

REVIEW OF THE CONDITIONS IMPOSED ON LA COLLETTE TERMINAL LTD

A report prepared for CICRA

23 November 2016



CONTENTS

1	Background	4
1.1	The theories of harm	4
1.2	The Conditions	6
2	Our approach	7
3	Our review and findings	9
3.1	Theory of harm: vertical foreclosure/refusal to supply	9
3.2	Theory of harm: exchange of competitors' confidential information	18
3.3	Theory of harm: lack of responsiveness to downstream customers	21
3.4	Other Conditions and concerns	23
4	Conclusion and recommendations	27
4.1	Recommendations	27

1 BACKGROUND

There is one fuel terminal¹ in Jersey (“the Terminal”), which prior to June 2015 was owned by two parties. In 2012, Esso Petroleum Company Limited (“Esso”) attempted to sell its share to the other party, La Collette Terminal Limited (“LCTL”), such that LCTL would own the Terminal in its entirety. In September 2014, the Channel Islands Competition and Regulatory Authority (“CICRA”) found that LCTL’s acquisition of Esso’s share in the Terminal assets (“the Acquisition”) would substantially lessen competition in Jersey.² However, CICRA ultimately decided to approve the Acquisition (“CICRA’s Decision” or “Decision”) on the basis that a number of conditions would be placed on LCTL to address the competition concerns that may arise from the Acquisition. CICRA’s Decision allowed the transaction to go ahead in June 2015.

CICRA placed fourteen conditions on LCTL (“the Conditions”), which are related to the theories of harm that CICRA had identified in making its Decision. We have been commissioned by CICRA to carry out an assessment of the effectiveness of the Conditions in addressing the competition risks that CICRA identified when it assessed the Acquisition, and to identify whether any amendments could be made to the Conditions.

1.1 The theories of harm

In making its Decision on the Acquisition, CICRA considered what competition risks the Acquisition may pose to the fuel market in Jersey. CICRA approached this assessment by considering both horizontal and vertical theories of harm.

The Terminal has always operated as the sole provider of fuel throughput and storage services in Jersey, including before the Acquisition, and would continue to be a monopoly provider after the Acquisition. Furthermore, CICRA considered that there is not much scope for future entry into the horizontal market. As a result of these two points, CICRA concluded that there would be no horizontal impacts of the Acquisition.

We note that since CICRA’s Decision, ATF Fuels (“ATF”) has begun importing some fuels through an alternative supply route³, which negates the need for ATF to use the Terminal. While this does appear to suggest that the barriers to entry may not have been as significant as CICRA previously concluded, we agree with CICRA that there may still be substantial barriers to further entry and expansion. While ATF has found an alternative route for its fuel supplies, the volumes presently supplied via this route are small relative to the total volume required to serve the relevant liquid fuel markets in Jersey, and it is unclear how much

¹ The following fuels have historically passed through the Terminal: PU10 (premium unleaded petrol); SU10 (super unleaded petrol); ULSD (ultra-low sulphur diesel); kerosene (heating oil); and AVGAS (aviation fuel). At present, three of those fuels (PU10, ULSD and kerosene) pass through the Terminal.

² CICRA (September 2014), Case M885/12F Proposed acquisition by La Collette Terminal Limited of the assets of Esso Petroleum Company Limited at La Collette Fuel Terminal

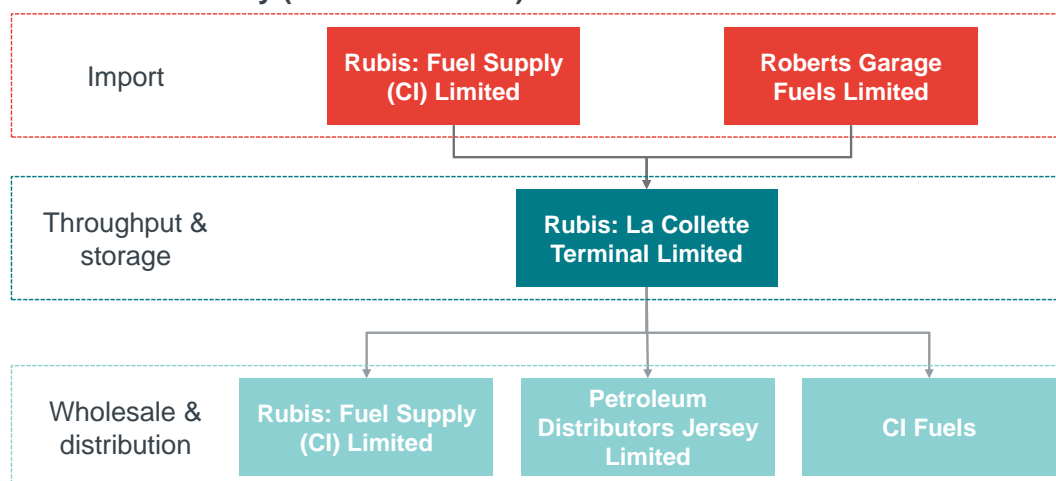
³ We understand that ATF uses modified ISO/SWAP tanks to transport fuel to Southampton docks via haulage, and then on container ships to Jersey docks. We also understand that the fuel is stored at Jersey Airport Fuel Farm.

additional supply could bypass the Terminal at present and at what cost. Further, if anything, this change in circumstance has increased the level of competition at the horizontal level. We therefore do not consider that this affects CICRA’s conclusion that there are not likely to have been horizontal effects of the Acquisition.

The parent company of LCTL, Rubis, also owns companies that operate in the markets for importation of petroleum products (the “upstream” market) and distribution of these products (the “downstream” market) in Jersey. Figure 1 below shows the parties that currently operate in the fuel market in Jersey. Rubis is engaged in both the upstream and downstream markets for fuel products in Jersey, through its Fuel Supply Channel Islands Limited (“FSCI”) business. CICRA therefore identified the following three vertical theories of harm.

- **Vertical foreclosure/refusal to supply.** Rubis/LCTL could harm its upstream and/or downstream rivals by discriminating against them in respect of the terms it sets for the provision of throughput and storage services at the Terminal.
- **Exchange of commercial information.** LCTL could pass confidential information on, for example volumes being booked by rivals, to its related business upstream and downstream so as to gain a commercial advantage in those aspects of the market.
- **Lack of responsiveness to downstream customers.** LCTL could make operational decisions that favour its upstream and downstream businesses, but respond less to its other downstream customers’ needs.

Figure 1. Current structure of the market for petroleum products in Jersey (via the Terminal)



Source: Frontier Economics

Note: This diagram is focused on illustrating the players involved in the activities at the Terminal, and the potential vertical competition issues within that specific supply chain. We note that ATF’s alternative supply route has been excluded from this diagram, although we recognise that it is a part of the wider fuel market in Jersey.

1.2 The Conditions

Having identified potential competition risks of the Acquisition, CICRA imposed fourteen Conditions on LCTL, which aimed to mitigate those risks. We have mapped CICRA's Conditions to the theories of harm that CICRA set out in its Decision, as shown in Figure 2 below. Most of the Conditions relate directly to one of the theories of harm. However, Condition 7 relates to two theories of harm: vertical foreclosure; and lack of responsiveness to downstream customers. This is because throughputter meetings, held between LCTL and throughputters, allow throughputters to raise any concerns they have in relation to their access to the Terminal (i.e. potential vertical foreclosure issues), and also to communicate any concerns that their downstream customers may have. In our report, to avoid repetition, we only cover Condition 7 and throughputter meetings in the sections relating to lack of responsiveness to downstream customers.

Figure 2. Summary of CICRA's theories of harm and corresponding conditions⁴

Theory of harm	CICRA acquisition conditions
Vertical foreclosure/ refusal to supply	Condition 1: LCTL shall not discriminate between throughputters on access conditions
	Condition 2: LCTL shall grant access to all throughputters on FRAND terms
	Condition 3: LCTL shall offer to enter into the TA with all existing throughputters
	Condition 4: LCTL shall offer to enter into the TA with all future throughputters
	Condition 5: Upon expiry of a TA, LCTL must enter a renewed or amended TA
	Condition 6: LCTL shall adhere to the terms of the TA and Schedules 2 and 3
	Condition 7: LCTL shall organise bi-annual meetings with throughputters
Exchange of competitors' confidential information	Condition 8: Rubis will not merge its throughputting activities with FSCI or any other of its downstream affiliates
	Condition 9: Any director on the Boards of LCTL and FSCI will step down as director of LCTL
	Condition 10: No director will sit on the boards of both FSCI and LCTL
	Condition 12: LCTL will not pass commercially sensitive information between throughputters
Lack of responsiveness to downstream customers	Condition 7: LCTL shall organise bi-annual meetings with throughputters
General	Condition 11: LCTL will enter an arbitration clause in relation to the conditions
	Condition 13: LCTL will provide information and documents to the JCRA for monitoring
	Condition 14: The conditions will exist as long as LCTL owns or operates the Terminal

Source: CICRA (2014) Proposed acquisition by La Collette Terminal Limited of the assets of Esso Petroleum Company Limited at La Collette Fuel Terminal: Decision, Frontier Economics

Note: This diagram uses the acronym "TA" to refer to Throughput Agreements. LCTL and its throughputters enter into these legal documents, which set out the terms of their engagement and the mechanism by which LCTL will calculate its charges.

It is the effectiveness of these Conditions that is the subject of our report.

⁴ Terms used: Throughput Agreement (TA); FRAND (Fair, Reasonable, and Non-Discriminatory); Jersey Competition Regulatory Authority (JCRA).

2 OUR APPROACH

To inform our assessment of the effectiveness of CICRA's Conditions, we have gathered a wide range of information and invited the submission of information from all stakeholders. More specifically, we submitted data requests to LCTL and relevant parties in both upstream and downstream fuel markets. While we requested specific evidence and data from LCTL, we sent an open letter to LCTL's stakeholders asking for any views and evidence that would be relevant to our assessment. We have also discussed the operation of the Terminal and the fuel supply markets in Jersey with CICRA.

Based on the information gathered, we have conducted a range of analysis to test whether there is any evidence to suggest that the Acquisition has resulted in any of the vertical theories of harm that CICRA identified in its Decision arising, and in doing so have tested the effectiveness of CICRA's Conditions. We took the following steps in our review.

- We reviewed market-level data that we received from LCTL (i.e. fuel import and withdrawal volumes, market shares, and information around relevant developments in the market) and considered whether there appears to be any evidence of material change, if so whether this change is likely to harm competition and consumers, and if so whether these effects are likely to have been caused by the Acquisition.
- We reviewed all Throughput Agreements that have been in place between LCTL and throughputters since 2012. We compared the terms offered to all throughputters in order to verify if there are any differences across these terms, and whether there was a rationale for any differences, in order to assess whether there is evidence of undue discrimination.
- We considered evidence related to how LCTL had dealt with any requests for access to the Terminal from potential new throughputters, to determine whether any potential new throughputters had been denied access, or equal access, to the Terminal.
- We assessed the operational information that we received from LCTL (e.g. information relating to fees charged, fuel stocks in the Terminal and capital investments) and considered whether there was any evidence that day-to-day operational decisions taken at the Terminal may be favouring parties upstream or downstream that related to LCTL.
- We reviewed evidence to determine whether LCTL appears to be compliant with Conditions that require it to carry out specific actions, e.g. Conditions 9 and 10 (i.e. we reviewed the Board resignations that had been made to ensure that no individual sits on the Boards of both LCTL and FSCI).
- We reviewed the submissions that we received from LCTL's stakeholders, and considered whether they provided any evidence that suggested that LCTL was in breach of any of the Conditions. We also considered whether they provided any further insights into the areas listed above. The focus of

this review, and what the potential concerns might be, was informed by our findings from our review of LCTL's data.

- We considered whether the information received in LCTL's response and in the stakeholder submissions suggested that CICRA should impose any additional conditions on LCTL.
- We considered whether LCTL should, or may wish to, adapt the way it operates or reports in any way, so as to improve the way that it communicates with other players in the wider market and to demonstrate more effectively and transparently compliance with the Conditions.

As part of this process, we reviewed all stakeholder submissions in full. In addition to commenting on the Conditions imposed on the Terminal, some stakeholders provided extensive views on the general operation of the Terminal and the wider conduct of LCTL. Some of these points were, in our view and the view of CICRA, outside the scope of our review, which is to assess the impact of the Acquisition and the effectiveness of CICRA's Conditions. For example, we considered that issues around the general level of the throughput fee charged by LCTL fell outside the scope of our report, unless there was evidence to suggest that LCTL's behaviour had in some way been affected by the Acquisition. The level of LCTL's charges is therefore only covered where it may relate to the effectiveness of the Conditions in addressing the vertical concerns CICRA identified in its Decision. We note that if LCTL were to charge prices that were unjustifiably high, then given its dominant position in the market for the provision of fuel terminal services, this would be a breach of competition law and CICRA would be able to take appropriate steps absent the Conditions.

3 OUR REVIEW AND FINDINGS

This section provides our findings and presents the analysis that we have undertaken to reach them. Although we consider that we have sufficient evidence to draw conclusions, we recognise that there is a limited amount of data post-Acquisition. Any conclusions that we draw in this section are necessarily based on this limited amount of data.

We have structured this around four subsections, corresponding to the three vertical theories of harm that CICRA identified in its Decision, and other general Conditions and concerns. In each subsection, we explain:

- which Conditions are relevant to our analysis;
- what evidence we received from LCTL and its stakeholders; and
- what our findings were.

3.1 Theory of harm: vertical foreclosure/refusal to supply

The concern that we test in this section is whether competition in the upstream and downstream markets appears to have been lessened as a result of the Acquisition. For example, there may be a concern that LCTL could restrict access to the Terminal for some throughputters, or offer discriminatory terms to throughputters so as to favour its related parties upstream or downstream (or to harm its rivals) and that this may harm competition and hence consumers.

In this section, we analyse evidence that we received from the Terminal and in stakeholder submissions on:

- market data;
- terms offered to throughputters;
- treatment of applications from potential new throughputters; and
- operational information and concerns.

3.1.1 Market data

We carried out an assessment of outcomes in the markets for importation and distribution of petroleum products in Jersey. Evidence in these markets, for example rivals to Rubis losing market share, could provide an indication that vertical foreclosure issues are, *potentially* at least, present, although further work would then be necessary to ascertain whether vertical foreclosure was the actual reason for any change.

We requested and received information from LCTL on ship discharges and on withdrawals of fuel since 2012. We used this to analyse the following:

- market shares of throughputters, based on discharge and withdrawal volumes;

- trends in total fuel volumes discharged into and withdrawn from the Terminal; and
- the impact on throughput fees of aviation fuel no longer being stored at the Terminal.

In the remainder of this sub-section, we address each of these three points in turn and conclude with a summary of our key findings across all three areas.

Market shares

We have looked at market shares of throughputters over time (based on both import volumes and withdrawal volumes) to analyse whether there appears to be any evidence of a material change since the Acquisition, which may provide an indication of *potential* vertical foreclosure issues.

The players within the upstream market have changed since the Acquisition. ESSO exited the upstream market after it sold its shares in the Terminal, and a new entrant (RGF) entered the upstream market. Although the players in the upstream market have changed, the Acquisition hasn't altered the fundamental market structure from a competition perspective. There were two upstream market players before the Acquisition (ESSO and FSCI) with broadly equal market shares, and there are now also two upstream market players with approximately the same market shares (FSCI and RGF). The structure of the downstream market, and the players that operate within it, are broadly similar to before the Acquisition. FSCI, Channel Island Fuels (CI Fuels) and Petroleum Distributors Jersey (PDJ) continue to distribute fuel to forecourts and other customers.

While the evolution of market shares provides no prima facie evidence to indicate the existence of any of the vertical concerns identified by CICRA in its Decision, we note that it is still necessary to conduct a fuller review of LCTL's compliance with the Conditions, in order to ensure that there is no other evidence of conduct that may give rise to vertical concerns in the future.

Volume trends

Our analysis showed a general downward trend in both imports and withdrawals prior to the Acquisition. This downward trend appears to have continued since the Acquisition. The general trend in total volumes appears to be mainly driven by a reduction in the levels of kerosene being distributed to end customers, and does not appear to have been driven or affected by the Acquisition. This data provides no evidence of increased volatility in volumes, or periods of low/no imports by any throughputters, which may have indicated operational difficulties and a need for further investigation into market conditions.

Since our review is focused on any potential impact of the Acquisition, this data does not present us with any particular concerns, as the Acquisition does not appear to have had any obvious effect on volumes of fuel consumed.

Diversion of aviation fuel

We understand that until the end of 2014, FSCI imported aviation fuel (AVGAS) and stored it at the Terminal. The last discharge of aviation fuel at the Terminal was in November 2014. All aviation fuel is now imported to Jersey by ATF, by alternative transport methods and storage at Jersey Airport.

Certain stakeholders expressed concern about the diversion of aviation fuel away from the Terminal. Diverting aviation fuel from the Terminal reduces total throughput volumes, and owing to the structure of charges set out in the TA this would increase unit charges for throughputters (and if this is passed through, in turn, prices to distributors and end customers). We have estimated the impact of the diversion of aviation fuel on terminal throughput fees. Given the small volume of aviation fuel consumed in Jersey relative to volumes of other fuels, this change does not appear to have had a material impact on throughput fees in 2016 (especially when considered relative to the historical variation in throughput fees).

We understand, however, that ATF is also now beginning to import heating oil through its alternative supply chain, via the Jersey docks. This could have a more material impact on LCTL if a significant proportion of the heating oil market was diverted from the terminal, although we have seen no evidence to suggest that such a development is likely. Further, it does not in our view provide evidence to suggest the Conditions are inadequate.

Key findings

We conclude that our review of the market data does not provide any evidence to suggest that the Acquisition has had any notable impact on the structure of the markets upstream and downstream from the Terminal, and general trends in the Jersey fuel market. This analysis provides no indication to suggest that there is presently evidence that the vertical concerns CICRA identified in its Decision are now present.

Separately, ATF's importation of heating oil using its alternative supply route could have a material impact on the level of charges that would be levied on throughputters by LCTL (based on their existing structure) and hence on the nature of competition in the fuel market in Jersey. However, we have seen no evidence to suggest that this alternative supply route could be scaled-up to any significant degree.

3.1.2 Terms offered to throughputters

Following the Acquisition, LCTL could potentially foreclose rivals of FSCI by offering its services to throughputters on different terms, discriminating against certain customers to disadvantage them in relation to related Rubis parties.

A number of CICRA's Conditions are aimed at ensuring that throughputters are treated on a fair and non-discriminatory basis. Condition 1 prevents LCTL from discriminating between throughputters on access terms, Condition 2 sets out that LCTL must grant access to all throughputters on FRAND (Fair, Reasonable And Non-Discriminatory) terms, and Conditions 3 and 5 state that LCTL must offer to

enter into the throughput agreement with all existing throughputters, and must renew any expired agreements.

To assess the effectiveness of these Conditions we:

- compared the terms that are imposed by LCTL on different throughputters; and
- reviewed any relevant concerns that were raised by stakeholders around the terms and charges that they are offered.

In the remainder of this sub-section, we address each of these two areas and then provide a summary of our key findings.

Review of Throughput Agreements

In order to assess whether LCTL is providing its services to all throughputters on fair and equal terms, we conducted a detailed review and comparison of all Throughput Agreements in place between LCTL and throughputters since 2012. The aim of this review was to assess whether there are any material differences in the terms offered to throughputters, and ultimately to assess whether there have been any adverse changes to the terms offered to throughputters after the Acquisition that may indicate any degree of vertical foreclosure.

- We did not identify any material differences in the terms and fees currently offered in the Throughput Agreements to the active throughputters.
 - The current schedules of discharge, throughput, additivation and marking fees provided to us by LCTL show that all active throughputters appear to be subject to the same fees.
 - Specifically, all throughputters are subject to the same per volume and per discharge fees, and the structure of these charges seem broadly reasonable.
- We also reviewed how the terms and fees offered to throughputters have changed over time, to assess if the Acquisition appears to have had any effect on this.
 - Generally, we only identified minor differences across the terms offered in Throughput Agreements between 2013 (the date of the earliest Throughput Agreement made available to us) and 2016. These minor differences include changes to definitions of terms, such as “Business Day”, and changes to the products throughputted at the Terminal.
 - The only material change to the terms of the Throughput Agreement after the Acquisition was an amendment to include the arbitration clause, in accordance with CICRA’s instructions. One stakeholder has raised concerns in relation to the wording of this proposed arbitration clause. We cover that concern in section 3.4, as the arbitration clause is considered more specifically in that section.
 - We also tested whether increases to discharge, additivation and marking fees over time have been implemented in line with the Throughput Agreement. We have verified that the fees charged are in-line with the

calculations set out in the Throughput Agreement. This is therefore consistent with Condition 6.

- We have checked whether actual revenues align with the published fee schedules. This analysis is in relation to Condition 2, which specifies that LCTL must offer access on a FRAND basis, and Condition 6, which requires LCTL to adhere to the terms of the Throughput Agreement. To assess whether throughput fees set out in the schedule of charges were reflected in the fees actually paid by throughputters, we carried out cross-checks against the revenues received by LCTL from each throughputter. We identified some immaterial differences in these cross-checks, and so we have no significant concerns in this area.
- Furthermore, LCTL confirmed specifically that there are not currently (and there have not hitherto been) any additional side agreements between LCTL and any of the throughputters. LCTL stated that, “Each Throughput Agreement represents the entire agreement between LCTL and the relevant throughputter.”

Review of stakeholder submissions on Throughput Agreements

In stakeholder submissions, concerns were raised over the level of throughput fees charged by LCTL. As noted above, the scale of LCTL’s charges in and of itself is not within the scope our review, as we are not carrying out a general review of the operation of LCTL, its profitability and compliance with general competition law provisions. The relevant issue for our review is whether the Acquisition has led to any vertical competition issues despite the imposition of the Conditions, which in this particular case places the focus on discrimination. Our review of Throughput Agreements found that fees and terms in the Throughput Agreement appear to be non-discriminatory.

Concerns were also raised around the tying of additives to LCTL’s other services. We reviewed evidence provided around these concerns and do not consider that LCTL’s behaviour appears to be discriminatory.

Key findings

There appear to be no differences between the terms and fees that are currently offered to active throughputters. Our review of historical Throughput Agreements generally identified only minor differences between the contractual terms that have been offered to throughputters over time, and these differences arose due to modest updates to the Throughput Agreement from time to time. The only material change to the terms offered to throughputters after the Acquisition was the amendment to include an arbitration clause, which was in-line with CICRA’s instructions.

We have therefore not seen any evidence to suggest that LCTL is behaving in a discriminatory way by offering materially different terms to the throughputters, or that the Acquisition has affected the terms that are offered. Although stakeholders raised concerns over the level of charges, no throughputter submitted evidence to suggest the access terms available are discriminatory. We therefore conclude that LCTL appears to be operating in a manner which is

consistent with the Conditions, specifically Conditions 1, 2, 3, 5 and 6 and that at present these Conditions are proving effective.

3.1.3 Treatment of applications from potential new throughputters

One potential concern relating to vertical foreclosure is that LCTL might deny future throughputters access (or equal access) to the Terminal, limiting the number of competitors to FSCI in the upstream market (and potentially in the downstream market, due to deals between importers and distributors). Condition 4 directly addresses this concern, requiring that LCTL offers to enter into a Throughput Agreement with all future throughputters. We have considered whether this Condition has been met following the Acquisition by requesting details of any applications from potential new throughputters. We have assessed the manner in which any such applications have been progressed and whether applicants faced difficulties in accessing the Terminal on non-discriminatory terms.

In the remainder of this section, we summarise the review that we carried out, and present our key findings from that review.

Information review

Over the post-Acquisition period there were two applications to become a throughputter, one by RGF and a second by another confidential party. We understand that RGF became a throughputter after the transaction. Neither LCTL nor RGF raised any issues in relation to RGF's application, which resulted in RGF agreeing a Throughput Agreement in line with that available to other parties that do act, or have acted, as a throughputter.

We understand from LCTL and other stakeholders that one other party wished to enter negotiations with LCTL in July 2014 to potentially become a throughputter at the Terminal. LCTL then requested that this party enter into a Confidentiality Agreement "to protect the confidentiality of the throughput terms", prior to viewing a proposed Throughput Agreement. However, this party did not agree to enter into the Confidentiality Agreement with LCTL. We understand that RGF signed the same Confidentiality Agreement prior to signing a Throughput Agreement.

LCTL stated that entering into such a Confidentiality Agreement is common practice in the industry. As this party would not sign the Confidentiality Agreement, a Throughput Agreement was not shown or offered to them.

Based on information provided to us by the potential throughputter, we understand that this party's concern in respect of the Confidentiality Agreement was that it felt the wording would have limited its ability to carry out alternative throughput activities (bypassing the Terminal) elsewhere on Jersey, if it decided to do so in future.

We have reviewed the circumstances of this event in order to appraise whether it provided evidence of vertical foreclosure. We make the following observations.

- Firstly, the use of a Confidentiality Agreement in such circumstances is not unusual. It is commonplace for commercial entities entering into

discussion over the potential provision of services to sign some form of Confidentiality Agreement.

- Secondly, in such circumstances where a Confidentiality Agreement is signed, it will not always be the case that discussions result in a satisfactory outcome for all parties. Where an agreement is not reached it is likely that the party seeking services will look for other providers of that service.
- Thirdly, RGF was willing to agree to the same Confidentiality Agreement as part of its negotiation with LCTL, implying that in its view the terms were not unreasonable.
- Fourthly, we understand that LCTL was willing to receive suggestions for amended wording, showing some level of flexibility.

Given these observations on the evidence presently available to us, we therefore do not consider that it is unreasonable of LCTL to require a Confidentiality Agreement to be signed before it enters into discussions with any potential throughputters. Requiring a Confidentiality Agreement to be signed, in and of itself, does not appear to represent an example of foreclosure. However, the exact wording of the Confidentiality Agreement and the question of whether that wording would have prohibited a party agreeing to it from seeking alternative providers of throughput services is ultimately a legal question, which is outside our area expertise. Should any party continue to have concerns around their ability to access the terminal, they should seek legal advice on the matter. Should the Confidentiality Agreement be found to be unduly restrictive then this could be evidence of vertical foreclosure, which would be in breach of Conditions 3 and 4 and may also lead to the view that LCTL is abusing a dominant position. LCTL may wish to undertake proactively its own review of the wording of its Confidentiality Agreement, in order to assure itself that it is in compliance with all relevant competition law provisions and undertakings.

Key findings

Since the Acquisition was completed, LCTL has agreed a Throughput Agreement with a new throughputter, RGF. Aside from RGF, only one potential throughputter has attempted to access the Terminal since the Acquisition, but discussions with this throughputter did not lead to that party entering into a Throughput Agreement with LCTL. Having reviewed the circumstances surrounding this, and in the light of a number of factors including the ability of RGF to agree a throughput agreement, on the face of it, it does not appear to us that access to the Terminal has been unduly restricted for this potential throughputter. However, the exact wording of the Agreement is a legal matter, and if any parties continue to have concerns relating to this, they should seek legal advice. LCTL may wish to proactively conduct its own review of the wording of its Confidentiality Agreement, in order to assure itself that it is in compliance with all relevant competition law provisions and undertakings.

3.1.4 Operational information and concerns

One way that LCTL could harm upstream and downstream rivals to its related businesses would be to operate the Terminal in a way that imposes costs or inconvenience on competitors of FSCI. For example, LCTL could limit the volumes that some throughputters are able to store at the Terminal, or prevent some throughputters from discharging/withdrawing fuel at convenient times.

We requested and analysed operational data from LCTL to assess if there is any evidence that throughputters are not being treated on equal terms in respect of operational access to the Terminal. We carried out assessments relating to the following outcomes at the Terminal:

- discharge volumes and frequencies;
- capacity usage and stock levels;
- investments and costs; and
- operational issues.

We also considered evidence provided by stakeholders on operational matters, where relevant to this aspect of our review.

In the remainder of this section, we provide a summary of the evidence that we reviewed in each of these four areas, and then present our key findings.

Discharge volumes and frequencies

We have assessed whether throughputters appear to be able to discharge and withdraw fuel from the Terminal at reasonable volumes and frequencies, and whether there are any signs of operational access to the Terminal being restricted.

We calculated average volumes of fuel discharged by each throughputter, and the frequency of their imports. Our analysis of these metrics did not present any particular concerns, e.g. we saw no particular change in average volumes per discharge that may indicate a change in pattern of usage after the Transaction. We also note that stakeholders did not raise this as a concern, aside from on two specific occasions discussed below.

We have also analysed discharge and withdrawal volumes, split by throughputter and by fuel type to assess volatility in these volumes. We found no notable differences in volatility of discharge and withdrawal volumes for all main fuel types before and after the Acquisition.

Overall, based on the information provided by LCTL, there does not appear to be any evidence of throughputters having limited access to the Terminal. Similarly, stakeholders did not raise any general concerns on this topic.

However, two specific concerns related to an individual ship discharge were raised. We understand that CICRA has investigated these specific complaints and did not find sufficient evidence of restrictions being imposed by LCTL on throughputters in these instances. While noting this evidence from one stakeholder, we do not consider it sufficient to indicate a more general concern,

in the light of CICRA's detailed review and findings, and also given our findings set out above.

Capacity usage and stock levels

We assessed whether there have been any significant changes to capacity usage at the Terminal since the Acquisition, which may point to inefficient use of the Terminal, or indicate whether LCTL appears to be using capacity restrictions to limit the amount of fuel that certain throughputters are able to import. We have also calculated fuel stock levels over time to assess if there is any evidence of throughputters either having to stockpile large amounts of fuel, or not being able to build sufficient fuel stocks.

We asked LCTL to provide the approximate maximum percentage of the Terminal's capacity that is used on a monthly basis, and whether this has changed materially since 2012. Based on the information provided by LCTL, we do not have any concerns in this regard, as there is no evidence of a material change since the Transaction.

We also estimated fuel stocks of each throughputter over time, and for each of the main fuel types stored at the Terminal. It appears from this analysis that throughputters have generally been able to build and maintain reasonable fuel stocks over time. In the stakeholder submissions that we received, an issue was raised in relation to potential agreements between throughputters which, it was argued, could contribute to the more efficient operation of the Terminal. We understand that such an arrangement would need to be agreed between throughputters directly, and conclude that this issue therefore has no bearing on the reasonableness or otherwise of LCTL's conduct.

Investments and costs

We reviewed investment levels at the Terminal before and after the Acquisition to assess if there were any material changes, as well as requesting details of any cost areas that have changed significantly since the Acquisition.

LCTL provided data on the level of capital investments from 2012 to mid-2016. Based on the evidence provided, investment levels after the Acquisition do not appear out of line with levels before the Acquisition.

A detailed assessment of LCTL's costs and their reasonableness is outside the scope of our review. However, based on the limited data that we have seen, we are not aware of any evidence to suggest that the Acquisition appears to be having a material impact on the way that LCTL makes investment decisions.

Operational issues

To assess whether there appear to be any detrimental impacts of the Acquisition on the general operation of the Terminal, we considered the Terminal's recent service history and incidences of any complaints.

LCTL stated in its response to our information request that it does not hold records of service failures or complaints. We recommend that LCTL starts to hold such records in future, covering for example:

- occurrences of throughputters not being able to access the services of the Terminal at the time or in the manner agreed;
- errors found in fuel measurements;
- shortages of additives and/or marking agents; and
- any other complaints by throughputters and distributors.

Holding such records would be in-line with good business practice in general, and would allow LCTL to accurately monitor its own performance to ensure it is complying with the relevant Conditions. The knowledge that LCTL holds such records may also provide a helpful signal to stakeholders in the wider Jersey energy market.

Key findings

From our review of operational information from LCTL, we have found the following.

- **Discharge volumes and frequencies:** We have not found any evidence, based on our assessment of discharge information, to suggest that the Acquisition has affected the usage of the Terminal by throughputters, as evidenced by discharge volumes or frequencies, or that access to the Terminal has been otherwise restricted operationally.
- **Capacity usage:** Based on the evidence we have received, the Acquisition does not appear to have had a material impact on capacity usage at the Terminal. Additionally, our assessment of fuel stocks does not suggest that throughputters appear to be struggling to develop/maintain fuel stocks in general.
- **Investments and costs:** A detailed assessment of LCTL's costs is outside the scope of our review. However, based on the data we reviewed, we have not found any evidence that the Acquisition appears to have affected LCTL's investment decisions.
- **Operational issues:** It appears that LCTL does not hold records of service failures or complaints from throughputters or distributors. We recommend that LCTL considers holding such records in future.

3.2 Theory of harm: exchange of competitors' confidential information

The second vertical theory of harm raised in CICRA's Decision is that LCTL might pass confidential information to its related upstream and downstream businesses in order to provide them with a commercial advantage. Several of CICRA's Conditions aim to prevent the sharing of commercial information between LCTL and FSCI, either by ensuring the separation of the two businesses or by explicitly requiring that LCTL does not pass commercially sensitive information between throughputters. We have tested whether these Conditions have been adhered to and whether LCTL has taken sufficient measures to ensure that commercially sensitive information is not shared between throughputters.

In the remainder of this section, we summarise our review and present our key findings on the following two topics:

- separation of the businesses of LCTL and FSCI; and
- measures taken around commercially sensitive information.

3.2.1 Separation of the businesses of LCTL and FSCI

It is important that Rubis takes measures to separate LCTL from FSCI, to eliminate the channels through which FSCI could access commercially sensitive information about other throughputters, and to ensure that LCTL is run as an independent business. This should ensure that Rubis cannot respond to the in principle incentive that it may have to run LCTL in a way which could harm FSCI's competitors.

CICRA's Decision states that "LCTL and FSCI currently share at least one director at Board level. [...] Third parties felt that the vertical integration of LCTL/FSCI gives FSCI a considerable advantage over its competitors in relation to marketing and sales."⁵ Conditions 9 and 10 address this issue. They require that no director sits on the boards of both FSCI and LCTL. This should reduce the risk that high-level decision makers at LCTL are influenced by the interests of FSCI. Condition 8 also addresses the separation of Rubis' businesses, requiring that Rubis does not merge throughputting activities with FSCI or any other of its downstream affiliates.

In relation to Condition 8, we have seen no evidence to suggest that Rubis has merged its throughputting activities with its other Jersey businesses. On LCTL's website, the FSCI business is described as a separate subsidiary of the Rubis business, which is also consistent with LCTL being compliant with this Condition.

In relation to Conditions 9 and 10, we requested evidence to show that LCTL has complied with these Conditions. LCTL provided evidence of various director resignations from the boards of LCTL and FSCI, as well as evidence of attendees at LCTL board meetings, held after the transaction and the subsequent separation of the boards of LCTL and FSCI.

The director resignations appear to be consistent with Conditions 9 and 10. In addition, there does not appear to be any overlap in the attendees of the LCTL and FSCI board meetings since the transaction.

- The minutes of the LCTL board meetings that have taken place since the transaction do not include any individuals that were present at the FSCI board meeting held on 12 September 2014, or any individuals listed at that time as future board members of FSCI.
- LCTL confirmed that the LCTL and FSCI boards are separate, and that none of the LCTL directors attend the FSCI board meetings. We therefore consider that LCTL appears to have complied with Conditions 9 and 10.

One stakeholder raised general concerns about the separation of staff at LCTL and FSCI. However, we did not receive sufficient evidence to assess this general

⁵ CICRA (September 2014), Case M885/12F Proposed acquisition by La Collette Terminal Limited of the assets of Esso Petroleum Company Limited at La Collette Fuel Terminal, paragraph 76.

complaint. Also, based on the information provided by LCTL on the board members of the Rubis businesses, we have no reason to believe that LCTL is not compliant with Conditions 9 and 10.

One stakeholder made a specific complaint relating to the separation of the Rubis businesses, and in particular around some service level agreements between LCTL and FSCI. The claim is that the scale of these charges is excessive, and that they could be used as a method of transferring revenues from LCTL to FSCI. These service agreements appear to have been discussed at the throughput meeting held on 11 December 2015, under the topic “Redevelopment of La Collette Terminal”. The minutes of the meeting show that the scale of the service agreement amounts to around 30% - 35% of LCTL’s total costs in 2015 and 2016. It appears therefore that this is a material issue. We consider that there are the following potential competition concerns around this issue.

- **Potential horizontal concerns.** If these service agreements are unnecessarily high, this would mean that the throughput fees charged by LCTL would be unnecessarily high (the nature of the Throughput Agreement is such that the costs incurred by LCTL, including these service agreements, would be passed onto throughputters). If this were the case, then LCTL may be abusing its dominant position, which would be a general concern under competition law.
- **Potential vertical concerns.** If these service agreements were found to be unnecessarily high, LCTL could be using them to squeeze the margins of FSCI’s competitors in the upstream / downstream markets. This behaviour would fall under the foreclosure concerns that CICRA identified in its Decision.

In order to conclude that either a horizontal or vertical concern has arisen, it would be necessary to conclude that the charges levied on LCTL by related parties for certain services were not consistent with those one would expect of a market transaction struck at arm’s length. We do not have evidence to suggest that this is the case in this instance. However, it would be preferable if greater clarity could be provided in the future.

Given this, we would recommend that LCTL in future ensures that any material service contracts it lets are procured through public tenders, in order to demonstrate the reasonableness of charges. This would provide transparency to stakeholders and may avoid the need for costly ex post investigation in the future.

Key findings

LCTL provided us with evidence that it has taken steps to comply with Conditions 9 and 10. LCTL also confirmed that there is no overlap in the Board members of LCTL and of FSCI, and no overlap in the attendees of the LCTL and FSCI Board meetings. We therefore consider that LCTL appears to have complied with Conditions 9 and 10.

One stakeholder raised general concerns around the separation of the Rubis businesses, and has also made a specific complaint in relation to this, with regard to services procured by LCTL from a related party. We recommend that in

future LCTL considers procuring material service contracts through open tenders, in order to provide clarity to stakeholders that its costs are reasonable and subject to appropriate market testing.

3.2.2 Measures taken around commercially sensitive information

Condition 12 requires that LCTL does not pass commercially sensitive information between throughputters. We requested and reviewed information from LCTL to determine whether specific measures had been taken to comply with this Condition.

LCTL informed us that three “Competition Law, Compliance and Regulation” training sessions were run for its staff, and provided details of what the training sessions involved and which members of staff attended. We have reviewed the topics covered in the sessions and find that the relevant areas regarding sharing of information have been covered. LCTL also informed us of various other steps taken in order to comply with Condition 12 (including for example including a reference to competition legislation in the LCTL staff handbook, and introducing a “secured document printing” policy).

The training sessions and other measures taken demonstrate that LCTL has taken proactive steps to comply with Condition 12. These steps should ensure that LCTL’s staff is well informed about the issue. However LCTL has not provided any indication of what on-going measures it takes to ensure this issue remains suitably prominent in the day-to-day operation of its business.

Key findings

We find that LCTL has taken appropriate steps to be compliant with Condition 12. We suggest that LCTL continues to ensure that its staff are adequately trained in competition law. LCTL may wish to consider whether further steps may assist in ensuring on-going compliance with Condition 12. This could include the following.

- LCTL could repeat training sessions, perhaps on an annual or biennial basis, to ensure that all staff are trained and up to date.
- LCTL could introduce a compliance officer role, so that someone at the firm has responsibility for ensuring that suitable steps are taken to train staff and implement measures to reduce the risk of commercially sensitive information being shared outside the company.

3.3 Theory of harm: lack of responsiveness to downstream customers

The third area of potential concern around the Acquisition raised in CICRA’s Decision was that LCTL could run the Terminal in a way that discriminates against certain downstream wholesalers and distributors. Because FSCI also runs a downstream business, which is owned by Rubis, LCTL could take actions that favour FSCI’s downstream business, disadvantaging the downstream customers of other throughputters. For example, in principle LCTL could operate

only one fuel loading rack and then prioritise FSCI's fuel tankers, inconveniencing its downstream rivals.

Condition 7 of CICRA's Decision requires that LCTL organises bi-annual meetings with all throughputters, in the first and third quarter of each year, to discuss any operational matters relating to the Throughput Agreement and the Terminal more generally. We understand that the intention of this Condition was that it would provide a forum for downstream concerns to be raised, in addition to any other concerns that throughputters have, and therefore mitigate the concern that LCTL may not give due attention to such concerns. As some throughputters (e.g. FSCI) are directly involved in downstream activities, they would be aware of any downstream issues (in addition to their own concerns that are specific to throughput and storage activities) and could raise them in the throughputters meetings. While other throughputters may not be directly involved in the downstream market, they are likely to be aware of any downstream concerns that their distributors have, and as such they could also raise downstream concerns in the throughputter meeting.

3.3.1 Information review

To assess the effectiveness of this Condition, we requested and reviewed details of throughputter meetings to ensure that: they are taking place regularly; they are allowing throughputters the opportunity to voice concerns (including downstream concerns); and that these concerns are being addressed where necessary and feasible to do so.

LCTL stated that a throughputter meeting was held on 11 December 2015. However, we understand that a throughputter meeting was not held in Q1 2016 because the existing Throughput Agreements terminated on 31 January 2016 and not all throughputters had signed the new Throughput Agreement that was proposed. A second throughputter meeting was held on 23 September 2016, which all throughputters attended. Therefore, at the time of our review two throughputter meetings had been held after the Acquisition. LCTL provided the agendas and minutes of these meetings.

In addition to determining whether the meetings have gone ahead as planned, we assessed whether it seems these meetings provide an effective forum for downstream concerns to be raised. To consider this, we additionally invited wholesalers and distributors to raise any concerns or issues with us, recognising that there is not a direct relationship between LCTL and downstream distributors.⁶ Based on the submissions we received from distributors, it appears that they do not have substantial information on the operation of the Terminal. Taking into account the nature of the relationship between LCTL and distributors, we recommend that LCTL considers whether the current operation of the throughputter meeting provides sufficient opportunity for LCTL to learn of any downstream concerns, and whether LCTL may benefit from more engagement with distributors. While there is no obvious consumer harm caused by the distributors not having detailed information about the operation of the Terminal,

⁶ Downstream distributors are not direct customers of LCTL. The Terminal sells its storage and other services to throughputters (fuel importers) who in turn sell their fuel directly to their downstream customers, and arrange for these customers to withdraw fuel from the loading racks at the Terminal.

more information flows between the parties may help to improve transparency within the market. Given this, LCTL may wish to consider the following:

- distributing the minutes of throughput meetings to downstream customers as well as throughputters (with sensitive information redacted where necessary);
- setting up annual meetings with both throughputters and downstream customers; and/or
- measures to increase transparency of the Terminal's relevant operations to downstream customers (e.g. communicating relevant information to wholesalers/distributors, and offering downstream players an opportunity to comment on this information).

3.3.2 Key findings

The throughput meeting that was due to have been held in Q1 2016 did not take place. We understand that CICRA is aware of this and that LCTL has been reminded that these meetings should take place in accordance with the Conditions. LCTL has therefore been reminded of its duty that these meetings should take place with all active throughputters, regardless of the status of contract renegotiations with those throughputters. If this raises concerns due to the confidentiality of topics covered in the throughput meetings, Non-Disclosure Agreements ("NDA"s) could be signed between LCTL and any active throughputters that do not have a Throughput Agreement in place at the time of the meeting.

We also recommend that LCTL considers whether it would benefit from more engagement with distributors, possibly by distributing throughput meeting minutes directly to distributors or by offering an annual meeting with all throughputters and distributors.

3.4 Other Conditions and concerns

A number of the Conditions do not relate specifically to any of the three theories of harm identified by CICRA, but have more general purposes, such as providing throughputters with a means of raising concerns. Specifically, these Conditions are:

- Condition 11, stating that LCTL will enter into an arbitration clause with throughputters in relation to the Conditions;
- Condition 13, that LCTL will provide information and documents to the JCRA for monitoring; and
- Condition 14, that the Conditions will exist as long as LCTL owns or operates the Terminal.

In the remainder of this section, we summarise our analysis and present our key findings on:

- the arbitration clause (Condition 11); and
- provision of information (Condition 13).

There is nothing to assess in respect of Condition 14.

3.4.1 Arbitration clause

The purpose of an arbitration clause between LCTL and its throughputters is that in the event of a dispute between LCTL and any throughputter, which the parties are not able to resolve by negotiation and/or mediation within 30 days, the Parties can refer the dispute to the International Chamber of Commerce to be settled by arbitration.⁷ This should ensure that throughputters have an option to pursue a matter of concern further, if the mediation process has broken down.

Information review

As described above, we requested that LCTL provide us with all Throughput Agreements since 2012, as well as any supplemental agreements. We reviewed the Throughput Agreements and found that LCTL omitted an arbitration clause from the Throughput Agreements entered into with throughputters in July 2015. It subsequently proposed Supplemental Agreements in January 2016 to add arbitration clauses to those Throughput Agreements. It also included arbitration clauses in the Throughput Agreements it proposed in March 2016.

However, we understand that one throughputter has not signed the Supplemental Agreement or the new Throughput Agreement, due to disagreements over the scope of the arbitration clause proposed by LCTL. We understand that the throughputter's concern is with the scope of the arbitration clause proposed by LCTL.

That one throughputter has not agreed to sign the 2016 Throughput Agreement due to this issue (or any agreement that contains an arbitration clause) is a potential cause for concern, as this was a specific requirement set out in the CICRA Decision. LCTL should seek to conclude discussions on the arbitration clause as swiftly as possible.

More generally, one stakeholder raised concerns about the costliness of the arbitration process, and that throughputters may not have a legitimate avenue of redress in the case of less material disputes. It is not immediately clear from this that the arbitration clause, and the costliness involved in the arbitration process are inappropriate. The fact that the parties involved in an arbitration process have to incur not insignificant costs ensures that only sufficiently material issues are taken to arbitration. If we take the converse and assume that the arbitration process is free or not sufficiently costly, throughputters may be encouraged to bring all issues to arbitration, which could lead to unnecessary and inefficient disruption to the parties involved, as cases would be brought to arbitration that could otherwise have been dealt with effectively through discussion between the parties. We have seen no evidence to suggest that the costliness of arbitration is not in and of itself a concern.

However, within the existing arrangement, it is important that throughputters do have a medium through which they can voice concerns on matters that are not

⁷ CICRA (September 2014), Case M885/12F Proposed acquisition by La Collette Terminal Limited of the assets of Esso Petroleum Company Limited at La Collette Fuel Terminal, Clause A.

material enough to resolve through arbitration. The throughput meetings provide such an opportunity, and as such there may be merit in ensuring that these are conducted frequently and in good faith.

The remaining issue therefore is how effective the throughput meetings are at providing an opportunity to engage openly with LCTL, to raise and discuss concerns, on matters that are not material enough to take to arbitration. LCTL has previously been reminded of its duty to hold these meetings. It also seems that more could be done to ensure that throughputters have sufficient opportunity to engage with LCTL. LCTL may therefore wish to consider whether it would be beneficial for throughput meetings to be held more frequently, or whether there are any other changes that could be made which would improve the information flows between parties. LCTL may wish to consult with stakeholders to identify any improvements that could be made to these meetings.

Key findings

LCTL has not yet agreed a Throughput Agreement containing an arbitration clause with all throughputters and this is a potential cause for concern. LCTL should seek to conclude negotiations on this swiftly, in order to comply in full with the Conditions.

We recognise that one stakeholder does not feel that arbitration is a realistic option in cases of less material disputes. Having considered this, we do not have any particular concerns about the fact that arbitration is a costly process, as long as throughputters have other avenues to raise less material concerns. Throughput meetings are the main opportunity that throughputters have to raise such concerns, and so we recommend that these are held frequently and in an open, transparent manner.

3.4.2 Provision of information

Condition 13 requires that LCTL provides information and documents that the JCRA requires, upon written request and with reasonable notice, for the purpose of monitoring compliance with the Conditions. We consider below whether we have any reason to believe that this Condition is not being met. More generally, we also consider whether LCTL is adhering to paragraph 15.2 of the Throughput Agreements which sets out that LCTL must allow its customers to enter the Terminal upon 48 hours' notice and inspect relevant records and documents in relation to product quality, financial settlement, product measurement and calculation of fees. We also reviewed information provided by stakeholders in relation to this Condition.

Information review and key findings

We are not aware of any concerns that CICRA has in relation to LCTL providing information requested by CICRA. In relation to this review specifically, we have been satisfied with the information that LCTL has provided to us and the level and timelines of cooperation from LCTL.

We requested that LCTL provide records and details of any instances where throughputters have made requests in relation to operational information. LCTL's response informed us that no records are held by LCTL on requests from throughputters in relation to operational information. Holding such records would be in-line with good business practice in general, and would allow LCTL to accurately monitor its own performance to ensure it is complying with the relevant Conditions. The knowledge that LCTL holds such records may also provide a helpful signal to stakeholders in the wider Jersey energy market.

We have been made aware from the submission of one stakeholder that it requested certain documents under paragraph 15.2 of the Throughput Agreement, and was not able to obtain all relevant documents requested until CICRA intervened. LCTL has therefore already been reminded of its duty in this area.

4 CONCLUSION AND RECOMMENDATIONS

We have reviewed a range of evidence to understand whether there have been any detrimental impacts of the Acquisition on the Jersey fuel market, and whether CICRA's Conditions have been effective in preventing any of the potential theories of harm arising. We have not found evidence of a significant change in market structure or conduct, upstream or downstream, or evidence of discriminatory or anticompetitive behaviour by LCTL resulting from the Acquisition. We have therefore concluded on the basis of the evidence presently available that LCTL is generally complying with the Conditions and that the Conditions are at present proving effective in addressing the Concerns identified by CIRCA in its decision.

However, we have identified a range of concerns, which in our view are presently minor but could become more significant over time, where LCTL's compliance with the Conditions could be made more complete and/or where greater transparency of compliance could be provided. We therefore have a range of recommendations for LCTL to consider in this respect.

In addition, we found some evidence of a lack of goodwill and trust between parties. Although there is no evidence to suggest that this is presently leading directly to consumer harm, the smooth and efficient functioning of the industry is in the benefit of consumers and all related parties. We have therefore suggested a number of measures that could be implemented in order to improve communication between parties, as well as improving the transparency of both the operation.

4.1 Recommendations

Below we summarise our recommendations.

- **Service agreements.** There is concern amongst stakeholders over LCTL's procurement of services from related parties. We recommend that in future LCTL market tests any material service contracts it intends to let, in order to provide assurance to stakeholders that the costs it incurs are reasonable.
- **LCTL's engagement with interested parties:**
 - throughput meetings should occur at least bi-annually, as per CICRA's Decision, and potentially could happen more frequently (e.g. quarterly);
 - LCTL could consider increasing information flows with its throughputters, perhaps by sharing key pieces of information on an annual basis;
 - LCTL could hold records of any service failures, complaints, and information requests (which could be made available for review by CICRA); and

- LCTL could distribute minutes of throughput meetings to downstream players, and could set up an annual meeting with all throughputters and downstream players present.
- **Treatment by LCTL of commercially sensitive information going forward:**
 - LCTL could repeat training sessions, perhaps on an annual or biennial basis, to ensure that all staff are trained and have up-to-date information;
 - LCTL could introduce a compliance officer role; and
 - provide a letter to CICRA setting out how compliance was achieved each year.
- **Arbitration clause / Throughput Agreement.** LCTL should seek to conclude discussions on the arbitration clause as swiftly as possible.
- **Confidentiality Agreement.** LCTL may wish proactively to undertake a review of its Confidentiality Agreements in negotiations with potential new throughputters in order to assure itself that its actions are fully consistent with the Conditions.

