

Western Isles Road Fuels Commitments consultation: questions and answers

What prompted the OFT's investigation?

In late 2012, the OFT received specific evidence relating to Certas' conduct in the Western Isles. The OFT's investigation was opened in January 2013.

What are the competition concerns that the OFT identified?

The OFT has been investigating whether Certas may have abused a dominant position in relation to the supply of road fuels to filling stations in the Western Isles by signing up the majority of such filling stations to contracts which required them to purchase road fuels exclusively from Certas for five years, with no option to terminate the contracts early. The OFT is concerned that Certas' contracts may have restricted competition by limiting the entry and/or expansion of rival road fuels wholesalers in the Western Isles.

What are the commitments that have been offered?

Under the proposed commitments, Certas will terminate its existing long-term exclusive contracts with filling stations in the Western Isles. In addition, Certas will open up access to its marine terminal at Loch Carnan in South Uist, to rival wholesalers for a period of five years. It will also extend such access to its terminal in Stornoway until December 2017.

Why is this a good outcome for people in the Western Isles?

In general, markets work better when they are competitive as customers benefit from greater choice and better prices. The OFT considers that, if accepted, the proposed commitments have the clear potential to boost competition in relation to the wholesale supply of road fuels in the Western Isles by facilitating the entry and growth of rivals to Certas. This would ensure that filling stations in the Western Isles have a greater choice of which wholesaler they buy fuels from. Increased competition between fuel wholesalers has clear potential to enable filling stations in the Western Isles to obtain fuel at lower prices and to pass these savings on to their customers

This doesn't address the price of fuel in the islands. Why is the OFT not making any recommendations about this?

The OFT isn't a price regulator so it cannot mandate a price for fuel in the Western Isles. However, as set out above, the OFT considers that the proposed commitments, if they are accepted, should facilitate greater competition between suppliers of road fuels to filling stations leading to more competitive prices.

Why has the OFT not issued an infringement decision against Certas?

In order to determine whether the law has been infringed, further investigative and procedural steps would need to be taken. Acceptance of commitments will allow the OFT to obtain an earlier resolution to the case than if it continued to investigate the matter. In such a case the OFT does not continue its investigation or make a final decision regarding whether competition law has been infringed.

In this case, the acceptance of commitments has further advantages (in addition to ensuring an earlier resolution to the case) since the proposed commitments go beyond Certas terminating its long-term exclusive contracts with filling stations, and include Certas opening up access to its marine terminals in the Western Isles. As such, the proposed commitments are likely to deliver benefits that potentially go beyond those which would likely follow from an infringement decision which prohibited Certas' long-term exclusive contracts with filling stations in the Western Isles.

Does the offer of commitments imply acceptance of an infringement on behalf of the parties to the investigation?

The offer of commitments does not imply that Certas accepts that it has infringed competition law. Furthermore, any final decision accepting binding commitments would not include any statement as to the legality or otherwise of the conduct by the parties under investigation, either prior to acceptance of the commitments or once the commitments are in place. Nevertheless, the OFT will only accept commitments in circumstances where it has competition concerns and is of the opinion that those concerns are addressed by the commitments offered.

What happens after the OFT's consultation?

The Competition and Markets Authority (which takes over the OFT's competition powers from 1 April 2014) will consider all responses to the consultation before

deciding whether to formally accept the commitments.

How do we know that the company will comply with its undertakings? How will this be monitored?

If accepted, the commitments will be legally binding on Certas and the Competition and Markets Authority will monitor Certas' compliance with them.

Certas and its parent company, DCC plc, will be required to report to the Competition and Markets Authority each year on the implementation of the commitments.

Islanders, competitors to Certas or other interested parties will also be able to submit evidence to the Competition and Markets Authority if they have reason to believe that Certas is not complying with the commitments.

What will happen if evidence suggests that the company has not complied with the commitments?

The Competition and Markets Authority would take strong action to address any non-compliance. This could include applying for a court order requiring compliance. The Competition and Markets Authority may also further investigate Certas' conduct and make an infringement decision, impose a fine, and/or issue directions where the evidence supports such a finding.

Will the OFT evaluate whether the undertakings have been successful in opening up the market?

Information on how effective the commitments have been will be gathered and assessed as part of the monitoring of the commitments.

What happens at the end of the commitments' five-year period?

The commitments would run for five years at the end of which they will expire. It is too early to say what the market might look like in five years time but, whatever happens, competition law will still apply and Certas (like all companies) will be required to comply with it.

How long will the consultation last?

The consultation period will last until 17 April 2014.

What about the OFT's investigation of Certas' conduct in the Shetland Islands?

The OFT has closed its investigation of different conduct of Certas in relation to the Shetland Islands for reasons of administrative priority. In order to make the best use of the OFT's resources in terms of real outcomes for UK consumers, the OFT must make appropriate decisions about which projects and programmes of work it undertakes across all areas of its responsibility. The OFT takes decisions on whether to take specific cases forward on the basis of its published [Prioritisation Principles](#).

Having assessed the evidence that it has gathered to date regarding Certas' conduct in the Shetland Islands, and taking into account the significant differences between the road fuels markets in the Shetland Islands and the Western Isles, the OFT considers that the likelihood of further investigation of Certas' conduct in the Shetland Islands resulting in a successful case outcome does not justify the resources that such further investigation would require. If compelling new evidence is provided to the OFT, then this decision will be revisited.