



# **FAIR TRADING COMMISSION**

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**Findings Report on the Conduct of SOL Petroleum (Barbados) Pursuant to the Complaint Submitted by Barbados National Oil Company Limited: Allegation of Exclusionary Abuse**

Date: June 14, 2024

1. Pursuant to Section 5 (1) of the Fair Competition Act CAP. 326C (“FCA”) the Fair Trading Commission (hereafter “the Commission”) considered the complaint submitted by the Barbados National Oil Company Ltd (“BNOCL”) which alleged that the actions of SOL Petroleum (Barbados) Ltd (“SOL”) in the storage and transport of Heavy Fuel Oil (“HFO”) are injurious to the business’ operations, national security, and competition in general. The impact of SOL’s actions is believed to be far-reaching, given HFO is an essential component in both the generation and provision of electricity to householders and businesses.
  
2. Specifically, BNOCL alleged that without notice SOL decommissioned one of two HFO storage tanks at its Holborn facility that were leased by BNOCL and has delayed in its replacement of the same. BNOCL further alleged that SOL has delayed repairs to the pipeline that runs from its Holborn facility to the Barbados Port Inc. (“BPI”), to the detriment of marine vessels who rely on the Port for bunkering services provided by BNOCL. The aforementioned actions threaten BNOCL’s ability to fulfil its obligations to clients and have negative repercussions on the market for the supply of HFO to the Barbados Light and Power Company Ltd (“BLPC”); the market for the supply of storage of HFO; and the market for the supply of HFO to the BPI. It was highlighted that adjacent markets (e.g. tourism, manufacturing) are also affected negatively by the actions of SOL.
  
3. On the basis of the facts presented, the Commission has concluded that SOL, by its actions were not exclusively directed to:
  - i. improving the production or distribution of goods or;
  - ii. promoting technical or economic progress and;
  - iii. allowing consumers a fair share of the resulting benefit.

4. As a result of the aforementioned, SOL acted in breach of Section 16 (3) (b), (c), (d), (e), and (h); Section 28 (1); and Section 33 (1) (b) of the Fair Competition Act CAP 326C, by:
  - i. Denying its competitor access to adequate facilities at its Holborn site for the storage of heavy fuel oil. The storage facility and the pipeline facility that connects the Holborn site to the BLPC are essential to the transport of heavy fuel oil to the BLPC;
  - ii. Denying its competitor access to the pipeline and storage facility connecting the Holborn terminal and the Bridgetown Port for the provision of bunkering services. The pipeline facility connecting the Holborn terminal and the Bridgetown Port and its attendant storage facility are essential to the transportation of heavy fuel oil between the Bridgetown Port and the Holborn site; and
  - iii. Denying its competitor access to the storage facilities at its Holborn site and to the pipeline that connects the Holborn site to the Bridgetown Port except at prices that are significantly less favourable to the extent that the prices do not correspond with the service to be delivered.
  
5. The Commission has also concluded that SOL has not demonstrated that there are efficiency gains resulting from its conduct and that such gains counteract any likely negative effects on competition and consumer welfare in the affected markets; that these gains have been, or are likely to occur as a result of said conduct; that such conduct is necessary for the achievement of the gains in efficiency; and that it does not eliminate competition by removing all or most existing sources of actual or potential competition.

6. Pursuant to Section 17 (2)(b) of the Fair Competition Act, the Commission directs that SOL cease the abusive practices hereinbefore referred to, by taking such steps as would allow BNOCL to honour its supply contract with BLPC and the Bridgetown Port without causing any disruption in the continuous supply of heavy fuel oil to either party. The objective of this directive is to return the subject markets to a baseline condition that would have prevailed had it not been for SOL's anticompetitive conduct.
  
7. Specifically, the Commission directs that:
  - i. Within six (6) months of this Decision SOL restore its supply inputs to BNOCL that would allow BNOCL to honour its supply contract to its clients to the level it did before the removal of Tank #2.
  - ii. Within one (1) month of this Decision SOL immediately provide BNOCL unrestricted access to Tank #3 (50,000 bbl HFO tank) as an interim measure until supply conditions are restored to that which existed before the removal of Tank #2 (see sub-bullet (i) above).
  - iii. Within two (2) months of this Decision, and every two (2) months thereafter, SOL submit reports in writing to the Commission with respect to the status, progress, and delivery dates for the restoration of its supply inputs to BNOCL that would allow BNOCL to honour its supply contracts to its clients to the level it did before the removal of Tank #2. The report shall be in writing and signed by the Country Manager (Barbados).
  - iv. From the date of this Decision SOL immediately revert the throughput fee to the quantum that existed before the removal of Tank #2.
  - v. SOL commence repairs to the Holborn-BPI pipeline within six (6) months of this Decision and complete such repairs within eighteen (18) months of the start of repairs.

- vi. Within two (2) months of this Decision, and every two (2) months thereafter, SOL submit reports in writing to the Commission with respect to the status, progress, and completion date for the repairs to the BPI-Holborn pipeline. The report shall be in writing and signed by the Country Manager (Barbados).
- vii. From the date of this Decision SOL immediately refrain from denying or otherwise restricting access to and the use of the facilities at the Holborn site to provide inputs necessary for the storage and supply of HFO. In this regard, the Holborn facility is declared an Essential Facility for the purposes outlined herein. SOL is permitted to charge for this access at fees and under conditions that are fair, reasonable and non-discriminatory.
- viii. The Commission may designate a Monitor to oversee and coordinate compliance with this Decision. SOL shall be responsible for the payment of all fees associated with the functions of the Monitor and until the obligations under this Decision are satisfied.
- ix. In compliance with this Decision, that duly authorised representatives of the Commission, and on one (1) week's notice made to SOL's principal office, be permitted access to the Holborn site during normal business hours to oversee the implementation of the remedies outlined herein.
- x. Within thirty (30) days from the date of this Decision SOL shall submit to the Commission the measures already undertaken (in relation to sub-bullets ii, iv, and vii above) and a detailed timetable of the specific measures that will be undertaken to cease the abusive practices to comply with this Decision. The submission of these undertakings shall be in writing and signed by the Country Manager (Barbados). The Commission shall determine whether these measures and timetable are acceptable and notify SOL accordingly in writing.