



Review of the Fuel Market in Jersey

Statement on the First Stage Findings, November 2015

CICRA has provided the Assistant Chief Minister's Office with a report of its first stage findings following its review of the fuel market in Jersey. Terms of reference were agreed in May 2015 to scope a market review and identify where CICRA could contribute to consideration of issues and potential concerns around the operation of the fuel market in Jersey. Previous CICRA reviews in this area include the Road Fuel (2011), Heating Oil (2012), Marine Fuel (2014) and Aviation Fuel (2014).

The first stage review involved a high level assessment of trends in gross margins in the supply chain of the fuel markets to and in Jersey. CICRA's primary aim in conducting this work was to identify areas where the market may not be acting in the best interests of consumers with a view to then either commencing a second stage detailed investigation or making recommendations for other corrective action (if the latter would be a more proportionate or effective approach to a particular issue). Alternative action could include a formal investigation under the Competition (Jersey) Law 2005.

Introduction

The review was structured in two stages and the report covers CICRA's conclusions following its first stage review of the supply of gas, road fuel, heating oil/on island distribution, storage facilities at La Collette and fuel supply/imports in Jersey.

Companies within the fuel industry were contacted and asked to supply information to assist with this study. This was done without using formal powers under the Competition (Jersey) Law 2005 and CICRA would like to place on record its gratitude to the companies concerned for their co-operation in providing information voluntarily. A significant amount of data was collected with the commitment that no company specific information would be shared outside CICRA other than on an aggregated basis. For reasons of commercial confidentiality the full stage one assessment is not being published.

Findings

The review concluded that, on the basis of information provided, supplementary information from businesses operating in the fuel markets and a review of other evidence available, ***there are no reasonable grounds to suspect that a feature, or a combination of features, of market/s for the supply and acquisition of fuel in Jersey are not acting in the best interests of consumers.***

A second stage detailed investigation in any of the fuel sectors assessed is therefore not proposed at this time.

However recommendations that would, in CICRA's view, nevertheless benefit consumers are:

- Storage at La Collette Terminal: A review of the effectiveness of conditions imposed by CICRA for approval of the La Collette Terminal acquisition may be appropriate once these have been tested in the market given the new arrangements have only recently come into effect
- Road Fuel Pricing Displays: It was noted that the pricing signage laws at forecourts are not always observed. This suggests current obligations on signage display of fuel prices needs ongoing enforcement in order to provide consumers with better means to compare offers

Approach

CICRA has no power to conduct 'spot checks' to verify compliance with the competition laws. A formal investigation can only be initiated if there is '*reasonable cause to suspect*' that there may have been a breach, or intention to breach, the competition law. This is a higher test than mere suspicion and must have a factual basis.

Whether *reasonable cause* exists will depend on an assessment of the information available and, as a matter of practice, CICRA follows this standard in deciding whether (or not) to initiate investigations of potential infringements of the law. The decision of whether to commence a formal investigation will depend on considerations such as the gravity of the conduct involved, the harm or potential harm caused to the local economy, consumers or businesses, whether the dispute is more applicable to private resolution between the parties involved, the matter's apparent urgency and other activities currently being undertaken by CICRA.

As well as investigation of breaches of the law, the minister may request a report, advice or assistance on competition matters from CICRA. A formal investigation in this situation also requires CICRA to have *reasonable cause* to do so. This threshold is therefore also the basis on which this review has been conducted and on which CICRA's recommendations have been made.

Conclusions

Gas

In carrying out a first stage review of this market, CICRA received detailed information on Jersey Gas's businesses, evidence and explanation of its approach to hedging of gas costs and took into account the wider context of the market and implications for price setting.

Given lack of evidence of any excessive margins or returns based on the information provided, the limited value in undertaking a full review of historic detailed business decisions and the lack of an obvious comparator for benchmarking, there appear to be no reasonable grounds to suspect that the Jersey gas market is not acting in the best interests of consumers at this time.

Road Fuel

In addition to a lack of evidence of excessive margins, there is evidence of competition in terms of price and service in the Jersey road fuel market. When Jersey prices are compared to the UK, some forecourt prices were found to be below the UK average. Price ranges also provided indicative evidence of appropriate protection and consumer choice.

The legal requirement to display prices does not appear to be enforced and, along with the Consumer Council website which now provides almost live information, consumer choice could be improved if all signage were compliant with the law in line with previous CICRA recommendations.

There appears to be no reasonable cause to proceed to a second stage formal investigation into the Jersey road fuel market at this time.

Heating Oil/On Island Distribution By Road

This element of the supply chain covers fuel uplifted at La Collette and delivered wholesale, in the case of road fuel, to the garage forecourts and, in the case of heating oil, directly to retail customers. There are inherent additional costs in supplying through a small terminal with the lack of economies of scale, a limited customer base and high local labour and land costs. Specifications for road tankers used in Jersey are also non-standard; they are narrower than those allowed on UK roads again adding to the cost base. CICRA also has no evidence to support potential concerns around anti-competitive behaviour in this aspect of the fuel market; gross margins for distributors in this sector were not found to be high based on the evidence received.

Given information available there would appear to be no grounds to recommend a Stage 2 Review at this time.

Storage at La Collette Terminal Ltd

Evidence to support concerns expressed over levels of prices has not been persuasive and the gross margins and return on capital for the terminal over the past four years are not out of line with the margins found to be reasonable in analysis undertaken by the CMA¹ and Oxera² in their energy sector modelling work. There is therefore no basis of reasonable cause to proceed to a second stage formal review at this time.

If concerns are raised about the operation of the fuel farm, or operation of the throughput agreement with potential competitors to the terminal owner, CICRA can investigate further through the conditions it attached to its approval of the acquisition of La Collette Terminal Limited by Rubis or through the use of its competition law powers.

¹ https://assets.digital.cabinet-office.gov.uk/media/54edfe9340f0b6142a000001/Cost_of_capital.pdf

² <https://www.gov.im/media/622811/investigationintoenergypricesr.pdf>

Fuel Supply/Imports to Jersey

New entrants for the supply of fuel to Jersey in 2014 (ATF) and 2015 (Roberts) in this sector of the fuel market is considered potentially significant. Given these developments CICRA's view is that the case for a Stage 2 Review is less strong at this point in time. The recommendation is therefore to allow the market to resolve issues of concern arising from a single supplier through imminent competition.

Should evidence emerge that market entry has been inhibited, consideration of a review focussed on this aspect of the supply chain or the use of CICRA's competition law powers may be more appropriate.