

Undertakings regarding retail petrol suppliers in the United Kingdom

1. In 1966 the Government secured Undertakings from the oil companies that reflected the recommendations made by the Monopolies Commission in their 1965 report (see Appendix 2.1). The Undertakings were amended in 1968, removing the constraint on further acquisitions of retail outlets by a supplier whose deliveries of petrol to his own outlets in a 12-month period exceeded 15 per cent of his total volume in that period; and further amended in 1976, reflecting at various points the extended use of licences and, in particular, introducing provisions for the settling of certain disputes by reference to arbitration, and a requirement that where a company makes proposals to a licensee for the renewal of a licence to sell petrol by retail it will do so on terms that are fair and reasonable. (These provisions were drafted to accommodate conflicting views on means of redress that it might be appropriate for licensees to enjoy.)

2. The full text of the Undertakings currently in force is set out below. There are three provisions that differ significantly from the tenor of the Commission's recommendations:

- (a) the five-year limit to a solus petrol tie was envisaged by the Commission as applying to all retailers, but the Undertakings exempt wholesaler-owned sites and MSAs;
- (b) the constraint on commissions (see Appendix 2.1, paragraph 8(d)) appears to have been envisaged by the Commission as comprehensive, but the Undertakings exempt 'payments to be made by a retailer who is a tenant or licensee of company premises by reference to his acquisitions or sales generally ...' (and so admits the possibility of a levy on shop turnover); and
- (c) the Commission envisaged that the only exceptions to the minimum three-year lease or licence would be for trial periods or failure to reach specified minimum sales volumes; however, the Undertakings permit an oil company to terminate a lease or licence in order to demolish or reconstruct the premises.

It will be noted that the Undertakings do not extend to cover relationships between oil companies and commission agents or franchisees.

3. The full text of the current Undertakings says:

UNDERTAKINGS REGARDING RETAIL PETROL SUPPLIERS IN THE UNITED KINGDOM, 1976

Part I (Solus Petrol Ties)

Undertaking as to Solus Petrol Ties (Other than Ties on Equipment)

1. The Company will not enter into any agreement with a petrol retailer which includes a solus tie which will or may affect any petrol filling station for more than five years unless the agreement in question permits the retailer, by giving such notice (not exceeding 12 months) as may be required by the agreement to determine the operation of the tie without any penalty whatsoever at any time more than five years after the first day following the making of the agreement on which petrol was supplied by the Company or an associated company for retail sale at the relevant petrol filling station:

Provided that nothing in this paragraph

- (i) shall apply
 - (a) to any agreement in so far as it relates to a filling station situated on company premises or in a motorway service area;
 - (b) to any credit sale, hire purchase or hiring agreement relating to petrol equipment, that is to say, storage tanks, pumping equipment and other articles used in connection with the retail sale of petrol, or to any agreement for the loan of such equipment if the only solus tie in the agreement is a term restricting the petrol in relation to which the equipment may be used; or
- (ii) shall preclude the Company from making the right to determine the operation of a solus tie conditional upon
 - (a) the repayment by the retailer of the outstanding amount of any monies loaned to him by the Company or an associated company together with such amount by way of interest as may then be due under the loan agreement; and
 - (b) the payment of all sums due to and demanded by the Company or an associated company in respect of petrol or other goods supplied for resale at the relevant filling station.

Undertaking as to Solus Ties in Agreements Relating to the Supply of Petrol Equipment

2. The Company will

- (a)(i) include in any such credit sale or hire purchase agreement as is mentioned in head (i)(b) of the proviso to paragraph 1 above, a term permitting the retailer to determine the operation of the solus tie at any time more than five years after the installation of the relevant equipment by giving such notice (not exceeding 12 months) as may be required by the agreement and, before the expiry of the notice, tendering payment of such sum as may be specified in the agreement not being an amount exceeding the sum of all the instalments still to be paid plus, in the case of a hire purchase agreement, any sum payable on the exercise of the option to purchase;
- (ii) where notice is given and payment tendered as aforesaid pursuant to a term included in a hire purchase agreement, permit the retailer to acquire ownership of the relevant equipment when payment is so tendered;
- (b)(i) permit any retailer to whom any petrol equipment is loaned or hired pursuant to such a loan or hire agreement as is mentioned in head (i)(b) of the proviso to paragraph 1 above to return that equipment to the Company or (if he so chooses) purchase it free of the solus tie at any time more than five years after it was installed; and
- (ii) ensure that the price payable on any such purchase or a formula by reference to which that price may be calculated is mentioned in the relevant hire or loan agreement, being a price which is not unreasonable in relation to the value of the benefit conferred on the retailer by the acquisition of the equipment having regard to the cost to the Company of providing, and where appropriate installing and maintaining, the equipment less (in the case of any hired equipment) any payments made to the Company by way of hire.

Provided that –

- (i) nothing in this paragraph shall apply to an agreement relating to equipment for use exclusively on Company premises; and

- (ii) nothing in head (b) of this paragraph shall require the Company to accept the return of or sell any equipment unless the retailer shall have given any such notice (not exceeding 12 months) as may be specified in the relevant hire or loan agreement.

Undertaking as to Loan Agreements

3. The Company will not enter into any agreement for or connected with the giving of a loan to a petrol retailer which includes a term the effect of which is or may be that the amount or date of any repayment is fixed or to be determined by reference to any quantity of, or the price of any quantity of, petrol acquired for sale or sold at any petrol filling station affected by a solus tie other than a filling station standing on company premises.

Undertaking as to the Determination of Solus Petrol Ties existing at the Date of These Undertakings

4. The Company will permit any petrol retailer carrying on business at a petrol filling station affected by a solus tie included in an agreement made before the date of these Undertakings (being an agreement which will or may have effect after the expiry of the period of five years hereinafter mentioned), by giving 12 months' written notice, to determine the operation of the tie in relation to that station without any penalty whatsoever at any time more than five years after the date of these Undertakings of five years after the date on which the Company or an associated company first supplied petrol for retail sale at that filling station, whichever is the later:

Provided that nothing in this paragraph

- (i) shall apply to any agreement in so far as it relates to a filling station situated on company premises or in a motorway service area or to equipment for use at such a station;
- (ii) shall require the Company
 - (a) to continue to supply petrol to a petrol retailer at a filling station which has ceased to be affected by a solus tie or to discharge further any other obligation connected with the promotion of petrol sales at such a station; or
 - (b) to permit a solus tie to be determined at a time when the retailer has not paid all sums due to and demanded by the Company or an associated company in respect of petrol or other goods supplied for resale at the relevant filling station; or
 - (c) to permit a solus tie to be determined unless the retailer tenders payment of the whole amount still to be paid under any hire purchase or credit sale agreement made between him and the Company or an associated company and relating to equipment for use by the retailer in the course of his business;
 - (d) to permit a solus tie to be determined unless the retailer tenders payment of the outstanding balance of any sums loaned to him by the Company or an associated company in the course of his business together with an appropriate amount of interest;
 - (e) to permit the determination of any solus tie included in an agreement relating to the hiring or borrowing by the retailer of any petrol equipment unless the retailer either

- (i) in accordance with any appropriate term of the agreement governing the hiring or loan of the equipment returns the equipment to the Company or purchases it; or
 - (ii) where there is no such appropriate term makes and carries out such arrangements with the Company as to the return of that equipment or its purchase as the retailer and the Company may agree upon.
5. In relation to head (e)(ii) of the proviso to paragraph 4 above the Company will –
- (i) in any case where it is not reasonably practicable to remove the relevant equipment and the equipment is the Company's property, offer to sell it to the retailer at a price which is not unreasonable in relation to the value of the benefit which is conferred by the purchase having regard to the cost to the Company of providing and, where appropriate, installing and maintaining the equipment less my payments made to the Company by way of hire; and
 - (ii) obtain and accept an independent estimate of such a price in any case in which the retailer is not prepared to accept a price proposed by the Company.

Part II (Ties as to Lubricants, etc)

Undertaking as to Agreements Restricting Sales of Lubricants, Etc.

6. The Company will not enter into any agreement with a petrol retailer (including a tenant or licensee of company premises) the effect or intended effect of which is:

- (a) to require the retailer to limit the brands of lubricants, kerosene or anti-freeze preparations acquired for sale, offered for sale, used, sold, displayed or advertised by him in the course of his retail business;
- (b) to require the retailer to acquire for sale, use or sell in the course of his retail business a specified proportion (however expressed) of lubricants, kerosene or anti-freeze preparations of a particular brand;
- (c) to give the retailer a right to a rebate discount or other advantage (whether financial or otherwise)
 - (i) for restricting the lubricants, or kerosene or anti-freeze preparations acquired for sale, offered for sale, used, sold, displayed or advertised, in the course of his retail business to lubricants or kerosene or anti-freeze preparations of a particular brand; or
 - (ii) for limiting in any way the quantity of any brand of such goods which is acquired for sale or stocked or the manner in which any brand of such goods is displayed, offered for sale or advertised by him in the course of his retail business; or
 - (iii) calculated by reference to the relative amounts of such goods of different brands which are acquired, sold, stocked, used or displayed by him in the course of his retail business;
- (d) to require the retailer to take delivery of any specific quantity of lubricants to be supplied by the Company or an associated company at a time which is or may be more than three months after the date of the agreement.

PROVIDED THAT nothing in this paragraph shall apply to any agreement is so far as it

- (a) relates to the use of a lubricating bay at a petrol filling station standing on company premises or the advertising of the services provided in such a lubricating bay; or
- (b) restricts the use of lubricating equipment supplied by the Company or an associated company in connection with lubricants not supplied by the Company or an associate company.

Undertaking as to Ties in Respect of Lubricating Equipment

7. The Company will not enter into any agreement with a petrol retailer prohibiting or restricting the use of any lubricating equipment in connection with lubricants not supplied by the Company or an associated company except where the equipment is supplied by the Company or an associated company

- (a) on loan or hire or on hire purchase or credit sales terms; or
- (b) for use in a lubricating bay at a petrol filling station standing on company premises.

8. Where the Company after the date of these Undertakings enters into any agreement for the supply on hire or loan of any lubricating equipment for use on premises other than company premises or any agreement for the supply on hire purchase or credit sale terms of any such equipment for use on any premises and the use of the equipment in connection with lubricants not supplied by the Company or an associated company is prohibited or restricted the Company will

- (i) where the equipment is supplied on credit sale or hire purchase terms, permit the retailer to determine the operation of the prohibition or restriction at any time when all the instalments have been paid in full and to pay these instalments in full at any time;
- (ii) where the equipment is hired or loaned permit the retailer to determine the hiring or loan at any time by giving three months' notice and returning the equipment in question before the expiry of the notice, or where there are practical difficulties involved in returning the equipment, by purchasing it at a price stated or provided for in the agreement being a price which is not unreasonable in relation to the value of the equipment at the time of purchase.

Undertaking as to Agreements Existing at the Date of these Undertakings

9. The Company

- (i) will not grant any such rebate discount or other advantage as is mentioned in paragraph 6(c) above under any agreement made before the date of these Undertakings save in so far as it is required to do so in discharge of a contractual obligation;
- (ii) will not enforce any agreement made before the date of these Undertakings in so far as the agreement would, if made after the date of these Undertakings involve a contravention of paragraph 6(a), (b) or (d) or paragraph 7 of these Undertakings;
- (iii) will permit any retailer party to any hire purchase, credit sale or hiring or other agreement for the loan of equipment made before the date of these Undertakings to act in such manner as would be required to be permitted by virtue of paragraph 8 if the agreement had been made after that date and accorded with that paragraph.

Part III (Commission Arrangements, etc)

Undertaking as to Commission Agreements

10. The Company will not enter into any agreements or arrangement the purpose or effect of which is to entitle the Company or any associated company to any commission or other similar benefit in respect of

- (i) any acquisition for sale of tyres or batteries or other motor vehicle accessories or articles unconnected with motor vehicles, or
- (ii) any sales of any such goods,

by a petrol retailer in the course of his business at a petrol filling station (whether on company premises or not) affected by a solus tie included in an agreement made between the retailer and the Company or an associated company.

Undertakings as to Agreements Existing at the Date of These Undertakings

11. The Company will not after the date of these Undertakings accept any such commission or other benefit as is mentioned in paragraph 10 under any agreement or arrangement made before the date if these Undertakings:

PROVIDED THAT nothing in paragraphs 10 or 11 of this undertaking shall apply to any agreement or arrangement

- (a) in so far as it relates to any goods supplied or to be supplied to a petrol retailer by the Company or an associated company; or
- (b) in so far as it requires payments to be made by a retailer who is a tenant or licensee of company premises by reference to his acquisitions or sales generally or by reference to his acquisitions or sales of goods of any specified class not being a class so described as to distinguish between comparable goods of different brands, manufacturers or suppliers.

Undertaking as to Agreements Restricting Sales of Goods (Other than Petrol and Lubricants), Etc

12. The Company will not enter into any agreement with a petrol retailer

- (a) restricting the acquisition for sale, stocking, exposing or offering for sale or selling of any goods (other than petrol or lubricants) at any petrol filling station affected by a solus tie included in an agreement made between the retailer and the Company or an associated company; or
- (b) restricting the advertising at such a station of any goods (other than petrol or lubricants) ordinarily sold at that station,

if the restriction is intended or calculated to require the retailer to discriminate between comparable goods of different brands, manufacturers or suppliers.

Undertaking as to the Enforcement of Restrictions

13. The Company will not enforce any restriction of the type described in paragraph 12 above (whether included in an agreement made before or after the date of these Undertakings and, if in an agreement made before that date, whether or not intended to require the retailer to discriminate between comparable goods of different brands, manufacturers or suppliers) with the intention of requiring such discrimination.

Part IV (Options and Rights of Pre-emption)

Undertakings as to Agreements Granting Options, etc

14. The Company will not include in any agreement relating to the loan of monies for use in connection with the purchase, construction or improvement of a petrol filling station any term or condition giving it or any associated company

- (a) an option to acquire any interest in the premises on which the filling station stands; or
- (b) a right of pre-emption in respect of any interest in those premises which is exercisable at any time after the loan (including interest) has been repaid in full.

Undertaking as to agreements existing at the date of these Undertakings

15. The Company will not exercise any option or right of pre-emption such as is described in head (a) or (b) of paragraph 14 that it enjoys under any agreement made before the date of these Undertakings relating to the loan of monies for use in connection with the purchase, construction or improvement of a petrol filling station at any time after the loan (including interest) has been repaid in full.

Part V (Deleted in 1968)

Part VI (Leases and Licences of Company Filling Stations)

Undertaking as to Gallonage Clauses

16. The Company will not include in any lease of premises on which a petrol filling station stands or in any licence affording a right to sell petrol by retail on such premises a term giving the Company the right to terminate the lease or licence or providing for its automatic determination on the sole ground that in any specified period the tenant or licensee has not purchased a certain quantity of petrol for resale at the station in question or has not sold a certain quantity there.

Undertaking as to Leases of Petrol Stations

17. Save in the cases referred to in paragraph 20, the Company will not grant or agree to grant a lease of premises on which a petrol filling station stands for a period of less than three years.

Undertaking as to Licences of Petrol Stations

18. Save in the cases referred to in paragraph 20, the Company will not grant to any person a licence affording him a right to sell petrol by retail on any premises on which a petrol filling station stands unless the Company operates a scheme approved by the Director General of Fair Trading for the reference to arbitration of disputes between it and licensees about the termination or non-renewal of such licences and the licence is granted for a period of not less than three years.

19. Where the Company makes proposals to a licensee for the renewal of a licence or for the grant of a further licence to sell petrol by retail on any premises on which a petrol filling station stands, it will do so on terms that are fair and reasonable.

Exceptions from Paragraphs 17 and 18

20. The Undertakings in paragraphs 17 and 18 shall not apply where
- (i) the Company grants or agrees to grant a lease or licence for a period not exceeding 12 months and the lease or licence is clearly expressed to be granted as a trial lease or licence to enable the Company to be satisfied that the grantee is a suitable person to be granted a lease or licence of the premises in question for a period of three years or more and the grantee has not previously held a lease or licence of the Company or any associated company in respect of any premises on which a petrol filling station stands;
 - (ii) the Company grants or agrees to grant a lease or licence of any premises to a person for a period of less than three years in accordance with a written request by that person for the grant of a lease or licence for such shorter period;
 - (iii) the Company terminates a lease or licence of any premises in pursuance of a provision allowing the company to determine the lease or licence in order to permit the demolition of the premises or in order to facilitate their reconstruction in accordance with an agreement or arrangement for such demolition or reconstruction made by the Company before that lease or licence is granted;
 - (iv) for reasons outside the control of the Company it is legally impossible for the Company to grant a lease or licence in accordance with paragraph 17 or 18;
 - (v) the Company grants a licence of any premises for a period not exceeding the six months following the death or insolvency of a tenant or licensee.

Continuation of Short Leases

21. Where the Company has granted a lease of any premises on which a petrol filling station stands for a period of less than three years

- (i) In the case of a tenancy to which Part II of the Landlord and Tenant Act 1954 applies the Company will not later than three months after the date on which the tenancy apart from that Act would have come to an end by effluxion of time, either
 - (a) give to the tenant a notice to terminate the tenancy in accordance with section 25 of that Act; or
 - (b) agree in writing to grant a further lease in accordance with paragraph 17 above unless the tenant has given to the Company a notice in accordance with section 27 of that Act that he does not desire the tenancy to be continued;
- (ii) In the case of a tenancy to which Part 11 of the Landlord and Tenant Act 1954 does not apply the Company will not permit the tenant to carry on business on the premises after the expiration of the tenancy without the further grant of a lease or licence in accordance with paragraph 17 or 18 above.

Holding Over of Licences

22. The Company will not permit a licensee whose licence relates to any premises on which a petrol filling station stands to carry on business at those premises at any time more than three months after the expiry of his licence (or the date of these Undertakings if later) without the further grant of a lease of licence in accordance with paragraph 17 or paragraphs 18 and 19 above.

Part VII (Definitions, Interpretation and Commencement)

23. In these Undertakings

- (i) 'petrol' includes automotive diesel fuel;
- (ii) 'petrol retailer' means any person who carries on a business in the course of which he holds himself out as willing to sell petrol for direct delivery into the fuel tanks of motor vehicles;
- (iii) 'agreement' includes a mortgage or loan agreement unless the context requires otherwise;
- (iv) 'solus tie' means any term the effect or intended effect of which is to prohibit or restrict the acquisition for retail sale, or the retail sale at any petrol filling station of petrol which is not supplied by the Company or an associated company, but shall not be taken to include a term providing for the payment of rebate by reference to any quantity of petrol supplied or sold or any term relating to the purchase of a specific quantity of petrol from the Company or an associated company;
- (v) 'petrol equipment' means such equipment as is described in head (i)(b) of the proviso to paragraph 1;
- (vi) 'lubricants' means any oil or grease intended for lubricating;
- (vii) 'lubricating equipment' includes tanks for the storage of lubricants, racks or cupboards for the storage of pre-packed lubricants and any equipment, instrument or vessel intended to facilitate the application of lubricants to a vehicle or the insertion in vehicles or removal from vehicles of lubricants, and includes a hoist or a lift;
- (viii) 'lubricating bay' means any part of a petrol filling station where there is situated a pit, lift or hoist, being a part of the station primarily or exclusively used for lubricating vehicles, and references to the use of a lubricating bay are references to the use for lubricating vehicles of the pit, lift, or hoist situated in the bay;
- (ix) 'kerosene' means kerosene for burning or illuminating;
- (x) 'company premises' means any land owned or leased by the Company or an associated company or in respect of which the Company or an associated company enjoys any licence which entitles it to sell petrol to the public by retail there, or to permit any other person so to sell petrol there;
- (xi) 'associated company' means any company which is a member of the same group as the signatory company;
- (xii) 'group' means a body corporate and all other bodies corporate which are subsidiaries thereof within the meaning of Section 154 of the Companies Act 1948;
- (xiii) references to leases include subleases;
- (xiv) references to retail sales are references to sales for use or consumption by the buyer and do not include sales with a view to resale by the buyer;
- (xv) references to 'the date of these Undertakings' are

(a) in Parts I to IV of these Undertakings references to the date on which the Company first gave Undertakings to the Board of Trade in relation to the report of the Monopolies Commission on the Supply of Petrol;

(b) in Part VI of these Undertakings references to the date on which these Undertakings have effect in accordance with paragraph 26.

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

25. In relation to land in Scotland

(a) 'owner' includes any person who, under the Lands Clauses Acts, would be enabled to sell and convey the land to the promoters of an undertaking;

(b) 'lease' includes sublease;

(c) 'licence' includes any form of permission not amounting to a lease; and

(d) 'mortgage' includes a heritable security, however constituted; and cognate expressions shall be construed accordingly.

26.

(i) These Undertakings, except paragraph 18, shall have effect from the seventh day after that on which they are first published in Trade and Industry.

(ii) Paragraph 18 shall have effect from such date as is announced in Trade and Industry being a date following the approval by the Director General of Fair Trading of suitable schemes for arbitration of disputes between companies supplying petrol to retailers and persons to whom such companies have granted licences affording a right to sell petrol by retail on premises on which a petrol filling station stands.

(iii) Until paragraph 18 has effect in accordance with (ii) above, paragraphs 17 and 20 shall have effect as if the references therein to a lease included a licence affording a right to sell petrol by retail on premises on which a petrol filling station stands.

Explanatory notes

These following notes are not an integral part of the Undertakings but may be read in conjunction with them to clarify their intended effect. Parts I to IV substantially reproduce Parts 1 to IV of the Undertakings given to the Board of Trade in 1966. Part V of the 1966 Undertakings was deleted in 1968 and is not re-introduced. Part VI extends Part VI of the 1966 Undertakings.

Part I of the Undertakings relates to solus petrol ties and is based on recommendations 1-3 of the Monopolies Commission's report.

Part II relates to sales of lubricants, kerosene and anti-freeze and is based on recommendation 4 of the report.

Part III relates to agreements between a petrol company and suppliers of tyres, batteries and other goods which petrol retailers may wish to stock, and is based on recommendation 5 of the report.

Part IV relates to a supplier's rights of option and pre-emption in connection with loans to buy, build or improve petrol stations and is based on recommendation 6 of the report.

Part V was deleted in 1968.

Part VI relates to leases and licences of company-owned petrol stations which were dealt with in recommendation 8 of the report.

Part VII contains definitions of a number of terms used in the Undertakings.

Part I Solus Petrol Ties

1. This undertaking does not affect arrangements between companies and their own tenants or licensees, nor arrangements in respect of motorway service areas.

2. In this undertaking the term petrol includes automotive diesel fuel.

3. Examples of a 'solus tie' (which may extend to arrangements at multibrand sites) are: a term whereby a retailer agrees to obtain petrol exclusively from a particular company; a term whereby a retailer agrees to obtain X per cent of his supplies of petrol from a particular company; a term whereby a retailer agrees to sell only a particular company's petrol throughsayeight out of 10 of his pumps; a tie on the use of any pump or any other piece of petrol equipment. (This list is not exhaustive). The mere offering of a quantity rebate does not constitute a 'solus tie' as defined in the Undertakings (see paragraph 23).

4. Paragraph 1 of this undertaking governs the terms of solus petrol agreements between petrol suppliers and independent petrol retailers (other than hire purchase, credit sale hiring and loan agreements relating to petrol equipment in which the only ties limit the use of the equipment; these are dealt with separately in paragraph 2).

5. Paragraph 1 regulates the duration of the tie which may be included in an agreement. Five years is to be the maximum fixed term; the tie may run on thereafter, if the retailer can terminate it at any time on giving 12 months' notice (ie from four years after the start of the five year period). A tie accepted in conjunction with a loan or mortgage agreement may be expressed to extend until the loan is repaid, but the retailer must have the option (provided he will meanwhile have repaid the loan) of ending the tie at any time after five years, subject to the same provisions about notice. If the retailer has not repaid a loan he can be required to repay it before determining the solus tie. Similarly he may be required to settle all outstanding payments due for petrol supplied to the filling station.

6. The undertaking provides for the five-year period to be calculated from the date when the supplier's petrol is first supplied, since this may in some cases be much later than the date of the agreement.

7. Companies are free to include in agreements terms restricting to the period of the 'solus tie' any of their obligations eg to supply petrol (either at all, or on favourable terms), or to assist in sales promotion or the maintenance of a station.

8. Paragraph 2 of this undertaking regulates agreements for the supply of petrol equipment (on hire purchase, credit sale, hire or free loan) by confining the 'solus tie' to restriction of the use of the equipment in question.

9. The general effect of the undertaking is that arrangements for the supply of 'tied' equipment must be terminable after an initial period of five years. In the case of hire purchase and credit sale agreements provision must be made for the retailer to terminate the tie by giving 12 months' notice, provided that he will meanwhile have completed payments under the agreement. In the case of hiring or free loan agreements, petrol companies must give the retailer an option to purchase the equipment at a reasonable price or to return it. It is for the parties to take account of the undertaking when drawing up the terms of the agreement, and to set out the basis on which the value of the equipment is to be calculated if the retailer exercises his option to acquire it. No mention is therefore made in the undertaking about an independent valuation or the particular provision to be made as respects the return of equipment.

10. The purpose of paragraph 3 of this undertaking is to ensure that arrangements for a loan from a company to an independent petrol retailer affected by a 'solus tie' should always provide a definite date for repayment or (where appropriate) for the payment of instalments. Amounts of repayments must be fixed but the undertaking will not preclude a supplier from actually taking payment by retaining earned rebate.

11. Paragraph 4 of Part 1 covers solus petrol ties in agreements made before the date when Undertakings were first given by the suppliers. It defines the circumstances in which companies subscribing to the undertaking will be required to permit the premature termination of 'solus ties' accepted by independent petrol retailers.

Part II Sales of Lubricants, Etc

12. The intention of Part II is to remove certain restrictions at company owned stations, as well as at the stations of independent retailers, in respect of the sale of lubricants, kerosene and anti-freeze preparations or lubricating equipment. It applies to kerosene only as fuel for illuminating or heating.

13. The general effect of the undertaking is that the decision as to what lubricants to stock or use rests with the retailer. This is reinforced by the provision of paragraph 6(d) of the undertaking which limits forward supply agreements for specific quantities to periods of three months ahead.

14. Uncertain circumstances agreements which impose some restriction on the use of lubricants in particular lubricating bays, or through particular items of equipment, are permitted. In some respects, the undertaking distinguishes between the position at company stations and at others. The undertaking, therefore, does not preclude a supplier from

- (a) restricting the lubricants which may be used in a lubricating bay (as defined in part VII) on company premises (eg by a tenant or licensee of the company);
- (b) restricting the use of lubricating equipment (on hp, credit sale, hire or free loan), whether supplied to a tenant, licensee or independent retailer. But independent retailers are entitled to end ties by paying off the outstanding instalments of a credit sale or hire purchase agreement at any time or by purchasing or returning hired or loaned equipment on three months' notice. A company tenant or licensee has a similar right in the case of equipment on hp or credit sale, but not in the case of hired or loaned equipment, which is the company's property.

15. All other restrictions are prohibited, ie there can be no restriction on the lubricants to be sold on the forecourt by any retailer (including a tenant or licensee) or on the general use of a lubricating bay on an independent station.

16. The undertaking does not preclude general limitations on advertisement in a trade or licence agreement. For example, a landlord remains entirely free to prohibit the fixture of advertisements to buildings, or the use of free-standing signs. However, to the extent that advertisement is permitted generally, it is not open to a landlord to impose additional restrictions on the advertisement of particular brands of lubricants, kerosene or anti-freeze.

Part III TBA (Tyres, Batteries, Accessories) Agreements

17. Under paragraphs 10 and 11 of the Undertakings a supplier may not participate in arrangements under which he stands to benefit from the promotion of another company's brands or TBA etc, by his solus retailers, tenants or licensees. The proviso makes it clear that the Undertakings do not preclude the supplier (or its subsidiary) from taking part direct in the TBA business, although this would be likely to result in some financial benefit for itself, nor from receiving a rent calculated on a tenant's general TBA business.

18. Under paragraphs 12 and 13 of the Undertakings a supplier may not oblige a retailer to discriminate in the course of his business between comparable goods of different brands, manufacturers and suppliers.

19. This undertaking does not preclude a supplier, in his capacity as landlord, from regulating generally what business is carried on at company premises. A landlord remains free to impose general restrictions on his tenants or licensees. eg by prohibiting the retailer from dealing in used cars, or from displaying banner advertisements. To the extent that dealing in a particular type of goods is permitted, however, the supplier may not impose further discriminatory requirements, eg to require a retailer to promote the sales of one brand while prohibiting the promotion of another. The undertaking does not, of course, preclude a restriction in general terms, eg prohibiting the sale of goods not complying with a British Standard, but it would not be compatible with it to seek to regulate the brands of goods sold on general grounds of serviceability.

20. It has been suggested that an undertaking on these matters might operate to prevent a landlord from making advantageous arrangements withfor examplea catering company for the sale of refreshments on one or more of his sites or granting a franchise in respect of cigarette vending machines. This is not the effect of the undertaking. Paragraphs 13 and 14 apply only to discriminatory requirements imposed on a petrol retailer in the course of his business. It will remain open to a supplier, within the terms of the undertaking, to require a retailer not to conduct any catering business himself or not to sell cigarettes, and at the same time to agree an exclusive concession with a third party for the direct operation of a catering business or the installation of cigarette vending machines. Paragraphs 10 and 11 are equally irrelevant to this situation, since they relate only to sales make by the petrol retailer himself.

Part IV Options and Rights of Pre-emption

21. Part IV provides that where an option to buy a filling station or a right of pre-emption has been granted as part of a loan arrangement connected with the laying, building or improvement of the station, these rights will be limited to the period for which the loan is outstanding.

Part VII Leases and Licences of Company Filling Stations

22. The provision made in 1966 for the granting of leases or licences for periods of at least three years is continued. However, some minor alterations have been made to the exceptions to this undertaking. These exceptions now are:

- (a) trial agreements with new tenants or licensees;
- (b) cases where the tenant or licensee has made a written request for a shorter term;
- (c) certain cases where three-year leases or licences are impracticable;
- (d) certain caretaker licences.

23. The revised undertaking precludes suppliers from providing in a lease or licence for termination on the sole ground of failure to comply with a gallonage clause.

24. When paragraph 18 takes effect suppliers granting licences in respect of their stations will be required to operate a scheme approved by the Director General of Fair Trading for settling by arbitration certain disputes with their licensees about the termination or non-renewal of licences. In addition, the suppliers undertake that the renewal of a licence or the grant of a further licence will be on fair and reasonable terms.

25. Provision is also made to regulate the holding over of leases granted for a period of less than three years and of licences. Where such leases are protected under the Landlord and Tenant Act 1954 the tenant is to be given within three months after the agreed period has expired either a statutory notice to terminate or a fresh three- year term (subject to the exceptions mentioned above). Where such leases are not protected under the 1954 Act holding over is not permitted. Licensees are not to be allowed to hold over for more than three months without a fresh grant being made.