



Competition Act, 2002

Decision of the Competition Authority
No. E/03/002

Agreements between Statoil Ireland Limited and motor fuels retailers allegedly fixing the retail price of motor fuels in Letterkenny

4th November 2003
(Case COM/98/02)

SUMMARY

The Competition Authority has refrained from initiating legal proceedings against Statoil Ireland Limited in light of the fact that Statoil Ireland Limited undertook not to implement or introduce any system that would have the effect of reducing the incentives for petrol retailers to compete with each other on price and services for the business of motorists.

In 2002 the Competition Authority initiated its own investigation into possible resale price maintenance in Letterkenny by Statoil Ireland Limited and its three motor fuels retailers in the town. This followed an earlier investigation by the Competition Authority into allegations of retail price fixing in Letterkenny among motor fuels retailers. That investigation was closed.

During the course of that investigation it came to the Competition Authority's attention that Statoil Ireland Limited was operating a scheme, the Price Support Agreement, with independent retailers of motor fuels. These agreements provided financial support to Statoil Ireland Limited retailers in order to match the price of selected motor fuels retailers that are most likely to compete with the Statoil Ireland Limited stations. However, as part of the agreement the Statoil branded station owner was not allowed to charge more than the Statoil Ireland Limited recommended retail price and would not receive price support from Statoil for any price cut below the marker stations.

The Price Support Agreement combined a ceiling on price – the recommended retail price – and a floor – that charged by strategically located rival motor fuels retailers. Rival stations knew that if they lowered their price then the Statoil branded stations would match their price reductions. Therefore it would appear that the Price Support Agreement may have acted as a restraint on competition and thus harmed consumers.

A careful examination of the facts of the situation in Letterkenny, in terms of market shares of the Statoil Ireland Limited and other stations, the views of the motor fuels retailers and several price surveys, combined with the development of a very simple model, led the Competition Authority to the view that the Price Support Agreement operated in such a way that it breached the Competition Act 2002.

After the Competition Authority informed Statoil Ireland Limited that it intended to initiate legal proceedings unless certain undertakings were given to the Competition Authority to amend its behaviour. Statoil Ireland Limited abolished the PSA scheme as and from midnight on the 31st July 2003 and agreed not to implement or introduce any new support scheme containing the features that the Authority considered breached the Competition Act 2002. However, it should be noted that Statoil Ireland Limited has consistently refuted any assertion that the Price Support Agreement breached the Competition Act 2002.

1. THE ISSUES

Initiation of Investigation

1.1. In 2002 the Competition Authority (“the Authority”) initiated its own investigation into possible resale price maintenance (“RPM”)¹ by Statoil Ireland Limited (“Statoil”) and three motor fuels retailers in Letterkenny, Co. Donegal. The investigation was based on information the Authority received in the course of an earlier investigation into allegations that the motor fuels retailers in Letterkenny were involved in a cartel to fix motor fuels prices to the motorist. However, that investigation was closed because the Authority found insufficient evidence, despite price surveys indicating that retail prices were the same, that a cartel existed.

1.2. During the course of its investigation into the allegations of price fixing among motor fuels retailers in Letterkenny, it came to the Authority’s attention that Statoil was operating a vertical agreement, the Price Support Agreement (“PSA”). The PSA is an agreement between Statoil and an independently owned and operated motor fuels retailer.² The PSA contained provisions which, in the Authority’s view, raised concerns that this agreement amounted to indirect RPM and therefore breached Section 4 of the Competition Act, 2002 (“the Act”).³ As a result the Authority initiated its own investigation under Section 30(1)(b) of the Act into RPM in motor fuels in Letterkenny by Statoil and its three motor fuels retail distributors.

1.3. The investigation into the PSA draws heavily on the documentary and oral evidence gathered in the earlier investigation into the alleged retail pricing in Letterkenny. It also relies on evidence gathered in a larger investigation into the

¹ RPM describes a practice whereby a supplier agrees to supply retailers on condition that they sell the goods at a price specified by the supplier. Such arrangements restrict the ability of retailers to determine their own prices. They also eliminate price competition between retailers for the suppliers’ products, assuming that the supplier applies such arrangements to all retailers handling its products.

² The PSA was a voluntary scheme that was open to all Statoil stations in the State although, as the Authority understands it, not all stations signed or availed of support under the PSA.

³ Although some of the arrangements discussed herein arose prior to the enactment of the Act, the analysis would be essentially identical under the predecessor statutes on the basis that the substantive provisions of the Act are identical to those in the Competition Act, 1991 (as amended).

motor fuels market at the State level which is referred to in the Authority's 1999 *Annual Report*.⁴

The Parties

1.4. Statoil⁵ is a wholly owned subsidiary of Statoil ASA, a Norwegian state oil undertaking. Statoil has been in the State since 1992, when it acquired BP's service station network. Four years later it strengthened its position with the acquisition of Conoco's JET retail and commercial operations. Statoil is the leader in petrol retail, home heating oil and commercial fuels market. It employs over 1,200 people in Ireland. Of its network of 300 branded Statoil service stations, 230 are owned and operated by independent retailers with the remainder owned by Statoil. Statoil claims to be No 1 in the motor fuels retail market in the State.

1.5. During its investigation into the PSA in Letterkenny there were three independently owned and operated motor fuels retailers that were branded Statoil outlets:

- George Sweeney, Ballyraine, Letterkenny
- Edward Tobin, Port Road, Letterkenny
- Pauric Dunne, Illistrin, Letterkenny

Neither George Sweeney nor Pauric Dunne are branded Statoil motor fuels retailers any longer, although they still operate stations in Letterkenny.

1.6. Professor Steve Davies,⁶ of the School of Economic and Social Studies, University of East Anglia, UK, acted as an expert advisor to the Authority in the investigation.

⁴ Since the Authority's file on this investigation remains open, the Authority will not comment further on the details of this investigation.

⁵ The information concerning Statoil in this paragraph is taken from www.statoil.ie.

⁶ Further information with respect to Professor Davies can be accessed from his university webpage: http://www.uea.ac.uk/soc/econ/people/davies_s.shtml.

2. ASSESSMENT⁷

Introduction

2.1. Section 4 of the Act applies when undertakings are engaged in arrangements,⁸ which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State. Section 4(1) reads as follows:

Subject to the provisions of this section, all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State are prohibited and void, including in particular, without prejudice to the generality of this subsection, those which -

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions,
- (b) limit or control production, markets, technical development or investment,
- (c) share markets or sources of supply,
- (d) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage,
- (e) make the conclusion of contracts subject to acceptance by other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

Section 3(1) of the Act defines an “undertaking” as “a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service.”

2.2. In order to establish that there is a breach of Section 4(1) of Act, the Authority must demonstrate in court that:

⁷ See note 3 above.

⁸ The arrangement can be either horizontal (i.e., between competitors in the same market) or vertical (i.e., between undertakings at different stages in the production/distribution/retailing chain).

- there is an agreement, decision or concerted practice,
- the parties to that agreement, decision or concerted practice are undertakings, or that the decision was made by an “association of undertakings”, and,
- the object or effect of the agreement, decision or concerted practices is to prevent, restrict or distort competition.

2.3. Section 4(1) of the Act is based on Article 81(1) of the treaty establishing the European Community. In applying Section 4(1) the Authority would have regard to its interpretation by Irish courts, but also that of Article 81(1) by the European Commission (“EC”), the Court of First Instance (“CFI”) and the European Court of Justice (“ECJ”).

2.4. Section 4(5) of the Act insulates any agreement, decision or concerted practice that:

having regard to all relevant market conditions, contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not –

- (a) impose on the undertakings concerned terms which are not indispensable to the attainment of those objectives,
- (b) afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

All of these conditions have to be satisfied in order that an agreement, decision or concerted practice is not prohibited under Section 4(1) of the Act.⁹ The burden of proof is on the parties to an agreement, decision, or concerted practice to demonstrate to the satisfaction of the court in any legal proceedings that it meets each of the criteria set out in Section 4(5) of the Act.

⁹ Section 4(5) and Section 4(1) are related through Section 4(2) which reads as follows: “[A]n agreement, decision or concerted practice shall not be prohibited under *subsection (1)* if it complies with the conditions referred to in *subsection (5)* ...” (emphasis in original).

2.5. Determining whether or not the conditions in Section 4(5) are satisfied requires an assessment of the economic context of the agreement, decision or concerted practice. For example, the relevant market needs to be defined. In some circumstances, the market share of the parties to the agreement, decision or concerted practice, together with the importance of barriers to entry into the market needs to be established. A judgment is also necessary as to whether there are terms or conditions of the agreement, decision or concerted practice that are not essential for the attainment of its objectives.

2.6. Section 4(5) is analogous to Article 81(3) of the treaty establishing the European Community. In considering Section 4(5) the Authority has regard to its implementation by the Irish courts, but also to the implementation of Article 81(3) by the EC, CFI and ECJ. However, the Authority also has regard to its own previous decisions, since until 1 July 2002, the Authority could grant exemptions under Section 4(5)¹⁰ to individual agreements, decisions or concerted practices. From that date the Irish courts applied the section directly.

2.7. In sum, it would be for the Authority to demonstrate in any legal proceedings that the agreement, decision or concerted practice breached Section 4(1) of the Act. The onus would then be on the parties to the agreement, decision, or concerted practice to show that it qualified for exemption under Section 4(2) of the Act by satisfying each one the conditions set out in Section 4(5) of the Act.

The relevant market

2.8. The Authority takes the view, for the purposes of this investigation, that the relevant product market is motor fuels (i.e., unleaded petrol and diesel).¹¹ The

¹⁰ Under the Competition Act 1996 the equivalent provision was Section 4(3).

¹¹ The issue of the relevant market is discussed further in the Authority's evaluation of the Statoil-Conoco and Maxol-Busselle mergers. (Competition Authority, 1996, *Report of Investigation of Proposal whereby Statoil Ireland Limited would Acquire the Entire Issued Share Capital of Conoco*. Dublin: Stationery Office. pp. 8-9; and Competition Authority, 2002, *Report of Investigation of the Proposal whereby Maxol Energy Limited would Acquire the Entire Issued Share Capital of Busselle Limited*. Dublin: Department of Enterprise, Trade and Employment. pp. 10-13, respectively). Although the Authority acknowledged that individual motor fuels showed a number of common characteristics, it did not determine whether or not motor fuels formed a single relevant product market. As with the analysis of the two mergers, the impact of the PSA is broadly similar whether motor

Authority considers that the appropriate geographic market is Letterkenny, Co. Donegal. At the retail level, competition in this market is localised in general since the search costs to the consumer, in terms of time and transport, associated with buying from motor fuels retailers any distance from home is typically significant relative to the cost of the purchase itself. However, for consumers that commute to work or cover relatively long distances such search costs may be lower. The more important such consumers, the more likely it is that the geographic market will not be localised. (See paragraphs 2.39 to 2.43 below for a discussion of the geographical pattern of prices in Letterkenny, Co. Donegal.) It is widely accepted in the academic and policy literatures that at the retail level motor fuels is a localised market.¹² Such an approach is also consistent with the Authority’s evaluation of the Statoil -Conoco merger¹³ and the Maxol-Busselle merger.¹⁴

2.9. At the time of the Authority’s investigation, there were eleven motor fuels station owners in Letterkenny, two of which operate two stations each, while the other nine operate one station each (Table 1 below). All of these owners are tied to their wholesale suppliers (“wholesalers”) through long-term exclusive supply agreements. Four of these wholesalers are large multinational integrated motor fuels undertakings that have ‘household name’ international brands. There are no unbranded or supermarket motor fuel retailers in Letterkenny.

Table 1
The Motor Fuels Market, Selected Characteristics, Letterkenny, Co Donegal,
April – August 2001

Station Owner	Market share (%)^a	No. of stations	Wholesale Supplier of Motor fuels	Comment
Tobin	[≤ 20]	1	Statoil	
G. Sweeney	[5 ≤ x ≤ 10]	1	Statoil	
Dunne	[≤ 5]	1	Statoil	
McGee	[25 ≤ x ≤ 30]	2	Esso	marker^b
Martin	[5 ≤ x ≤ 10]	1	Shell	marker^b

fuels is considered as one (i.e., unleaded petrol and diesel combined) or two (i.e., unleaded petrol and diesel treated separately).

¹² See, for example, Margaret Slade, 1987, “Interfirm rivalry in a repeated game, an empirical test of tacit collusion,” *Journal of Industrial Economics*. June, pp. 499-516, and Office of Fair Trading, 1998, *Competition in the supply of petrol in the UK*. London: OFT. pp. 20-21

¹³ Competition Authority, 1996, supra note 11.

¹⁴ Competition Authority, 2002, supra note 11.

Doherty	$[5 \leq x \leq 10]$	1	Shell	
Hegarty	$[\leq 5]$	1	Shell	
B. Sweeney	$[\leq 5]$	1	Shell	
Keys	$[5 \leq x \leq 10]$	2	Texaco	
Blaney	$[5 \leq x \leq 10]$	1	Texaco	
Reid	$[\leq 5]$	1	Burmah	
Total	100	13		

Notes:

- a. These market shares are estimated by the Authority on the basis of the information in its possession. Market shares are measured in litres of motor fuels, defined to include unleaded petrol and diesel.
- b. The term 'marker' is explained in paragraph 2.18. below in the discussion of the PSA.

Source: Competition Authority

2.10. At the time of the Authority's investigation the motor fuels market in Letterkenny was highly concentrated, whether measured at the level of the station owner or the brand of motor fuels. Two station owners – Tobin and McGee – that are located geographically very close to each other, accounted for almost 50% of the Letterkenny market, with the other nine station owners accounting for between 3% and 8% each. Table 2 below shows that at the level of the wholesaler of motor fuel there are three large firms: Statoil; Esso Ireland Limited ("Esso"); and Irish Shell Limited ("Shell"). The Authority estimates that together these three wholesalers accounted for over 80% of the Letterkenny motor fuels market, supplying nine of the 11 retail stations. A fourth firm, Texaco Ireland Limited ("Texaco"), accounted for 15%, while Burmah Castrol plc ("Burmah") accounted for [no greater than 5]%. Statoil, Esso, Shell, and Texaco also accounted for a large share of the market at the level of the State, in 2001, although in Letterkenny Texaco had a substantially smaller market share than at the State level.

Table 2
Market Shares of Wholesale Suppliers of Motor Fuels,^a the State and Letterkenny, Co. Donegal, 2001

Wholesale Supplier of Motor Fuels	Letterkenny ^c	State ^d
Statoil (3) ^b	30	[≤25]
Esso (1)	[25 ≤ x ≤ 30]	[≥15]
Shell (4)	23	[≤20]
Texaco (3)	15	[≤25]
Others ^e (1)	[≤ 5]	[≤25]

Notes:

- a. These market shares are estimated by the Authority on the basis of the information in its possession. Market shares are measured in litres of motor fuels, defined to include unleaded petrol and diesel.
- b. The number of stations served in Letterkenny is shown in brackets in the first column.
- c. April-August 2001.
- d. 2001.
- e. Others refers to just one Burmah station in Letterkenny. At the State level, it refers to eight smaller wholesale suppliers of motor fuels, none with more than 7% individually

Source: Competition Authority

2.11. Table 3 below presents several standard summary measures of the degree to which a small number of firms account for a large share of the output of a market. The leading three wholesalers of motor fuel accounted for 81% of the Letterkenny market. The Herfindahl-Hirschmann Index (HHI)¹⁵ at 2,520 is considerably larger than the threshold of 1,800 used in the Authority's merger guidelines for defining a highly concentrated market.¹⁶ Concentration of station owners is necessarily lower, since most wholesalers of motor fuels supply more than one owner, but even this was high for Letterkenny: the four leading station owners or retailers accounted for nearly two-thirds of the market.

¹⁵ The HHI is a measure used to estimate the level of concentration of an industry. It is defined as the sum of the squared market share of each undertakings operating in a particular market. The value of the HHI must lie between 0 and 10,000, with larger values indicating higher concentration (i.e., tighter oligopoly). Further information on the use of HHIs by the Authority in particular in the context of merger analysis is available in the Authority's 'Notice in respect of Guidelines for Merger Analysis', Notice N/02/004.

¹⁶ The critical value in the merger guidelines of the Authority is based in part on an examination of what thresholds are used by other national competition authorities.

Table 3
Concentration Indices, Wholesale Suppliers & Retailers of Motor Fuels, the State and Letterkenny, Co. Donegal, 2001

	HHI index	Number equivalent (N)	Concentration ratios (CRX)		
			CR2	CR3	CR4
Letterkenny, station owners	1470	7	48	56	64
Letterkenny, wholesale suppliers	2520	4	58	81	96
State, wholesale suppliers	1590	6	42	61	77

Notes:

- The **Herfindahl-Hirschmann** index (HHI) is calculated by summing the squared market shares of all firms.
- The **Number Equivalent** (N) is the reciprocal of the H index: it represents the hypothetical number of equal sized firms who would record the given H value. For instance, if the Letterkenny market comprised 4 equal sized petrol companies, this would record exactly the same HHI value as actually occurs. It is, as if, Letterkenny is served by 4 equal sized firms.
- The **Concentration ratios** (CRX) record the combined share of the top x players (where X here is shown alternatively, for the top 2,3,4 firms).

Source: Competition Authority

2.12. In terms of the geographical location of motor fuel stations in Letterkenny at the time of the investigation there were several key conglomerations to the east of the town (Table 4). About two kilometres out of town, the N14 (the main road to/from Derry, Dublin and Donegal Town) joins the N13 at a roundabout where three stations are located. Then as this road continues into town, the motorist encounters two more stations. Between them, these stations accounted for 59% of the volume of motor fuels sold in the Letterkenny market in the period in question. Statoil, Esso and Shell supplied all these stations, which include the two largest station owners (Tobin and McGee). The remaining eight stations are more scattered, although there is one pair located to the north and another pair to the north-east. It seems reasonable to assume that, in each case, the pairs are geographical rivals. The remaining six stations are smaller and less obviously in close proximity. Statoil does not own any of these.

Table 4
The Geographical Locations of Motor Fuels Stations in Letterkenny, Co. Donegal, 2001

Station Owner	Market Share	Wholesale Supplier	Comment
Main road in from Derry and Dublin (N14)			
S. McGee	$[25 \leq x \leq 30]$	Esso	marker
A. Martin	$[5 \leq x \leq 10]$	Shell	marker
Tobin	$[15 \leq x \leq 20]$	Statoil	
B. Sweeney	$[\leq 5]$	Shell	
Main road to the north-east (R245)			
T Keys	$[\leq 5]$	Texaco	
G. Sweeney	$[5 \leq x \leq 10]$	Statoil	
Main road to the north (N56)			
P. Dunne	≤ 5	Statoil	
E Blaney	$[5 \leq x \leq 10]$	Texaco	
Main road to the west (R250)			
T. Keys	≤ 5	Texaco	
A. Hegarty	≤ 5	Shell	
Others			
Reid	≤ 5	Burmah	
E. Doherty	$[5 \leq x \leq 10]$	Texaco	

Note: See Table 1 above for notes.

Source: Competition Authority and Ordinance Survey Map of Letterkenny

Agreements, Decisions and Concerted Practices

2.13. The legislation does not define the terms ‘agreements’, ‘decisions’ and ‘concerted practices’. Reference must be made to the interpretation of these terms by the Courts.¹⁷ Agreements include legally binding agreements¹⁸ as well as informal ones, and they may be written or not. The latter would include, for example, so-called ‘Gentlemen’s Agreements’. A concerted practice is at the opposite end of the

¹⁷ For further discussion see Richard Whish, 2001, *Competition Law*. Fourth Edition, London: Butterworths. pp. 76-86.

¹⁸ Of course, if such an agreement breaches Section 4 of the Act then the agreement is null and void.

spectrum from a legally binding agreement. It has been defined as follows in EU precedent:

a form of coordination between undertakings, which without having reached the stage where an agreement properly so called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition.¹⁹

The test in determining whether a decision is a decision by an association of undertakings is whether the decision can be regarded as the expression of the will of the association to co-ordinate the behaviour of its members. Although such co-ordination may, in any event, be caught by the terms ‘agreement’ or ‘concerted practice’, the provision prohibiting decisions of associations of undertakings which restrict competition, may in certain circumstances, facilitate the proof of such anti-competitive behaviour.

2.14. There are two types of agreements between Statoil and the stations that retail its products in Letterkenny.

- (i) so-called solus agreements that which are long-term exclusive supply agreements between Statoil and individual station owners
- (ii) the PSA, which are much narrower in scope and are limited to supporting the station owner in meeting price competition from selected rival stations.

We consider each in turn.

2.15. Under the solus agreement²⁰ a Statoil station owner is contracted to confine its purchases of motor fuels from Statoil. The latter may supply certain equipment to be used by the retailer in selling motor fuels. These agreements tend to be long-term with a maximum duration of 10 years. When a station owner signs the solus

¹⁹ *ICI v Commission*, Case 48/69 etc [1972] ECR 619, [1972] CLMR 557, paragraph 64.

²⁰ Such agreements are common across motor fuels suppliers.

agreement they are often able to secure some concession from Statoil in return for long-term exclusivity such as a loan or the supply of equipment on favourable terms. The Authority issued a motor fuels category licence in respect of solus agreements on 1 July 1993,²¹ which is due to expire on 30 June 2008.²²

2.16. The PSA was part of Statoil's Price Promise that was announced publicly in late 1996 and continued up until midnight 31 July 2003 when all PSA's were terminated. The Price Promise was supported by an extensive advertising campaign designed to establish public awareness of the scheme. In press releases announcing price changes in motor fuels Statoil makes frequent reference to the Price Promise – e.g., "Wherever a 'Price Promise' sign is posted on a Statoil forecourt, customers are guaranteed that Statoil will be competitive on price in the local area."²³ The aim of the Price Promise was set out clearly in an internal Statoil slide presentation, "we will match the lowest real competitor – but not go below!"

2.17. Part and parcel of the Price Promise was the PSA, an agreement between Statoil and independent station owners concerning the financial contribution to be given by Statoil to assist station owners to meet competition from rival stations. More specifically, under the PSA Statoil undertakes to subsidise half of the difference between its recommended retail price (RRP) for unleaded petrol and diesel and the price of these products in selected rival petrol stations, so-called marker stations. This allows the Statoil motor fuels retailer to match a rival's lower price at half the cost.

2.18. The RRP as advised by Statoil to retailers set a maximum price which retailers could sell petrol at if they wanted to avail of the price support. Statoil head office identifies one or more 'competing' sites, chosen as those stations most likely to influence the volume of business at the site in question. These rival stations are known as 'marker' stations and are named in the PSA. The Statoil representative selects these for the area in conjunction with the retail management and pricing

²¹ Competition Authority, *Motor Fuels Category Licence*, Decision No 25.

²² Under Clause 3(2) of Schedule 2 to the Act, such category licences continue in being as if they were a declaration made under the Act. For further details see note 25 below.

²³ Statoil, 1999, "Statoil announces petrol price changes." Press Release, 29 January.

administration teams. Price Support is not given if a Statoil retailer decides independently to reduce his retail prices or reduces his prices below that of a marker stations.

2.19. Table 5 below shows an example of how the rebate under the PSA would be calculated. This is based on documentary evidence supplied to the Authority by a Statoil station owner in Letterkenny in November 2001. In this case the competitor or marker station(s) are charging 62.5²⁴ cent per litre ('cpl') while Statoil's RRP is 66.2 cpl. After taking VAT into account, the difference is 3.06 cpl. Under the PSA Statoil would pay the participating station owner 1.53 cpl for every litre sold during the relevant period – usually a week.

Table 5
Illustrative Statoil Discount and Rebate Calculation under the Price Support Agreement, Letterkenny, Co. Donegal, 2001

		Unleaded petrol (cpl)
A	Statoil RRP (cpl) inc VAT	66.2c.
B	Competitor Price (cpl) inc VAT	62.5c.
C= (A-B)	Competitor Variance (cpl) inc VAT	3.70c.
D= (C/1.21)	Net Discount excl. VAT	3.06c.
E = (D * 0.5)	Retailer Contribution (50:50 excl VAT)	1.53c.
F = (D-E)	Head Office Contribution (cpl) excl VAT	1.53c.

Source: Competition Authority.

2.20. The pump price(s) of the marker station(s) were reported by the Statoil retailers to the head office along with the Statoil station's pump price and weekly sales volume. These reports are known as 'Monday Reports'. Cheques were issued by Statoil head office weekly, based upon the pricing information received through the 'Premium Club terminal'. This terminal is the computer on site where the Monday Reports were entered.

²⁴ The prices would have been quoted in pence, as opposed to cent, at the time of the investigation. However, unless otherwise stated, all prices are cited in cent in this Decision Note.

2.21. The two chosen marker stations for all three Statoil stations in Letterkenny were Shell Dry Arch, owned by Mr. Martin, and Esso Dry Arch, owned by Mr. McGee. The two stations are situated beside each other on the main road from Derry and Dublin into Letterkenny. They had a combined market share of [between 25 and 30]%. It should be noted that there is another Esso station owned by Mr. McGee situated across the road from these two stations. It had a market share of [between 5 and 10]% which when combined with the market share of the two ‘marker’ stations gives 36%. There were three Statoil stations in Letterkenny that availed of PSA. Therefore the six stations directly affected by the Statoil PSA in Letterkenny accounted for an estimated 67% of the local motor fuels market.

Object or Effect of Preventing, Restricting or Distorting Competition

2.22. Agreements, decisions and concerted practices breach Section 4(1) of the Act if they have the object **OR** effect of preventing, restricting or distorting competition. In paragraphs (a) to (e) of Section 4(1) examples are provided – e.g., price fixing – of the type of agreements that would breach the Act. However, even if the agreement, decision or concerted practice breaches Section 4(1), it could be exempt if it met the conditions – e.g., promotes economic progress - set out in Section 4(5). In some circumstances, of course, the agreement, decision or concerted practice may not be prohibited by the Act at all.

2.23. The Authority and the Commission have respectively issued guidance concerning the application of Section 4 of the Act and Article 81 of the EC Treaty to RPM. Article 3(a) of the Authority’s 1998 Category Licence in respect of Agreements between Suppliers and Resellers provides that agreements involving RPM or an inducement to engage in RPM do not benefit from the licence.²⁵ The text of these articles is identical and states that the Category Certificate and Licence do not apply to any agreement, which involves: -

²⁵ Under the Competition Act, 2002, Schedule 2, Clause 3, all certificates and individual licences granted under the Competition Act, 1991 (as amended) were revoked as and from 1 July 2002 while every category licence continued in being “as if it were a declaration” made under Section 4(3) of the Competition Act 2002. Thus, the category licence in respect of agreements between suppliers and resellers remained in force as a declaration and the Authority issued a Notice in respect of Agreements between Suppliers and Resellers on 1 July 2002 to replace the 1998 category certificate.

(a) any restriction on the freedom of the reseller to determine his own resale prices. However, suppliers may recommend resale prices, provided:

- i) such recommendations indicate that the reseller is free to set his own resale prices;
- ii) the recommendation makes no references to margins arising from applying the recommended price;
- iii) there is no requirement to display the recommended price; and
- iv) no inducements are offered to secure compliance with the recommended price.

2.24. Article 4(a) of EC Regulation 2790/99 on the application of Article 81(3) of the Treaty to Categories of Vertical Agreements and Concerted Practices states that agreements involving RPM do not benefit from block exemption. The text of Article 4(a) stipulates that the block exemption will not be available where the object of the agreement is:

the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier's imposing a maximum sale price or recommending a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties.

Thus, both the Commission and Authority adopt a similar position with respect to RPM.²⁶

2.25. In addition to these general guidelines on RPM the 1993 Motor Fuels Category Licence also raised the issue of RPM. The Licence states in paragraph 25:

The Authority regards anything which enforces or is conducive to resale price maintenance as a serious restriction upon competition and indeed to an

²⁶ While the PSAs were introduced prior to the 1998 Category Licence in respect of Agreements between Suppliers and Resellers, and EC Regulation 2790/99, they have continued to be implemented from that date to the period considered in this Decision Note. Therefore, the provisions of these "Block Exemptions" are relevant to the analysis of the findings of this investigation.

elimination of price competition and therefore as a serious infringement of the prohibition in Section 4(1).

It goes on to state in paragraph 72 that:

No licence under Section 4(2) could be justified for anything which constitutes or amounts to resale price maintenance, and this category licence does not extend to such arrangements.

2.26. **Object of the PSA.** As noted above Section 4(1) may be breached because an agreement has the object of preventing, restricting or distorting competition. Certain agreements, by their very nature, are considered anti-competitive. For example, under Section 6 of the Act there is a rebuttable presumption that agreements between competitors that fix prices, limit output or share markets are assumed to have as their object the restriction of competition and hence breach the Act. It should be noted that the object here does not mean ‘the subjective intention of the parties when entering into the agreement, but the objective meaning and purpose of the agreement considered in the economic context in which it is applied.’^{27, 28}

2.27. It is not clear that the object of the PSA can necessarily be considered anticompetitive. It does, however, have certain features that raise concerns under the Act and at the same time appear to be inconsistent with the provisions of the Authority’s 1998 Category Certificate/Licence and the Commission’s Regulation 2790/99, details of which are outlined at paragraphs 2.23-2.24 above. In particular, under the PSA the retail price of motor fuels may not exceed the RRP (i.e., maximum RPM). In considering the issue of maximum RPM the Authority concluded that it ‘may be anti-competitive in certain circumstances and it is unable to conclude that, in

²⁷ Whish, *Competition Law*, supra note 17, pp. 92-93.

²⁸ In this connection it might be noted that the Statoil documentation concerning the October 1996 introduction of the Price Promise and the PSA stresses that the purpose was to project the Statoil brand as a price competitive brand. Earlier Statoil acquired Jet, a low price brand and was concerned that Jet consumers would not transfer to the Statoil brand, which was perceived as expensive. The Authority investigation into this merger confirmed these perceptions. (Competition Authority, 1996, supra note 8, para 4.23). Even if this was accepted as justification for the PSA, it is not clear that this justification, while of relevance in 1996 would continue to apply in 2002.

general, it does not contravene Section 4(1).”²⁹ However, in the case of the PSA maximum RPM is combined with a floor on the price – that charged by strategically located rival motor fuel retailers, the marker stations. By linking the PSA to the RRP, it indirectly pushes retailers into fixing their prices at the RRP. To do otherwise is made uneconomic as both setting prices above the RRP and independently cutting prices results in the removal of price support payments, which enable the station owner to match its competitors lower prices at half of the cost.

2.28. An alternative method of characterising the PSA is as a ‘meet the competition’ or ‘price matching’ scheme. This is how the Price Promise was promoted, and the PSA was designed to help retailers match price-cutting by rivals. Since as noted above, there was no evidence of a cartel, then there is obviously no formal ‘collusive’ price. But, in effect the RRP is the clear focal point. On the basis of the testimony of the motor retailers in Letterkenny, and in light of the advertising campaign referred to at 2.16. above, it seems reasonable to conclude that all motor fuel retailers were aware of this, and that the PSA was designed to ensure pricing at RRP except in times of matching rivals’ price cuts.

2.29. Price matching schemes are not a form of conduct on which the Authority has previously opined. However, there is no doubt that the consensus in the academic economics literature that price-matching schemes are a facilitating device to achieve and sustain tacit collusion. Although price-matching guarantees may give the impression of vigorous competition, the dominant view is that they merely facilitate collusive pricing. In the literature, this is formalised in oligopoly models, which show that price matching supports the absence of price competition precisely because it prevents rival firms from gaining market share by cutting price.³⁰

²⁹ Competition Authority, 1998, *Category Certificate/Licence in Respect of Agreements Between Suppliers and Retailers*, Decision No 528, para 16. For the legal status of this document under the Act, see note 22 above.

³⁰ This theory can be found in most standard textbooks on industrial organisation (Cabral L M, 2001, *Introduction to Industrial Organization*, MIT Press; Church J and Ware R, 2000, *Industrial Organization: A Strategic Approach*, McGraw-Hill), management strategy (Oster S, 1994, *Modern Competitive Analysis*, 2nd ed. New York, Oxford University Press; Baye M, 1997, *Managerial Economics and Business Strategy*, 2nd ed., Homewood, IL, McGraw-Hill), game theory (Dixit and Nalebuff, 1991, *Thinking Strategically*, New York: W W Norton) and anti-trust law (Handler M et al, 1990, *Cases and materials on trade regulation*, Westbury, New York: Foundation Press). The original research papers from which this consensus derives are Salop, 1986, ‘Practices that (credibly) facilitate oligopoly coordination’, in J Stiglitz and F Mathewson (eds), *New developments in the analysis of market structure*, Cambridge MA, MIT Press and Hay G, 1982, ‘Oligopoly, shared monopoly and anti-trust law’ *Cornell Law Review*, 28: 439-81, and two recent examples are Edlin A and Emch E, 1999, ‘The welfare losses from price-

2.30. In sum, it appears that there are grounds for arguing that the object of the PSA was to prevent, restrict or distort competition.³¹ This applies whether the practice is characterised as price matching or RPM. At the same time there is not an extensive set of cases concerning PSA-type cases that would lead to the conclusion that their objective is necessarily to restrict competition.³² Indeed if the combined market share of the Statoil and marker motor fuel stations were sufficiently small then there would be little if any impact on competition. As a result the Authority has decided not to come to an unequivocal view on whether the object of the PSA is necessarily a breach of the Act. However, the PSA does raise sufficient concerns that there is merit in examining whether or not the effect restricts competition.

2.31. **Effect of the PSA.** There are a number of ways in which the effect of the PSA on competition can be evaluated. In this Note three are considered. *First*, a theoretical analysis of the way in which the PSA influences the incentive to cut price, which is then applied to the situation in Letterkenny. *Second*, the testimony of the station owners in Letterkenny. *Third*, the pattern of prices in Letterkenny based on several ‘snapshots’. We consider each in turn.

2.32. *An analysis of the effect of the PSA on price competition.* The Authority took the view that a price support scheme such as the PSA would be likely to dampen a petrol retailer’s incentive to compete. An illustrative model is used to show how this

matching policies”, *Journal of Industrial Economics*, 47: 145-67 and Hviid M and Shaffer G, 1999, ‘Hassle costs: the Achilles’ Heel of Price-Matching Guarantees”, *Journal of Economics and Management Strategy*, Vol. 8, 4: 489-521.

³¹ An argument which has been consistently refuted by Statoil.

³² Two recent cases may be noted here.

First, the Authority considered PSA type arrangements in the Maxol-Busselle merger and while noting the anticompetitive aspects of such arrangements did not come to the conclusion that they were necessarily anticompetitive. (See Competition Authority, 2002, supra note 11, paragraphs 4.26 to 4.30)

Second, in a recent examination of a scheme somewhat similar to the PSA in the Netherlands, the Dutch Competition Authority came to the conclusion that the price-matching scheme was not an infringement of competition law. However, it should be noted that the Dutch analysis was largely theoretical in nature and, unlike the Authority’s investigation in Letterkenny, the Dutch authority could not demonstrate that the price-matching schemes in place had an anti-competitive effect in the market. Details may be found on the Dutch Competition Authority’s website (www.nmanet.nl/en/default.asp). On this see also RBB Economics, 2003, *Fine in Theory*, RBB Brief 09, June, and Global Competition Review, 2003, “Dutch Praised for Scepticism”, *Global Competition Review*, 15 August. Details of the latter may be found on their website, www.globalcompetitionreview.com/new. It is perhaps also worth pointing out that in the Dutch case several of the wholesalers of motor fuels operated margin supports similar to the PSA, whereas in Letterkenny, Co Donegal only Statoil operated such a scheme, although one of the other wholesalers occasionally gave support on an ad hoc basis.

would occur. As a starting point, consider first the incentive for any motor fuels station owner to cut price (net of VAT) by say 1 cent. Several simplifying assumptions are made to facilitate an analysis of the incentive effects:

- Prior to this price cut the mark up of the station owners' retail price over the wholesale price charged by the wholesale supplier (net of VAT) is 5c.
- None of the station owners' other costs are sensitive to volume sold.
- Aggregate petrol sales in the vicinity of the stations are insensitive to price³³
- Price cutting can only increase the sales of the cutting firm by attracting customers away from rivals that do not cut the price.
- The station owner's initial market share is one third of the market.

Since a 1c price cut represents a 20% reduction in the mark-up, for the station owner to increase their profit, the station owner will need to increase the volume sold by at least 20%, raising its market share by 6.7 percentage points, from 33.3% to at least 40%. Since the station owners' rivals initially have 66.7% of the market, it must therefore attract away at least 1 out of every 10 of their customers.

2.33. But now suppose that this retailer knows that some of its rivals will immediately match any price cut. Suppose that their market share is also initially 33.3%. This drastically reduces the likelihood that the cut will be profitable for two reasons:

- None of the matching rivals' customers will switch.
- Although some of the non-matching rival's customers will switch, they are equally likely to switch to the matching rival as to the station owner that initiates the price cut.

As such, and assuming that the initiator attracts half of the switching customers, a 6.7% point increase in market share is only possible if 13.3% of the market switches.

³³ Especially in the short-run, demand for petrol as a whole is likely to be extremely insensitive with respect to price: substitution to alternatives (public transport, walking, consumers switching to more economical cars) is only really likely in the longer-term, and, even then, limited to the extent that many consumers see private motoring as a necessity.

Since these customers must come from the 33.3% of the non-matching rivals' customers, this requires 2 out of 5 to switch. In other words, the required cross-price elasticity of demand between rival petrol stations must be four times greater than in the initial case.

2.34. Underlying this particular hypothetical numerical example there is a more general formula. Denote the market shares of the three types of firms as follows:

- X = the initial price-cutter
- Y = the matching rivals
- Z = the non-matching rivals

Then a profitable price cut which entails a 20% cut in X's margin requires:

$20X/(100-X)$ in every 100 customers to switch if the price cut *is not* matched,
and
 $20(X+Y)/(100-X-Y)$ in every 100 customers to switch if the price cut *is* matched.

Table 6 uses these formulae to show how the required switching rate increases; (i) the larger is the initiators market share; and (ii) the greater are the market shares of the matching rivals.

Table 6
Number of customers (amongst every 100) of non-matching rivals (Z) required to switch in order to make a price cut profitable

Y's share (%)	0	10	20	30	40	50	60	70
X=10%	2	5	9	15	20	30	47	80
X=20%	5	9	13	23	30	47	80	*
X=33%	10	15	23	40	55	100	*	*

Notes:
* indicates that the price cut would be unprofitable even if all 100 customers switched.
X, Y, and Z are defined in paragraph 2.34.

Source: Competition Authority

2.35. Although price matching may be designed to make price competition softer in general, this is not always its effect, whether this is the outcome in a particular market

will depend on who is matching whom. Table 6 shows that, in general, price cuts are unlikely to be profitable where either the price cutter and/or the matcher has a large market share. It might be that, however, in Letterkenny, this is not necessarily the case. Therefore, the Letterkenny market structure is examined with this in mind.

2.36. In the case of Letterkenny, Co. Donegal, the Authority estimated that the market share of the initial price cutters, the marker stations, was 36%, i.e., $X = 36$,³⁴ and the combined market share of the matching rivals was 41%, i.e., $Y = 41$.³⁵ Only 23% of the market would be left open from which to capture sufficient additional market share to cover the reduced margin of the marker. According to similar calculations to those used for Table 6, this would require capturing nearly 60% of consumers previously buying from the remaining non-cutting retail outlets. Such a switch seems unlikely, especially when it is remembered that the non-cutters are located geographically in the peripheral locations. In this respect, it is interesting to note that two station owners stated in oral hearings before the Authority that the Price Promise did not affect their own pricing decisions, this would appear to be a result of their peripheral location. The implication is that, by virtue of their own location, they do not see themselves as in direct competition with the Statoil stations. If this is true, it is difficult to see how a price cut by one of the marker stations could conceivably attract sufficient extra custom to cover the reduced margin, if the Statoil stations matched that cut. The Authority is of the opinion that the Price Promise disincentivised aggressive price cutting behaviour, at least in the core locations in Letterkenny.

2.37. It should be recalled that this hypothetical table has been calculated on the assumption that the price cut represents a 20% reduction in the profit margin, say 1c per litre. It would seem that the hypothetical figures in Table 6 probably underestimate the dampening effect of the PSA on rivalry in Letterkenny, given that

³⁴ Strictly speaking, there are only two marker stations: Martin and one of McGee's stations, which account for 29%. However, McGee's other smaller station, although not strictly a marker, is situated across the road from these two stations. All the evidence suggests that, unsurprisingly, McGee always sets the same price in his two stations. Therefore, it is reasonable to assume that this smaller station is also, in effect, part of the marker.

³⁵ Statoil motor fuels stations accounted for 30% of the market. Based on the testimony of two other station owners who alleged that they would tend to price in parallel with their Statoil neighbours, one can justifiably include their combined market share (11%) with Statoil thereby yielding a Y value of 41.

the price reduction in the actual was closer to 1-2% (with prices in 2001 in the region of 60-80 pence) than the 20% assumed here. It is highly unlikely that such a small percentage change could give rise to such large percentage increases in demand as are implied by nearly all the figures in the table.

2.38. *What do the Station owners say?* As noted above, all the station owners were summoned under the Act to provide documents and answer questions under oath as part of the investigations into motor fuels pricing in Letterkenny. In that connection the effect of the PSA was raised. The responses were as follows:

(i) ***Statoil stations.*** As already explained, the PSA is so structured that the owners of the Statoil stations have no incentive but to price at the level Statoil wishes: they are helped to match their markers in times of price cuts, and not to do so would be to risk large losses in market share; at other times, they are discouraged from pricing below their markers because this would mean foregoing support. This is confirmed by the comments of the three owners in the oral hearings, to the effect *inter alia* that:

- to sell below that price without support wouldn't be viable;
- their selling price is based on what our marker sites are selling at and that's it; and
- you're not supposed to go below marker site prices.

(ii) ***The marker stations.*** Do the owners of the marker sites admit that the PSA compromises their incentives to price cut, as suggested above? Here, the picture is more mixed. One stated quite clearly that the availability of price support to his rivals removed the incentive for him to reduce his price because he knew they would match whatever price he would set. However, the second station owner said that, although he was aware of PSA, it did not affect his pricing decision. This requires further examination, and we will return to it below.

(iii) *Non-marker owners.* We have already mentioned in the previous paragraphs that some of the non-marker stations felt tied to Statoil prices, whilst others – the owners of more peripheral stations – felt unconstrained.³⁶

In sum, it would appear that the station owners' testimony is largely consistent with the view outlined above as to how the PSA influences the incentive to cost price.

2.39. *What do the price data tell us?* Table 7 below summarises surveys of the prices of all the stations on seven occasions (each a snapshot taken on the same day) between May 2001 and January 2002.³⁷ The data is grouped by Statoil station owners, their markers and their non-marker rivals. The last mentioned are divided into those geographically close, and those not so close, to Statoil stations. To facilitate the comparisons, on each date the prevailing price is identified. Not only is this the price set by the majority of stations on that day, but also, significantly, this is also always the price of McGee's stations (one of the markers). Reference is made to unleaded petrol prices, recorded in pence per litre.

2.40. A number of patterns emerge from the data in Table 7:

- On two of the seven days, all stations charged exactly the same price
- Excluding the four stations located peripherally, there is a remarkable uniformity of prices. On four of the seven dates, all nine stations posted the same price. Taking all seven dates, there are 63 station observations, and for only five of these does an individual motor fuels station differ from the prevailing price.
- Of the five exceptions, three relate to one day, when one of the markers was pricing at 1p less than the prevailing price, and this had been matched by one of the Statoil stations and the non-Statoil station across the road. The other

³⁶ Indeed, one of these stated that they had a niche in the market, which allowed them to charge a higher price.

³⁷ The first two were reported by members of the public, and the others by authorised officers of the Authority.

two exceptions are each singular, in that one of the nine stations was out of line with the other eight.

- The four more peripherally located (non-Statoil, non-marker) stations were more likely to deviate: for 11 of the 28 observations, there was some deviation from the prevailing price – usually above.

Table 7
Unleaded Petrol, Price Surveys, Letterkenny, Co. Donegal, 2001 to 2002, Selected Dates

	18-5-01	21-6-01	27-6-01	28-8-01	01-10-01	05-11-01	28-01-02
prevailing price	72.9	75.9	75.9	68.5	69.9	65.7	84.9
	<i>Excess over prevailing price</i>						
Statoil							
Tobin	0	0	0	0	0	-1	0
G. Sweeney	0	0	0	0	0	0	0
Dunne	0	0	0	0	0	0	1.3
Markers							
Martin	0	0	0	0	-1.4	-1	0
McGee	0	0	0	0	0	0	0
Others in the Vicinity							
McGee	0	0	0	0	0	0	0
B. Sweeney	0	0	0	0	0	-1	0
Blaney	0	0	0	0	0	0	0
Keys	0	0	0	0	0	0	0
Others, Less Close							
Keys	0	0	0	0	-1.4	0	-1.5
Hegarty	0	0	0	0	0	0.2	-1.5
Reid	0	0	0	0.4	0	0.2	0
Doherty	2	0	0	-0.1	1	0.2	1.2

Notes: See paragraph 2.39 for details on the construction of the table.

Source: Competition Authority

2.41. Bearing in mind the snapshot nature of these observations, it is always possible that we might observe the odd aberration – perhaps because one station owner is momentarily behind/ahead of the others in changing price, or because they are observed at different times in the day. This might well be the case, for example, on the single days each when Martin was under the prevailing price, and Dunne above. The day when three of the non-peripheral stations were all 1p under the prevailing price is rather more interesting: this is perhaps an instance when Tobin

(and the adjacent B Sweeney) had followed one marker (Martin), whilst the other Statoil stations had followed the other (McGee.) However, these appear to be very much exceptions.

2.42. Turning to the four more peripheral stations, they are clearly more inclined to deviate, albeit considerably less often than not. However, paradoxically, even this can be interpreted as supporting the view that the PSA will dampen effective competition. If these peripheral stations feel able to deviate this suggests that they do not see themselves as in direct competition with the more centrally located Statoil and marker stations (see Ms Doherty's opinion cited earlier), this further narrows down the scope for any of the leading stations to increase their market share by price cutting.

2.43. We have concentrated our remarks on this set of price data because we believe that it brings out most accurately some of the details of the market *as a whole*. However, there are other sources of information, which point even more strongly to parallel prices between Statoil and marker stations. For example, the Authority obtained copies of the so-called 'Monday reports' (sent by Statoil petrol stations to Statoil), which list the price of unleaded and diesel for the two marker stations and the price of the Statoil station submitting the data. There is a four-week period when the available reports for two Statoil stations (Tobin and Dunne) overlap. For this four-week period the prices recorded for the two Statoil stations and the two marker stations are the same (with one trivial exception³⁸) for each week for each grade of fuel.

2.44. In sum, as noted above 'Meet the competition' policies are widely viewed by academic economists as generally anticompetitive. This is primarily because they reduce the incentive for firms to price cut, and make it more likely that 'tacit collusion' will emerge. We define this term to mean the avoidance of price competition because of the fear that this will be self-defeating. This need not always be the case, especially where the firms are relatively small. However, in the context of the Letterkenny petrol market, the Authority believes that a publicised price

³⁸ For one week there is a difference with respect to unleaded fuel, which apparently reflects a 5-day difference in the timing of the submission of the report to Statoil, during which Statoil announced a change in price.

matching policy is anticompetitive. This is largely because the aggregate demand for petrol is price insensitive, and because both the firm declaring its price-matching policy, and the firms to which it chooses to link that strategy have large market shares. Moreover, much of the remainder of the market is located in more peripheral areas geographically, with some degree of localised monopoly power: this further narrows down the scope for price cutting to recover lost margins by increased volume.

3. ENFORCEMENT ACTION

3.1. In this case a letter of initiation was sent to Statoil and its three station owners in Letterkenny on 6 March 2003.³⁹ A meeting was held with Statoil officials and their legal representatives on 12 May 2003. In a letter dated 23 May 2003 Statoil put forward various proposals to cure the competitive harm that the Authority alleged had been caused by the PSA, although not accepting that the PSA is either anti-competitive or a breach of Section 4(1). Subsequent discussion with the Authority clarified the elements of Statoil's proposal. The new support arrangements proposed by Statoil were implemented so that by 31 July 2003 – the PSA was withdrawn and replaced by the Retail Price Discount Incentive.

3.2. A summary of the undertakings given by Statoil is set out in Box 1. The PSA is withdrawn not just in Letterkenny, but also throughout the State. Statoil undertakes not to introduce a support scheme with the elements which, combined as a package within the PSA scheme, the Authority found objectionable.

- Statoil identifies one or more marker stations being “competing sites” selling rival brands in the vicinity that are most likely to influence the volume of sales in the Statoil stations; **and**
- If the marker station(s) set(s) a price, which is less than Statoil's recommended retail price, Statoil agrees to subsidize its retailer to meet the difference by lowering its price; **and**

³⁹ Details on the Authority's powers and procedures in bringing an investigation, and the purpose of a letter of initiation are outlined in previous decision notes, see for example, Section 3 of Competition Authority, Decision Note E/03/001, “The selection, introduction, implementation and operation of the Glassmatix motor vehicle repair estimation system by the Consortium; Allianz Ireland plc, AXA Insurance Limited, Hibernian General Insurance Limited and Royal & Sun Alliance Insurance plc, in the State”, August 2003.

- The support is conditional on the Statoil station owner not independently cutting price, **and** not cutting to below the price of the marker station(s).

3.6 In sum, the Authority takes the view that the proposals of Statoil, which have now been implemented, cure the competitive harm it believes was created by the PSA. The result should be a more competitive market.

Box 1: Summary of Undertakings given by Statoil Ireland Limited to the Competition Authority in relation to its investigation into Possible Resale Price Maintenance practices by Statoil Ireland Limited in the Motor Fuels Market

1. Statoil agreed to terminate all PSA's throughout the State as and from midnight on 31 July 2003. A copy of the communication dispatched to all Statoil station owners confirming this was provided to the Authority. The PSA was replaced with a new scheme satisfying the criteria outlined in 2(a) – (c) below.
2. Statoil has undertaken not to introduce or continue to implement any scheme or agreement which combines the following elements:
 - (a) identifies one or more markers stations selling rival brands in the vicinity of Statoil stations for the purposes of subsidising its retailers in only matching the price of the marker station; **and**
 - (b) is conditional on the retailer not independently cutting the price, and not cutting to below the price of the marker station(s); **and**
 - (c) sets a recommended retail price as a maximum price in excess of which retailers are not permitted to sell motor fuel if they wish to avail of price support.

THE DECISION

4.1. On the basis of the facts in its possession and for the reasons set out above, the Authority has decided that for so long as Statoil Ireland Limited is in compliance with the terms of the assurances made by it to the Authority, the Authority shall discontinue its investigation as it relates to the Statoil Ireland Limited.⁴⁰

⁴⁰ Mr. Terry Calvani, Member of the Authority recused himself from, and did not participate in the Authority's decision-making process on this matter, on the basis that he has acted as legal representative for a major international competitor to Statoil in the past.

4.2. This decision of the Authority does not affect the rights of private parties to take action under the Act.

For the Competition Authority

Dr Paul K Gorecki

Member and Director of the Monopolies Division
8th December 2003