

**LA COLLETTE FUEL FARM, ST. HELIER: LEASE TO SHELL U.K. LIMITED AND ESSO PETROLEUM
COMPANY LIMITED (P.67/2002) - COMMENTS**

**Presented to the States on 18th June 2002
by the Industries Committee**



STATES OF JERSEY

STATES GREFFE

150

2002

P.67 Com.(2)

Price code: A

Comments

P.67/2002 lodged au Greffe by the Harbours and Airport Committee on 30th April 2002 proposes the renewal of the Lease for La Collette Fuel Farm to Shell (U.K.) Limited and Esso Petroleum Limited for a period of 20 years, backdated to 1st February 1998. The terms of the lease would enable Shell (U.K.) Limited and Esso Petroleum Limited access to, and use of, the facilities of the Fuel Farm.

The Industries Committee has on a number of occasions received advice on the price of fuel oils in Jersey, and is of the firm view that there are problems in the current market structure. As the Fuel Farm is one vital element of the supply and distribution chain, the Industries Committee is of the view that the lease for the Fuel Farm should ensure that the operation of the Fuel Farm is on a non-discriminatory basis.

The Industries Committee, having sought appropriate advice, is of the view that the facility of La Collette Fuel Farm currently represents an Essential Facility in the distribution chain for most, if not all, supplies of liquid fuel for consumption on the Island of Jersey. As a result, any person controlling such an essential facility is likely to obtain market power in downstream markets, and may also obtain market power in relation to upstream supplies. Thus, the granting of the lease, in its currently proposed form, would confer a *de facto* monopoly position to the lessee in the supply chain across the Island economy of Jersey. The unrestrained exercise of the resulting market power is, in the view of the Industries Committee, likely to be against the public interest. Furthermore, it is the view of the Industries Committee that the terms of the lease could be altered, subject to agreement between the lessor and the lessee, to reduce the market power of the operator of the Fuel Farm and that such terms would have a material impact on the potential development of effective competition in the supply of liquid fuels in the Jersey market.

In order to achieve this public interest objective, the proposed lease should be altered to include terms to achieve the following in the operation of the Fuel Farm -

- Ensure that the operators of the Fuel Farm supply all their services on a non-discriminatory basis, including supply to both downstream petrol retailers and wholesale distributors, as well as upstream providers of bulk liquid fuels. The proposed lease does not achieve this.
- Ensure that the States and the JCRA have access to sufficient information to fully understand the costs of operating the Fuel Farm and the pricing mechanism operated by the Fuel Farm, and for the JCRA to monitor compliance with the requirement to offer services on a non-discriminatory basis. The proposed lease does not provide the necessary powers to ensure such access to that information.
- Ensure that the operators of the Fuel Farm are subject to all relevant elements of the proposed Competition Law. The Industries Committee is progressing a Competition Law as a matter of highest priority, but it is not in place as yet. The heads of terms of the proposed lease do state that *“the lessee is obliged to comply with all Laws and Regulations, including those which may be brought about in connection with the Jersey Competition Regulatory Authority.”*

If it is given that La Collette Fuel Farm cannot be replicated elsewhere on the Island, and where there is no likelihood of an alternative facility for importation, for example road tankers from France, then the Fuel Farm would be likely to be an essential facility under a European competition Law analysis. A European Community law definition of what is “essential” refers *“in practice, (to) an insuperable barrier to entry for competitors”*. However, given the significance of the Fuel Farm to the economy of Jersey, and the size of the local market, the Industries Committee thinks that the Fuel Farm and its physical assets (the tanks and pipes) is an essential facility. Under a European Competition law framework, for example, that would oblige the Consortium, as owners of the essential facility, to adopt a number of trading practices (and not to indulge in other trading practices) so as to ensure that the operation of the Fuel Farm did not distort competition in related markets, both upstream and downstream. In particular, the owners of the facility would be under a legal obligation to supply their services on non-discriminatory terms to those wishing to purchase such services, subject, of course, to relevant safety, environmental and other measures.

Under the existing arrangements, the land on which the Fuel Farm is situated belongs to the States, but the tanks and pipes belong to the Fuel Consortium. In a market such as Jersey's, any efficient fuel farm is likely to be an essential facility, irrespective of who owns the land. However, as lessor, the public of the Island of Jersey, through the States, have the opportunity to ensure that the market power conferred on operators of such a facility is not abused. Although the States has not attempted to do this in the past, and although this objective has not been part of the remit of the Harbours and Airport Committee, the Industries Committee is of the view that it is the best interests of the residents of Jersey that the States now adopts this position in its role as lessor. Furthermore, it is the view of the Industries Committee that, in acting as lessor, the States' objectives should include the creation of conditions that will increase competition in the supply of liquid fuels in the

Jersey market.

Furthermore, the Industries Committee is of the view that granting the lease to the Consortium, as currently proposed by the Harbours and Airport Committee, for a duration of 20 years would allow the Consortium the possibility of denying access to an important facility on the same terms as it gives to the companies in the Consortium over a very long period. A contract length of 20 years creates a clear incentive for the Consortium, as the dominant player in the relevant market, to potentially charge monopoly prices or engage in discriminatory practices for the use of the facilities, which would have to be passed on by the fuel wholesalers to their customers, and would distort competition in the retail market for liquid fuels on the Island.

The Industries Committee is of the view that an exclusive monopoly contract of the form currently proposed of 20 years' duration unreasonably restrains competition in the Jersey fuel market.

The Industries Committee is, therefore, firmly of the view that the Harbours and Airport Committee should renegotiate the terms of the Lease for the Fuel Farm at La Collette on the basis set out above.