

2 Background to the reference

2.1. This is the third report on petrol¹ by the MMC or their predecessor, the Monopolies Commission.

2.2. The first reference, in September 1960, was made under the Monopolies and Restrictive Practices Act, as amended. It was directed to establishing, in effect, whether there was what the Fair Trading Act 1973 calls a 'complex monopoly' in the supply of petrol by wholesalers to retailers and, if so, whether it was sustained by agreements or arrangements imposing restrictions on retailers in respect of petrol or other goods ('solus arrangements'), or by the withholding of petrol supplies to retailers, or by the acquisition of petrol retail stations. The Monopolies Commission reported in May 1965, ie after 4½ years' study, that there was indeed such a monopoly of wholesale supply. They found that none of the parties concerned withheld supplies but that certain features of solus arrangements then entered into operated, and might be expected to operate, against the public interest, and that the acquisition of retail outlets by the petrol suppliers might be expected to operate against the public interest unless some limit was imposed. However, the Commission concluded that with some safeguards to eliminate these features, these practices were not likely to operate against the public interest. (There was a sharply dissenting minority report.) A more detailed summary is at Appendix 2.1.

2.3. The safeguards in practice took the form of assurances ('Undertakings') given by certain wholesalers to the Secretary of State for Prices and Consumer Protection on various aspects of their relations with retailers. One of these Undertakings, on the acquisition of retail outlets, was deleted in 1968 but the remainder, which were revised in 1976, are still binding. They relate to solus ties on petrol, tie-in arrangements on lubricants and other products, loans, commission agreements, agreements on sales of other products, and the terms of leases and licences. The full text of the Undertakings is at Appendix 2.2.

2.4. The second MMC inquiry began in February 1976. They were asked to investigate whether a complex monopoly existed, and whether any facts found operated, or might be expected to operate, against the public interest. In pursuing this reference the MMC were limited to considering petrol wholesalers' practices of:

- (a) discriminating between retailers on petrol prices or other terms;
- (b) promoting schemes involving goods or trading stamps given to retail purchasers; and
- (c) buying exclusive retail outlets and using them to sell directly by retail or permitting licensees or tenants to use them subject to restrictions as to the petrol sold.

The MMC reported in July 1978, ie after 2½ years' study. They reaffirmed the 1965 conclusion that there was a complex monopoly, and said that it favoured 15 named wholesalers, and others not named. The MMC did not find this situation to operate against the public interest but they suggested that the Director General of Fair Trading (DGFT) should keep the structure of the retail trade, and retail sales, under review in order to see whether, locally or generally, the major wholesalers were driving out the

¹'Petroll, a substance strained out of the natural Bitumen. It is for the most part white, and sometime black, and, being once set on fire can hardly be quenched'.

independent retailers, with resulting adverse effects on retail petrol prices (which could lead to a further MMC reference). A more detailed summary is at Appendix 2.3.

2.5. The DGFT acted on this suggestion, and has conducted an annual review of the major wholesalers' retail site ownership and sales ever since. A list of these wholesalers is at Appendix 2.4.

2.6. Article 85 of the Treaty of Rome provides that agreements between undertakings which affect trade between member states and which have as their effect the prevention, restriction or distortion of competition within the EC are void unless granted exemption by the EC Commission. In 1983 the EC Commission issued Regulation 1984/83 which inter alia contains a block exemption for long-term exclusive purchasing agreements relating to the resale of petroleum products in filling stations, subject to certain conditions. The texts of Article 85 and relevant passages of the Regulation are at Appendix 2.5.

2.7. In December 1987, the House of Commons' Select Committee on Trade and Industry decided to inquire into the United Kingdom petrol retailing industry. After taking extensive oral and written evidence on a wide range of issues the Committee reported in June 1988; they said there was 'a direct and almost total contradiction' in the evidence they had received from the retailers and that from the oil companies. The Committee said 'this is an enormously complex area. The evidence we have heard demonstrates that it requires detailed further investigation.' The Committee went on to say they were:

convinced that there is *prima facie* evidence of resale price maintenance. Further, the changes in the shape and structure of the wholesale and retail markets indicate the possibility that the prevailing complex monopoly is limiting competition and acting against the public interest.

Accordingly the Committee recommended that the MMC should investigate the petrol retailing industry in the United Kingdom.

2.8. In addition, among other matters, the Committee recommended that:

- (a) the Petrol Price Marking Order (1980) be altered so that the clear pricing of petrol in gallons as well as litres on price boards visible from the road should be made compulsory;
- (b) the OFT should monitor the licensing system closely, to ensure that the entrepreneurial petrol retailer has the maximum freedom to decide what to stock in his shop;
- (c) the operation of the strategic stock requirement should be reviewed and modified so that it does not remain a barrier for new entrants into the wholesale market; and
- (d) the OFT should conduct an immediate inquiry into the true costs of supply to rural areas to ensure that the consumer is not overcharged.

2.9. In November 1988, having considered the evidence put to the Committee, together with his own researches, the DGFT referred to the MMC 'the matter of the existence or the possible existence of a monopoly situation in relation to the supply in the United Kingdom of petrol by wholesale'. The reference, made under the Fair Trading Act 1973, was in terms very similar to those of the 1976 reference, but not limited as to the practices to be examined. The DGFT, in responding to the Committee, said that he proposed to frame the terms of the reference widely to enable the MMC's investigations to address comprehensively the range of matters brought to the Committee's attention. He went on to say that the reference would enable the MMC to consider generally the impact of oil company control over the activities of retailers and the continuing relevance of the undertakings given by the oil companies and to consider whether any procedures of oil companies by ownership of retail sites or otherwise have the effect that rural prices are higher than they would otherwise be. The DGFT concluded by saying that the MMC's investigation should be able to throw light on the level of retail prices in different parts of the country.

2.10. In pursuing our inquiry we have had close regard to the Committee's report.