept an exclusive tie over the same period. It does not follow that it is reasonable to insist on maintenance of the tie if a change in the retailer's circumstances should enable him to repay the loan earlier than he had expected. We think a greater degree of flexibility in this matter would be beneficial and that a retailer who is able and willing to repay a loan should not be tied to a particular supplier for a period beyond the maximum of five years which, in our view, is desirable for the ordinary solus agreement. If this means that a retailer may be able to repay a loan from one supplier by obtaining a replacement loan from another supplier to whom he wishes to transfer his custom we think it of some advantage that his bargaining power should be strengthened to this extent. Our view accordingly is that when a petrol supplier makes a loan to a retailer for a period exceeding five years any solus tie between that supplier and that retailer may be expressed to extend to but not beyond the latest date for repayment of the loan, but the loan agreement should provide that the retailer may at his option repay in full at any time after five years from the date of the loan and on such repayment the exclusive tie shall terminate. In this connection we think it desirable that the contractual period of repayment should be expressed as a definite period and not—as is the case in a few loan agreements—as the

* Esso is prepared on occasion to accept pre-payment of all but a nominal amount of the loan but, in order to retain its rights under the loan agreement, insists that this nominal remainder shall not be paid until the final due date (see paragraph 132).

period over which a specified gallonage of petrol will be purchased by the retailer.

Arrangements concerning Petrol Equipment

389. The petrol companies supply petrol storage tanks to some retailers on so-called loan terms, but, in effect, the tank becomes a gift if the retailer observes his undertaking to use it only for the supplier's brand of petrol throughout the contractual period (normally twenty years). Exceptionally, Regent has on occasion used a form of tank loan agreement under which the retailer enters into an exclusive commitment not only in respect of the tank or tanks supplied but for the station as a whole (see paragraph 149). Retailers can also obtain petrol pumps and tanks from the petrol companies on favourable hire purchase terms if they undertake to use them only for the supplier's brand.

390. We do not think it necessary to examine in detail the various arguments that have been advanced in justification of these arrangements. While the hire purchase arrangements may well, as the companies assert, be self-balancing so far as they are concerned, the loan arrangements clearly involve a substantial outlay on their part; but as in the case of monetary loans (see paragraph 386) it does not seem to us to follow that there is any additional cost which the ultimate purchaser of petrol has to pay. Our main concern with these arrangements is that they should not be a means of extending the retailer's exclusive obligations under his solus agreement, since we consider that this is against the public interest. In our view, therefore, all hire purchase agreements for petrol equipment between petrol suppliers and retailers which contain provisions restricting the retailer's use of that equipment should provide for the property in the equipment to pass unrestricted to the retailer at any time on payment of the balance of the purchase price. Similarly agreements between petrol suppliers and retailers for the "loan" of petrol equipment which contain such restrictive provisions should provide that the property in the tank shall pass unrestricted to the retailer on payment of that proportion of the original price which is appropriate to the unexpired part of the original contractual term. We understand that the companies do, to a large extent, operate on these principles as a matter of discretion, but we think that they ought to be applicable as a matter of right. Further, we think that no equipment agreement should be so expressed as to restrict the use of any equipment other than that which is being sold or loaned under that agreement.

Restrictions on the Supply of Lubricants and other Petroleum Products

391. Solus retailers' obligations in relation to lubricants vary widely. Every supplier of lubricants has his own system of quantity rebates of which a retailer can take advantage without entering into any restrictive obligation. Most of the petrol companies, however, offer various additional allowances to retailers who agree to give some form of preference to their brands of lubricants. A few solus petrol retailers have accepted no obligation at all in regard to lubricants, or have undertaken no more than that they will stock and do their best to promote the sale of their petrol supplier's brand. Some are restricted only as to the display and advertising of competitive brands. Others have agreed to purchase at least a specified quantity of their petrol

supplier's brand annually or that their annual purchases of that brand shall form at least a specified proportion of their total requirements. Finally, some, including many tenants of petrol companies, have undertaken to stock and sell their petrol supplier's brand exclusively.

392. The petrol companies' arguments in justification of their various restrictive arrangements with retailers in regard to lubricants are, very largely, an extension of those they have advanced in connection with their arrangements for petrol. Because of the heavy investment involved in the setting up of refineries (see paragraph 365), the refiner must, it is said, seek to market all refinery products to his best advantage. Among these products are the base oils from which finished lubricants are made, and the companies are convinced that their own advantage lies in the direction of making and marketing their own brands of finished lubricants. This, it is said, is also in the public interest since it has created a more competitive situation than existed formerly. Before the war and up to about 1950 the retail market for lubricants was dominated by Castrol. The petrol companies say that the public interest has been well served by the emergence of more formidable competitors with this "monopoly"; they claim that, as a result, innovations and improvements in quality have been introduced to the benefit of the motoring public.

393. Some of the companies go on to say that it is also natural that they should make use of their retail petrol outlets to market their own brands of lubricants.* As in the case of petrol, no retail station can in practice stock and sell more than a minority of the brands of lubricants which are available. Confronted as they were in the 1950's with a situation where Castrol had, in their belief, about half of the market, the petrol companies concentrated on improving their sales to those retailers who had already shown themselves willing to sell their petrol exclusively. As one supplier argues in effect, he could only obtain his fair share of the market by persuading some retailers to take proportionally more than that share; and the solus customers for petrol were the obvious candidates for persuasion. The companies claim that, as in the case of petrol, the public's freedom of choice of lubricants has not been impeded. The various petrol companies' brands of lubricants can be bought at the respective solus stations, while Castrol lubricants can, it is said, still be obtained at most stations. They contend, in any event, that their methods of competing with Castrol are perfectly fair and that it has been, and is, open to Castrol to use the same methods. At company-owned stations they hold that they are entitled to ensure that their own brands are sold exclusively if they should think that to be good policy.

394. We accept that it is reasonable that refiners should wish to market, and promote the sale of, their own brands of lubricants. We are not called upon to judge the effects on the public interest of Castrol's alleged "monopoly" in this field, and we do not think it is for us to decide whether, in this trade, the future lies with the specialist or with the integrated manufacturer of petroleum products. We do not necessarily accept all of the petrol companies'

* Esso, which does not believe in linking its arrangements concerning lubricants with its solus agreements and also appears to differ to some extent from other petrol companies in that it regards the production of lubricants, and the base oils therefor, as separate from its normal refinery activities (see paragraph 343), does not use this argument. In practice, however, its restrictive arrangements for lubricants have for the most part been made with its solus customers for petrol (see paragraph 216).

claims but we think it likely that in the existing circumstances the public interest is best served if the dominant supplier has to face vigorous competition.

395. Up to a point also we accept that it is reasonable that each petrol company should seek to maximise its sales of its own brands of lubricants at its exclusive petrol outlets. We think that, without any agreement at all between petrol supplier and retailer in relation to lubricants, the existence of a solus tie for petrol must, generally speaking, afford the supplier a significant advantage in promoting the sale of his lubricants at the retail station concerned. The supplier's name is advertised at the station and customers who want his lubricants may well be attracted in the expectation of being able to buy them there; and most retailers in such circumstances would be disposed to co-operate in promoting their sales. We do not think that such an effect of the solus petrol arrangements is in itself objectionable, and by concentrating their sales of lubricants the petrol companies may achieve some saving in cost.

396. When concentration is pursued, however, to a point where retailers are induced to enter into specific commitments as to the amounts of the petrol supplier's lubricants that they will buy annually or as to the restrictions that will be observed in the advertising and sale of other brands of lubricants (amounting in extreme cases to a completely exclusive undertaking) other considerations arise. In our view the effect of such arrangements on the customer's freedom is, or is liable to be, of rather more importance than the petrol companies' submissions suggest. Motorists, in general, are more selective about the brand of lubricant they require than about the brand of petrol and they naturally prefer to be able to buy both petrol and lubricants at the same station. Even if there were no restrictive arrangements with regard to lubricants, however, motorists would not find an unlimited range of brands available at every, or indeed at any, station. While the retailing of lubricants does not involve quite such problems as we have described in relation to the retailing of petrol (see paragraph 368), there is a large number of brands on the market and each brand-owner makes a range of lubricants for different needs. In any conditions, therefore, most retailers would stock only a few of all the available brands of lubricants. The motorist who required a leading brand of petrol and the same brand of lubricant would probably soon find a station which sold both, whether under solus or mixed trading conditions. With any other combination of needs he might meet more difficulty under either system unless the brand of lubricant he wanted was in such general demand that most retailers could be expected to sell it. Castrol lubricants certainly answered to this description before the introduction of the solus arrangements, and we believe it is true, as the petrol companies have said, that this brand can still be bought at most stations. It does not appear to us to follow that such a state of affairs will necessarily continue if the petrol companies remain free to pursue their policies; and Castrol in any event is not the only independent supplier of lubricants whose interests have to be taken into account.

397. With more than 95 per cent. of petrol stations tied to one or another of the petrol companies there is a very real danger that the brands of the independent lubricants suppliers may be partly or wholly excluded from the market. All the independent lubricants manufacturers have, in fact, felt the effects in recent years of the petrol companies' competition. The smaller of

these independent manufacturers appear to find it increasingly difficult to retain a foothold in the retail market. One of them says that the solus system has prevented him from exploiting technical improvements which he had developed ahead of the larger producers, though it may be that the experience of this and other small suppliers in the face of growing competition from the petrol companies would have been little different even in the absence of solus arrangements. Castrol, on the other hand, although its share has declined, remains a leading supplier. This result reflects the fact that the petrol companies, as we have shown in paragraph 391, have not adopted a completely exclusive policy over the whole range of their solus outlets. We have little doubt that most of the petrol companies would be willing to impose a more completely exclusive policy if they thought this practicable, and that they have been deterred so far from adopting such a policy mainly because motorists are more insistent on keeping to one chosen brand than they are when buying petrol and, in particular, because there is a public demand for Castrol lubricants which is reflected in the reluctance of a great many retailers to refrain from selling that brand.

398. Castrol, itself, while agreeing that it has so far withstood the competition of the petrol companies reasonably well, has submitted that it would have suffered much greater losses of trade if existing agreements had been fully enforced and that the real danger lies in the future when—if they retain their freedom of action—the petrol companies will bring increasing pressure to bear on their solus retailers. The essence of the case for Castrol and the other independent manufacturers is that it is inherently unfair that a supplier's share of the lubricants market should depend in any way upon his ability to supply petrol. The reply of some of the petrol companies to this is that it is not unfair since, so far as refiners are concerned, the costs and profits of marketing the two products are interdependent, and that it has been open to Castrol to become a supplier of petrol and adopt solus trading, just as Mobil did after the war. We do not consider this latter argument realistic, since Castrol, unlike Mobil, is not part of an international group undertaking both the production of crude oil and refining. Although we would not go so far as to say that a petrol supplier who also supplies lubricants should not take any advantage of that fact, we think that there would be dangers in permitting unlimited exploitation of this advantage.

399. One petrol supplier, S.M. & B.P., has been conspicuously successful in increasing its share of the lubricants market since solus trading in petrol was introduced (see Table XII). S.M. & B.P., to a greater extent than any other supplier with the possible exception of Regent, has made the acceptance of a restriction in respect of lubricants a condition of its solus petrol agreements with retailers; it also appears on the whole to have procured a greater degree of exclusive dealing in lubricants on the part of retailers than other suppliers. The Esso group on the other hand generally makes separate agreements for petrol and lubricants and does not make the one conditional on the other; and Mobil, except at its own stations, does not normally seek to restrict the sale of other brands of lubricants other than by offering quantity rebates on its own brand. The Esso group's share of the lubricants trade has been static and Mobil's has declined substantially.

400. With all of these considerations in mind, our view is that, while petrol suppliers should not be prohibited from entering into arrangements with their

solus petrol retailers under which the latter would undertake to stock and sell their brands of lubricants or from offering retailers quantity rebates on lubricants, any undertaking on the part of the retailer which restricts his freedom to stock and sell any brands of lubricants he wishes is against the public interest. The agreements concerned with the supply of petrol (including where applicable the licences or tenancy agreements for company-owned stations) should not, therefore, commit the retailer to purchase or sell specified quantities of the petrol supplier's lubricants or to take the supplier's lubricants for the whole or any specified proportion of his total requirements, or to limit in any way the purchase, sale, stocking, use, display or advertising of other brands of lubricants. Furthermore no petrol company or other supplier of lubricants should make separate agreements with petrol retailers containing any such restriction or offer rebates or similar allowances upon conditions involving any such restrictions.

401. Other products which are covered by some of the agreements between the petrol companies and petrol retailers are derv, kerosene and anti-freeze preparations. Commercial users are the principal consumers of derv and most of their purchases are made direct from the suppliers and not through petrol stations. Not all petrol stations, therefore, stock or sell this product, but where a solus station does so we can see no objection to the solus agreement for petrol (subject to those limitations which we recommend in this report) applying also to derv. Kerosene is, of course, distributed through many retail outlets which have nothing to do with the petrol trade and with which we are not concerned, but it is also handled by some petrol stations. The sale of anti-freeze preparations is a natural part of the trade of petrol stations; the petrol companies are not the only producers of these preparations and the situation is in some ways parallel to that for lubricants though the motorist buys anti-freeze preparations less frequently than lubricants. We think that petrol stations should enjoy the same measure of freedom in relation to kerosene and anti-freeze preparations as we recommend in the case of lubricants; the views expressed in paragraph 400 therefore apply also to these two products when marketed by petrol suppliers through petrol stations.

Control of Retailers' Businesses (including Trade in Tyres, Batteries, and Accessories)

402. Under this head we are concerned, in effect, with the question whether the solus arrangements afford the petrol suppliers an undesirable degree of control over retailers' activities and businesses generally. Under some agreements, for instance, retailers undertake obligations as to their hours of opening, the services they will provide to customers, or even as to certain types of business that they will not conduct on the premises. But apart from obligations which are expressed in the agreements the solus relationship may enable the petrol supplier to induce, or bring pressure to bear upon, the retailer to conduct his business in a way which the supplier thinks will be in his interest. Except for some undertakings of a very general character in certain agreements we have seen no evidence that solus retailers have entered into restrictive agreements with their petrol suppliers concerning their dealings in tyres, batteries or accessories; but it is quite clear that one petrol company in particular, Regent, is using the solus relationship to induce some of its retailers to concentrate on the brands of certain manufacturers of such goods, from

whom the petrol company receives special commissions. We consider that under the terms of our reference we are properly concerned with such matters because our judgment of the effects of the solus arrangements on the public interest must be affected by the consideration that they can lead to practices of this kind.

403. We do not think that provisions in existing solus agreements relating to the general conduct of the retailers' business could be regarded as onerous or oppressive. Commitments relating to hours of opening and the services to be provided are not, as a rule, very specific in terms. In some company-owned stations tenancy agreements prohibit the carrying on of certain kinds of ancillary businesses (such as car sales), while others merely provide that if such a business should be carried on it must not interfere with the sale of petrol (for example, by obstructing access to the forecourt). In some cases it may be necessary for the tenant to obtain the petrol company's consent if he wishes to set up as a vehicle repairer. None of these provisions seems to us unreasonable.

404. As we are concerned here with some of the more indirect attributes of the solus system, it is convenient to consider at this point some allegations which have been made to us to the effect that retailers have, on occasion, been induced to sign agreements by misrepresentations and threats (see paragraph 291). All the petrol companies assert that such conduct on the part of their representatives would be completely contrary to company policy, that it would not be in their own interests to recruit an unwilling or disgruntled customer and that they have issued strict instructions on the matter which they believe are observed. It may well be that in this trade as in others salesmen have sometimes misrepresented both the advantages of signing an agreement and the action the company might take if the retailer did not sign an agreement. There are also no doubt some retailers who sign agreements without proper consideration and subsequently blame the salesman. As we have said, retailers can easily obtain advice before signing an agreement with a petrol supplier, and we believe the retail trade is, on the whole, conscious that it has some bargaining power at this point. We do not find that there is any evidence of deliberate or serious abuse on the part of the petrol suppliers but think that all of them should review their instructions to their representatives to ensure that their policies as expressed to us are fully understood and carried out.

405. It remains for us to consider whether the solus relationship has led, or might lead, to an undesirable degree of influence by the petrol supplier over the whole of the business of the retailer. All the companies have asserted that they have no intention of trying to impose any restriction on retailers' sales of tyres, batteries and motor accessories. Regent, nevertheless, is now taking an active interest in this field. Under an agreement signed in 1963 between Regent and Firestone Tyre and Rubber Co. Ltd. the former receives a commission of 10 per cent. (calculated on the net price to the retailer or, where appropriate, to the wholesaler who resells to the retailer) on purchases of Firestone tyres not only by Regent itself but also by its tenants and other solus retailers. Regent for its part has not so far sought to obtain any undertakings from its solus retailers which would restrict them as to their purchases or sales of tyres; but, without disclosing the nature of its agreement with Firestone, it has used its "merchandising field force" to persuade certain of its solus

retailers of the advantages of making contact with Firestone with a view to operating a "selected tyre outlet". According to Regent's confidential instructions to branch managers it was expected that "solus tyre representation will gradually be the accepted pattern for the U.K. market" and "at the moment" the objective should be "75 per cent. one manufacturer".* Regent also has some less formal arrangements by which it receives commissions from three battery manufacturers and has been in contact with another tyre manufacturer. These activities on the part of Regent are recent. If they were to be allowed to continue without interference it is impossible to say how far they might develop or what effect they might have upon the policies of the other petrol companies.

406. Regent's policy of short-term leases for tenants of company-owned stations (to which we refer also in paragraph 417) is possibly relevant to its attitude to T.B.A. We have noted that both in Canada and the United States short leases appear to be associated with a high degree of control of retailers' businesses, with active participation by the petrol companies in the accessories trade. We think that there is a very real danger that the solus system, if left to develop unchecked, could become gradually more restrictive over a wider field. We can see no advantage in petrol companies setting out to promote the sale of various brands of goods which are not petroleum products, and commissions such as those received by Regent on goods which it does not handle seem likely in the long run to add to the cost of distribution. The petrol company's intervention in this case appears to us objectionable because it is using its captive market—the solus retailers—to influence the distribution of products which it does not make, without the expectation that this will bring about a saving in cost but solely for its own financial advantage. Any transactions of this nature relating to the businesses of retailers with whom the petrol suppliers have solus relationships are in our opinion against the public interest.

407. In our view, therefore, no petrol supplier should accept any commission or other benefit in respect of the sales or purchases of tyres, batteries, accessories or other goods not being petroleum products by any retailer with whom he has a solus agreement, and any existing arrangement or agreement which has such an effect should be terminated. Furthermore, although as we have said we have seen no evidence that any petrol company has so far made restrictive agreements with retailers concerning their trade in such goods, some of the companies might well do so in future and we consider that the solus arrangements for petrol may be expected to operate against the public interest in as much as they may tend to lead to developments of this kind. We think, therefore, that the petrol suppliers should be precluded from making any agreements with their solus retailers under which the latter would undertake any restrictive obligations in relation to the purchase, sale, stocking, display of advertising of such goods.

Restrictions on Disposal of Retail Premises

408. Most solus agreements provide, in effect, that the retailer shall not sell his premises during the term of the agreement without procuring that the

* See paragraph 238. We have noted Regent's subsequent explanation that these remarks did not represent company policy. We do not think that this can have been the impression conveyed to branch managers who received the instructions.

purchaser shall accept the solus obligation. In some agreements there is also a clause giving the petrol supplier an option to purchase (subject to normal safeguards as to the price) should the retailer wish to sell the station; such a clause is not normally required by the supplier or accepted by the retailer unless there is also a loan arrangement, but some companies insert these clauses more indiscriminately.

409. The petrol companies say that a solus agreement expresses a bargain between the two parties from which both derive benefits; the retailer receives his benefits, by way of rebate and other assistance from the company, from the commencement of the agreement, but the benefits to the company, by way of security and the ability to plan deliveries, are impaired if the exclusive tie is not maintained for the full term. The companies submit that clauses requiring the transfer of solus obligations on sale are fully justified on this ground and also as a safeguard against the retailer evading his obligations by transferring the ownership while retaining control (e.g. by selling the station to a limited company which he effectively owns). Some of the companies argue, indeed, that the relevant clause in their forms of agreement is a concession to the retailer who is thereby conditionally enabled to obtain release from a positive obligation to supply the particular brand of petrol over the full contractual term.

410. The principal objection which has been raised to clauses requiring transfer of obligations is that the retailer who, for one reason or another, has to sell his station during the term of his agreement may find that prospective purchasers object to the tie and that the price he can realise is accordingly diminished; this it is said may create hardship, particularly in cases where the station must be sold because of the death or ill-health of the working proprietor. We think, however, that this difficulty has been exaggerated. The retail trade is not, on the whole, hostile to the solus system and we have no reason to think that the existence of an exclusive tie would deter most prospective purchasers or materially affect the realisable price. Moreover, there can be little doubt that, in general, the fact that the petrol companies are known to be in the market for petrol stations enhances the prices that are obtained for them, and to this extent the retailer who wishes to sell probably obtains some benefit in price. The benefit may be slightly greater if he can afford to wait until his solus agreement expires—a delay which, if our view as to the maximum term of agreements is accepted, need not be inordinately long. We accordingly see no objection to the inclusion in agreements of clauses requiring the transfer of solus obligations on sale of the station.

411. Option clauses in loan agreements are defended by the companies on the ground that it is justifiable to secure to themselves the right to retain the future benefits of the development to which the loan is to be applied in the event of the retailer wishing to dispose of the premises. We do not think that trivial loans call for any such provision, but where there is substantial investment by the company in the premises the argument seems to us reasonable. Thus where a petrol supplier makes a loan to a retailer to cover the purchase or construction or substantial development of his station, we see no reason why the loan agreement should not contain a provision for the supplier to have the option to purchase the premises if the retailer wishes to dispose of them while any part of the loan is outstanding. We think that in all other cases such clauses are oppressive and against the public interest.

Company-owned Petrol Stations

412. The petrol companies justify their practice of acquiring petrol stations and petrol station sites principally on the ground that it produces in accentuated form all those advantages both to themselves and to the public interest which, as they argue, are inherent in their solus arrangements. Thus ownership of the premises, it is said, affords not only a higher degree of security than a fixed term agreement but also greater opportunities for enforcing savings in cost and improvements in station layout and standards of service at those premises as well as setting an example in these latter respects which the independent solus retailer can be brought to emulate.

413. At the present time approximately one-seventh of all the petrol stations in this country are owned by one or another of the petrol companies. Partly because many of them are new stations, sited where traffic is heavy and designed to be able to meet a growing demand, they are in general stations with a higher than average turnover, and in aggregate they account for about one-quarter of all the petrol sold through petrol stations. These stations have been acquired over a period of about twelve years. The policies of all the companies concerned with regard to further acquisitions are flexible. The S.M. & B.P. group indeed has told us that it regards it as desirable that about one-quarter of its total sales should pass through its own stations, and the Esso group has said that it has had from time to time certain target figures (see paragraphs 159 and 161). All the companies say, however, that they acquire stations and sites if they think it desirable to increase their representation in particular areas, if alternative means of doing so are not available or seem less attractive and subject always to competition from other parties to acquire the site and to the price. Though they attribute the rise in site values which has occurred in recent years mainly to other causes they agree that the entry of the petrol companies into the market may have been a contributory factor. While the companies have told us that they are, in general, unwilling to pay uneconomic prices for sites and for this reason exercise some restraint in competing with one another for sites, we are satisfied that prices are inflated by this competition. This has its bearing on the position of new entrants to the market, who may find it difficult to obtain a footing at all unless they are prepared to acquire sites. We have little doubt that the proportion of retail stations owned by petrol suppliers will continue to increase if the suppliers remain free to pursue their present policies, though the pace and eventual extent of this development can only be a matter for speculation.

414. We accept that company ownership of a number of petrol stations has up to the present served a useful purpose by pioneering improvements and setting standards for the retail trade generally. Although the control exercised by the companies over the retail trade as a whole through ownership of stations is limited at present, we foresee dangers if that control should be extended. The ordinary solus arrangements are for fixed terms. Now that the system has been in operation for some years there is a continual falling in of expired agreements with the consequent possibility of change of supplier; and if our view as to the maximum term of these agreements in the future is accepted (see paragraph 383) the system should become still more flexible in this respect. Ownership of the station, however, gives the supplier permanent security. The objections we have already stated to long-term solus ties (see paragraph 382) apply with even more force to permanent ties, particularly

if they should be obtained in relation to a high proportion of retail stations. Such a situation would, as it seems to us, lead to an undesirable degree of rigidity not only in the retail trade itself but also as between the petrol suppliers who would, moreover, effectively control between them the retailing of petrol and also of the other goods which are normally sold at retail petrol stations. Company-owned stations are already subject on the whole to more severe restrictions than other stations in respect of the sale of lubricants. We have recommended certain safeguards as to the trade in lubricants and other goods (see paragraphs 400, 401 and 407) which we think should be applied at company-owned stations as well as at other stations. In a situation where a large proportion of all stations were company-owned, however, we do not think that such safeguards could be easily enforced. Whatever may be the terms of his agreement, a retailer who is the tenant of his principal supplier is open to pressure to carry out the supplier's policy, and we therefore think it undesirable that the company ownership of petrol stations should be permitted to extend indefinitely. Thus in our view the practice on the part of petrol suppliers of acquiring retail petrol premises may be expected to operate against the public interest unless some limit is imposed.

415. In considering the form that such a limit might take we have had in mind, first, that the method of limitation must be practicable, secondly, that it must have the effect of restricting not the numbers of stations owned by petrol companies—since it may well be that their importance is wholly out of proportion to their numbers—but the proportions of the companies' total sales that pass through them, and, thirdly, that it must not be such as would impede newcomers and small suppliers from acquiring stations as a means of obtaining access to and extending their shares of the market. We think too that the limitation should apply to any stations in which the suppliers have a leasehold interest (see paragraphs 122 to 126) as well as to those they own as freeholders. With these considerations in mind we think that petrol suppliers (or groups* of suppliers) whose deliveries of petrol in any year to stations they own (being stations in which they have a freehold or leasehold interest, either directly or indirectly) exceed 15 per cent. of their total deliveries to petrol stations in that year should not build or acquire any further stations or acquire any such interest in any further stations while such excess continues, provided that this restriction should not apply in any year in which the total deliveries by the supplier or group to petrol stations are less than 10 million gallons.

416. Having dealt with the question of the extent of ownership of stations by petrol companies we must still consider whether there are any particular features of the arrangements between the companies and their tenants which are objectionable. In dealing with the former question we have taken into account the additional degree of control of the retailer's activities which is afforded to a supplier who is also the retailer's landlord; and we have already made it clear that arrangements in relation to the supply of lubricants and other goods should be no more restrictive for tenants than for other retailers. These matters apart, the principal criticisms made to us about agreements between the suppliers and their tenants are that the method of assessing rents is unfair and that the tenant has no sufficient security of tenure.

* E.g. the S.M. & B.P. group and the Esso group should each be regarded as a unit for this purpose; Jet and Continental, also, together form such a group.

417. There is no section of the field of solus arrangements where there is more diversity of practice between the various suppliers than in the terms they offer to their tenants. To a large extent the two criticisms we have mentioned go hand-in-hand in the sense that both are directed more particularly against certain of the supplying companies. Mobil and Petrofina are generally prepared to offer long-term tenancies at fixed rentals, and the same is true of S.M. & B.P. when its stations have achieved the minimum gallonage considered appropriate. There is little criticism of the fixed rentals and such complaint as has been made about the arrangements of any of these companies is for the most part to the effect that the target gallonage to be achieved before a long lease is granted by S.M. & B.P. may have been fixed too high. The more substantial complaints, however, are directed against the arrangements of Esso and Regent. Esso's policy has been to grant annual tenancies; the rental is expressed as a surcharge in pence per gallon on the tenant's purchases of petrol, the amount of surcharge per gallon varying as the actual gallonage approaches and exceeds the target (see paragraph 171). The general effect is that the rent Esso receives increases with the turnover. The highest rate of surcharge, however, occurs when the turnover is at or around the target figure; if, therefore, the tenant fails to exceed the target figure his rent although not increasing may be maintained at the maximum rate of surcharge indefinitely. Although Esso has told us that since 1961 it has been offering long leases (usually for seven years) to satisfactory tenants after two years' operation, most of its existing arrangements remain on the basis we have described; and some of the company's tenants have complained that the absence of security beyond a period of twelve months deprives them of any incentive to build up a successful business and that if the company has over-estimated the station's potential gallonage the surcharge rentals are onerous. Regent, on the other hand, was offering until 1961 long-term tenancies at fixed rentals but has subsequently changed to a policy of annual tenancies on a surcharge basis. The complaints in this case are to the effect that the company now seizes every opportunity afforded by break clauses to terminate existing agreements in order to implement its new policy. Regent says that most of its stations are obsolete and that it exercises its rights under break clauses because its stations need to be reconstructed (see paragraph 201).

418. In spite of the complaints we have received, there is no evidence of any rapid turnover of tenants or that the terms the companies offer are not, in general, attractive to prospective tenants; the companies tell us, indeed, that they have waiting lists. The suppliers, no doubt, are sometimes mistaken in their estimates of potential turnover but they tell us that in such cases they are willing to negotiate adjusted terms. We have no reason to doubt this and, in general, we accept their assertions that it is in their own interest to keep good tenants by doing their best to ensure that they are satisfied tenants. It is true that some petrol companies may expect a higher or an earlier return on their investments than others, and it may be noted in this connection that up to 1962 at any rate Esso appeared to be obtaining a higher rate of return on its investment in the purchase of petrol stations than any of the other companies (see paragraphs 175-177). We do not think that the company should be criticised on that account. Any prospective tenant can very easily obtain sound advice about the terms he is offered and, except in one particular (see paragraph 419), we think it neither desirable nor practicable to attempt to lay down any kind of standard terms for tenancy agreements.

419. We think, however, that tenants should normally enjoy a greater measure of security than is afforded by annual tenancies. It is said that tenants in any case are protected by the Landlord and Tenant Act, 1954, but, however this may be, it appears to us that any tenant who might contemplate invoking that Act would have to bear in mind not only that he was opposing a company with powerful financial resources and a well-equipped legal department but also that he was possibly antagonising his supplier as well as his landlord, and to that extent, putting his business at risk. Accepting as we do that the petrol companies on the whole want to retain their tenants, we see no reason why this should be so entirely a matter for the company's discretion as is the case when the tenancy agreement is expressed to last for no more than one year. If a tenant is conscious that his agreement must come up for renewal annually he is likely to be open to undue pressure by his supplier, for instance in relation to his trade in goods other than petrol. We think, therefore, that petrol suppliers should not let or license their petrol stations for periods of less than three years save that (a) the agreement may contain a provision that, if the station should fail to reach within a specified time and to maintain a specified minimum gallonage, the agreement may be terminated by either party, and (b) the suppliers shall have the right to offer a new tenant an initial agreement for a trial period of one year.

Arrangements at Motorway Petrol Stations

420. A special situation exists in relation to motorway service stations. No petrol station can be erected on a motorway except at the service area sites designated by the Minister of Transport. The Ministry leases the greater part of each site to a contractor who undertakes responsibility for providing a number of services, including catering and the supply of petrol, derv and lubricants. The lessee is obliged by the terms of his lease to retail a minimum number of brands of petrol, derv and lubricating oil; in most recent contracts the stipulated minimum has been four, of which at least two must be those of competing, unassociated suppliers. In addition he covenants not to enter into any agreement or arrangement which would restrict his freedom to buy any of these goods from any person for sale on his premises, or to sell them on the premises or advertise them.

421. We are told that apart from the requirements in the leases the Ministry now takes steps to see that motorway stations sell brands which normally account for at least 50 per cent. of the total national sales and that over "the longer lengths" of motorways all the "major brands" are represented (see paragraph 105). According to our latest information on motorway stations, including a number under construction for which contracts have been entered into, the only brands of petrol, derv and lubricating oil represented are those of the S.M. & B.P. group, the Esso group, Regent, Mobil and Petrofina, except that Castrol lubricating oils are also sold at all the stations. Thus, as far as petrol is concerned, the brands which can be bought by the public on the motorways are confined to those of the suppliers who are generally called the "majors". They do not include any brand which is commonly sold at lower retail prices than these "major" brands, even though over the country as a whole one such low-price brand is now sold in greater volume than one of the "major" brands.

422. Although the Ministry of Transport have been concerned to ensure that there shall be a choice of brands on the motorways and that no supplier shall obtain a local monopoly, their measures have not ensured that there will be any choice of price, grade for grade. The effect in practice is that the motorway retailer, unlike retailers on ordinary roads, is in an extremely strong bargaining position and enters, on terms highly advantageous to him, into solus agreements for separate groups of pumps with a sufficient number of suppliers to enable him to sell the number of brands stipulated by the Ministry. The retailer has no incentive to sell those brands that are normally sold at lower prices and lower retail margins, or to reduce the price of any one brand to the public, since by so doing he would only be competing with himself.

423. It appears to us in the first place that the Ministry ought to consider whether the solus arrangements made by the lessees of motorway stations for particular groups of pumps are in accordance with their undertakings not to enter into restrictive agreements. The mere bringing to an end of such arrangements would not, however, solve the problem of the absence of price competition. We think that the Ministry should so extend the steps they already take (see paragraph 421) as to ensure that any lower-priced brands which are sold on a substantial scale elsewhere shall be fairly represented on the motorways and shall be sold at no higher retail price there than elsewhere.

The Solus Arrangements as a Whole

424. While we consider that solus arrangements, in principle, need not operate against the public interest (see paragraph 379) the system we have examined seems to us both to have some disadvantageous features as operated at present and to be potentially dangerous for the future unless certain safeguards are introduced. Bearing in mind our observations in paragraphs 359 to 361 about the various factors to be taken into account in determining the public interest, we have accepted that solus arrangements can be of some advantage to the consumer and the general public. We think, however, that the power and resources of the petrol suppliers are such that, if left entirely free to pursue their own chosen policies, they will be likely to gain an increasing degree of control over the retail trade; all the more so, since they are operating in a market where their customers' freedom of action is in any case restricted by the special problems involved in storing and dispensing petrol (see paragraph 368) as well as by planning legislation and traffic conditions generally. The history of petrol supply in this country shows that since the invention of the motor car the major suppliers have consistently (except when matters were taken out of their hands in time of war) sought by one means or another to minimise price competition. In our view it would not be in the consumer's interest that new suppliers—some of whom might be prepared to sell at lower prices than the established suppliers—should be impeded from entering the market, or that the competitive incentive to save costs and keep prices down should be weakened by most retail outlets being secured for long terms to one or another petrol supplier. Nor would it be in the consumer's interest if the suppliers were to control for their own advantage those activities of petrol stations which are not concerned with the suppliers' own products. It is for these reasons that we consider that the length of term of solus agreements (other than with tenants) should be limited and equipment agreements made more readily terminable, that the petrol suppliers should refrain from interfering in any way with the trade of petrol stations in tyres, batteries, accessories

or other non-petroleum products, that pre-emption clauses should be exceptional, that the marketing of petrol through company-owned petrol stations should be restricted, and that price competition should be encouraged on the motorways as well as on other roads. So far as petroleum products other than petrol and derv are concerned we consider that any advantage to be derived by the petrol suppliers in this field from their solus agreements for petrol should be confined to an undertaking by the retailer to stock and sell the petrol suppliers' brands; we think that it is detrimental to the consumer's interest if the retailer's freedom to stock and sell any other brands is restricted. We also think that the suppliers' tenants should enjoy a certain minimum of security of tenure.

425. There is one other aspect of the relations between petrol companies and retailers that calls for comment. In the light of all that has been said to us about the economies which have been and can be achieved by increasing the size of "drop" it might have been expected that the petrol companies would have offered some form of quantity allowance as a direct incentive to retailers to maximise their storage tank capacity so that they could buy the largest possible quantities of petrol at a time.* To be effective for these purposes any system of allowances would no doubt require some kind of undertaking by the retailer as to the frequency and minimum size of his orders. This might well mean that he would earmark a certain number of pumps for the particular supplier's brand; and in order to take full advantage of such a system many retailers would, no doubt, tend to confine their purchases to one supplier even in the absence of contractual solus arrangements. Some of us think that such a system would be preferable to the existing solus arrangements. There is room for many opinions about the form quantity allowances might take and about their effects. We do not think we can or should conclude that the solus system as a whole operates against the public interest on the ground that a system of quantity allowances would be preferable, but we think that the petrol companies should seriously consider the feasibility of offering a quantity incentive to all retailers who buy from them.

426. Subject to the safeguards mentioned in paragraph 424 we do not consider that the making of solus agreements or the acquisition of retail petrol premises or interests therein by petrol suppliers may be expected to operate against the public interest.

IV. SUMMARY OF CONCLUSIONS: RECOMMENDATIONS

427. Our conclusions may be summarised as follows:

- (1) The conditions to which the Act applies prevail because more than one-third of all the petrol supplied within the terms of reference is supplied by (i) the S.M. & B.P. group and (ii) a number of petrol suppliers (including the S.M. & B.P. group) who have been so conducting their respective affairs as to restrict competition (paragraph 349).

* At a late stage in our inquiry Esso announced that it was introducing for its solus retailers a rebate of 3d. per gallon on their purchases of petrol in excess of their figures for the previous year (see paragraph 72). Esso does not appear to expect that retailers who earn this extra margin will reduce their selling prices and has expressed the hope that they will use it to improve the service at their stations. This rebate, being related to annual purchases and not to the size of individual deliveries, does not appear to us to offer the kind of direct incentive we have in mind.

- (2) With regard to the things specified in paragraph 4 of our reference:
- (a) most of the petrol suppliers who are parties concerned with the conditions make agreements and arrangements under which petrol retailers accept restrictions in respect of the supply and acquisition of petrol, lubricants and other products and in respect of the acquisition or disposal of their premises or their interests in premises, either as a result of or for the purpose of preserving the conditions (paragraphs 352-354);
 - (b) none of the parties concerned withholds supplies of petrol from petrol retailers either as a result of or for the purpose of preserving the conditions (paragraph 356);
 - (c) most of the parties concerned acquire premises for the retailing of petrol for the purpose of preserving the conditions (paragraph 357).
- (3) As to the effects upon the public interest of the things done as a result of or for the purpose of preserving the conditions:
- (a) the restrictive agreements and arrangements made by petrol suppliers with retailers operate and may be expected to operate against the public interest in so far as (i) many agreements are made for terms which are too long, and some are too wide (paragraphs 383, 388 and 390), (ii) many agreements contain restrictive provisions in relation to lubricants and other petroleum products and anti-freeze preparations (paragraphs 400 and 401), (iii) the relationship between petrol suppliers and retailers created by these agreements provides opportunities for the suppliers to influence for their own advantage the retailers' trade in tyres, batteries, accessories and other non-petroleum products (paragraph 407), (iv) some agreements provide, in circumstances where this is not justified, that if the retailer wishes to sell his premises the petrol supplier shall have a right of pre-emption (paragraph 411), and (v) some agreements of petrol suppliers with their tenants afford the latter insufficient security (paragraph 419);
 - (c) the acquisition of retail petrol premises by the petrol suppliers may be expected to operate against the public interest unless some limit is imposed (paragraph 415).

Subject to the introduction of safeguards to eliminate those features which we consider to be against the public interest, as set out above, the things done under (a) and (c) may not be expected to operate against the public interest (paragraph 426).

428. We recommend:

- (1) that the term of any solus agreement for petrol should not, except as provided under (2) or (8) below, exceed five years, though it may provide for continuation thereafter on an annual basis if neither party wishes to terminate it;
- (2) that when a petrol supplier makes a loan to a retailer for a period exceeding five years any solus tie between that supplier and that retailer may be expressed to extend to but not beyond the latest date for repayment of the loan (which should be for a definite period and not one contingent upon the purchase of a specified gallonage), but the loan

- agreement should provide that the retailer may at his option repay in full at any time after five years from the date of the loan and on such repayment the exclusive tie shall terminate;
- (3) that agreements concerned with the hire purchase or loan of petrol equipment which contain provisions restricting the retailer's use of that equipment should provide that the property in the equipment should pass unrestricted to the retailer at any time on payment of the balance of the hire purchase price or the appropriate proportion of the price of the equipment on loan; and that no such agreement should be expressed to restrict the use of any equipment other than that which is being sold or loaned under that agreement;
 - (4) that while petrol suppliers may obtain undertakings from their solus petrol retailers that the latter will stock and sell their brands of lubricants, neither the solus petrol agreements nor any other agreements between petrol companies, or any other suppliers of lubricants, and petrol retailers should commit the retailer to purchase or sell specified quantities of the supplier's lubricants or to take the supplier's lubricants for the whole or any specified proportion of his total requirements, or to limit in any way the purchase, sale, stocking, use, display or advertising of other brands of lubricants; that no lubricant supplier should offer rebates or similar allowances upon conditions involving any such restrictions; and that the recommendations in this sub-paragraph should also apply to kerosene and anti-freeze preparations when these are marketed through petrol stations;
 - (5) that no petrol supplier should accept any commission or other benefit in respect of any sales or purchases of tyres, batteries, accessories or other goods not being petroleum products by its solus retailers, or should make any agreement with such retailers under which the latter would undertake any restrictive obligation in relation to the purchase, sale, stocking, display or advertising of such goods; and any existing agreements or arrangements of petrol suppliers with manufacturers or distributors of such products as aforesaid to be paid such commissions or afforded such benefits should be declared void and of no effect;
 - (6) that where a petrol supplier makes a loan to a retailer to cover the purchase or construction or substantial development of his station, the loan agreement may provide that the supplier shall have the option to purchase the premises if the retailer wishes to dispose of them while any part of the loan is outstanding but otherwise no agreement between a petrol supplier and his solus retailer should give the supplier any such option;
 - (7) that no petrol supplier (or group of suppliers) whose deliveries of petrol in any year to company-owned stations (being stations in which the supplier has a freehold or leasehold interest, either directly or indirectly) exceed 15 per cent. of his total deliveries to petrol stations in that year should build or acquire any further stations or acquire any such interest in any further stations while such excess continues, provided that this prohibition should not apply in any year in which the total deliveries by the supplier or group to petrol stations are less than 10 million gallons;
 - (8) that petrol suppliers should not let or license their petrol stations for periods of less than three years, save that (i) the agreement may

contain a provision that, if the station should fail to reach within a specified time and to maintain a specified minimum gallonage, the agreement may be terminated by either party, and (ii) the suppliers should have the right to offer a new tenant an initial agreement for a trial period of one year.

429. At present there exist some thousands of agreements between retailers and suppliers of petrol or lubricants. We do not think that the public interest would be sufficiently safeguarded by providing that no new agreements should be made which would conflict in any way with our recommendations while permitting existing agreements which so conflict to continue in force until the contractual dates of expiry. We therefore recommend that, as from the date when effect is given to the foregoing recommendations, all then existing agreements should be read and construed as though the recommendations appropriate to such agreements were embodied in them, and that as from that date all then existing agreements of a kind prohibited by the recommendations should become null and void, except that any existing agreement which conflicts with the recommendations solely because the contractual term is more than five years may be allowed to continue in force during the remainder of the term or for five years, whichever is the shorter.

V. DISSENT

430. Professor Barna has signified his dissent from the conclusions and recommendations of the Commission but had not formulated his reasons for such dissent in time for inclusion in the report.*

R. F. LEVY (*Chairman*)
BRIAN DAVIDSON
W. E. JONES
O. B. MILLER
J. M. A. SMITH
LAURENCE WATKINSON

A. S. GILBERT (*Secretary*)
28th May, 1965

* Note by the Board of Trade. A note of dissent prepared by Professor Barna was subsequently sent to the President. This is set out as an annex at pages 171 to 181.