



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
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**PROCEEDINGS
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**ENVIRONMENT AND INFRASTRUCTURE
POLICY REVIEW COMMITTEE**

Office of Fair Trading

HANSARD

Douglas, Monday, 29th March 2021

PP2021/0102

ENVI-OFT, No. 1/2020-21

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Members Present:

Chairman: Mrs C L Barber MHK
Mr C R Robertshaw MHK
Mr R J Mercer MLC

Clerk:

Miss F Gale

Assistant Clerk:

Mr K Skehan

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Standing Committee of Tynwald on Environment and Infrastructure

Office of Fair Trading

*The Committee sat virtually at 3 p.m.
Proceedings were conducted and broadcast live
from the Legislative Council Chamber.*

[MRS BARBER *in the Chair*]

Procedural

The Chairman (Mrs Barber): Good afternoon and welcome to this virtual public meeting of the Environment and Infrastructure Policy Review Committee, a Standing Committee of Tynwald.

I am Clare Barber MHK and I chair the Committee and with me today in cyberspace are the other members of the Committee, Mr Chris Robertshaw MHK and Mr Rob Mercer MLC.

5 Before we begin, please can we all ensure our mobile phones are either off or on silent. For the purposes of *Hansard*, I will ensure that we do not have two people speaking at once, and I would be grateful if we could all try to make sure our microphones are muted when we are not speaking.

10 Today we are taking evidence for our inquiry into the Road Transport Licensing Committee and we will be hearing from the Chairman and the Head of the Office of Fair Trading. The OFT is currently investigating Bus Vannin's demand-responsive bus services and we would like to find out more about the process of conducting such an investigation. If necessary, we will go into private at the end to discuss any matters relating to the live investigation.

EVIDENCE OF

**Mr Martyn Perkins MHK, Chairman, and Mr John Peet, Head,
Office of Fair Trading**

15 **Q1. The Chairman:** So to begin, I wonder if you could both, for the record, please state your name, job title and how long you have been in the role.

Perhaps Mr Perkins would like to go first.

20 **Mr Perkins:** Thank you. Martyn Perkins MHK, and I have been chair of the OFT since the end of 2016.

The Chairman: Okay. Mr Peet – you are on mute.

Mr Peet: Apologies for that. John Peet, Head of the OFT and I have been in this role just short of two years.

25 **The Chairman:** Thank you very much. Then I move to Mr Robertshaw to commence questioning.

Q2. Mr Robertshaw: Thank you, Clare.

30 Okay, so I think the first thing we want to look at before we go into detail is the relationship of OFT to DEFA. I think that is the first thing.

So can I ask the Chairman of the OFT, bearing in mind that OFT not only must be independent in its opinions and judgements, but also that it is seen to be so, are you satisfied that there is sufficient separation between the operation of the OFT and the Department you sit alongside at St John's and also appropriate officer separation?

35 **Mr Perkins:** Yes, although we sit in the same building, the officers are separated out accordingly and I have got no problems with that.

Q3. Mr Robertshaw: Right. So is it the case that your officers work purely and solely for the OFT and not for the Department; or is it that some of the work that they do, as it were, bleeds into DEFA's responsibilities and duties?

40 **Mr Perkins:** No, they work solely for the Office of Fair Trading, but with the recent COVID problems, we have been seconding officers to other areas of Government, as many of the Departments have also done.

Q4. Mr Robertshaw: Right, okay, so outside of the COVID issue then – so put that to one side and it is reasonable of you to have mentioned that – how is, for example, the senior officer in OFT, Mr Peet ... who does he report to apart from yourself? Does he in any shape or form report to the CEO of DEFA?

45 **Mr Perkins:** No, he reports to the board and myself, apart from members of staffing issues, possibly. If we are recruiting staff, then that would be passed through DEFA.

55 **Q5. Mr Robertshaw:** So how many officers do you have in OFT?

Mr Perkins: John, would you like to pick that up? I am not actually sure how many we have got.

You are on mute, I think, John.

60 **Mr Peet:** I think it is 13. There are some part-time staff, but I would say it was 13 in total at the OFT.

Q6. Mr Robertshaw: Okay, so John, none of those 13 work – outside of COVID now – for DEFA? It is all solely OFT work – is that correct?

Mr Peet: All the OFT staff work for OFT. There are shared admin functions –

Q7. Mr Robertshaw: Talk to me about the shared admin functions. How does that work?

70 **Mr Peet:** That is literally somebody answering reception, somebody taking in mail etc. We have the secretary to the board: he is a shared job. Nigel prepares the budget and things like that, and he has more to do with DEFA than the rest of the officers do – put it that way.

75 But all the OFT officers, the enforcement staff, the Financial Services Ombudsman Scheme staff, the consumer advisers, the debt counsellors, they all work for the OFT and serve the OFT.

Q8. Mr Robertshaw: Okay, and is it the case that from time to time the CEO or other senior officers in DEFA attend OFT meetings?

80 **Mr Peet:** Yes, it is. There is a service level agreement. When we moved from Lord Street out to St John's, there was a service level agreement drawn up, and that is how we ended up with the shared admin function.

Under that, the Chief Executive of DEFA is also the Chief Executive of OFT.

85 **Q9. Mr Robertshaw:** Ah, well, there we go! That is my point, John.

Mr Peet: Okay, one of the directors – as there are a number of directorates within DEFA – is the director of the OFT. So both me as Head of the OFT, as a director of the OFT, and there is a Chief Executive of the OFT and the Chief Executive of the OFT is also the Chief Executive of DEFA.

90 But –

Mr Robertshaw: So how on earth then can – ?

Mr Peet: But I just emphasise, under that agreement, the OFT is still a Statutory Board and is still a separate legal entity.

Q10. Mr Robertshaw: Excuse me for interrupting my flow and perhaps yours there. I have got a bit of a cough this afternoon, which I hasten to add is not COVID.

100 But I am at a loss now, Chairman of the OFT. If the Chief Executive of OFT is the Chief Executive of DEFA, how could you possibly tell me that they are separate entities?

Mr Perkins: Well, they are separate entities, inasmuch as the Chief Executive ... how many meetings has he attended, John? None at all or perhaps one, since I have been Chairman? And I think that was a matter of courtesy, just to show his face basically. Otherwise there has been no –

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Q11. Mr Robertshaw: But surely you would accept that, even considering perception alone, the idea that a chief executive of a department is chief executive of OFT would lead people to believe that the OFT is not the independent body that you suggest that it is. Does that not concern you?

110

Mr Perkins: It does not concern me, inasmuch as I know that there has been no political interference whatsoever, as far as I am concerned.

Q12. Mr Robertshaw: Why is it that the Chief Executive of OFT is the Chief Executive of DEFA? Why is that necessary?

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Mr Perkins: A good question. We inherited that situation, as Mr Peet said, from Lord Street. I have never felt the need to question it.

120 **Q13. Mr Robertshaw:** Why? Because you are supposed to be the head of an independent body. How on earth can you consider yourself to be an independent head, or head of an independent body, if you have a situation where the Chief Executive of DEFA is also the Chief Executive of OFT? How can Mr Peet possibly suggest that he has no significant relationship with his own Chief Executive?

125

Do you not consider this whole matter is seriously – and I mean this – undermining the perception of an independent body? Should you, as Chairman of the OFT, not be fighting for a much greater degree of independence?

130 **Mr Perkins:** I have never felt the need to do that because we have not had political interference from the Chief Executive.

135 **Q14. Mr Robertshaw:** Well, I have no wish to question the veracity of that statement, and you are entitled to say that. I respect that, but nonetheless it does not appear that from the outside looking in – and you will understand why that is the case ... and surely as a politician, you must be equally concerned not only with matters related to your own personal experience, but also the perception of how things appear, because that surely is part of the role of the Chairman.

Mr Perkins: Well, I think we have to differ on that, Mr Robertshaw.

140 **Mr Robertshaw:** Okay. Well, in that case, we perhaps need to move on. Chair, can we move on to the Competition Bill with your agreement? Clare.

The Chairman: Yes, I am comfortable with that.

145 **Q15. Mr Robertshaw:** Okay. Mr Perkins, thank you for that. It does obviously leave serious concerns in the mind of the Committee.

As we all know, the Competition Bill is making its way through the Keys at the present time. I think it was after the first clauses session, where we dealt with the first set, up to about clause 22, I approached you and I said I am not clear as to why there is this determination to get this Bill through in terms of the importance of, again, perception externally and our ability to sit comfortably with the UK's position on its efforts to set up fair trading agreements (FTAs) across the world. The impression – and forgive me if I have misunderstood you – that you gave me was that actually this is an important and urgent matter, that it does impact upon the Isle of Man's ability to trade externally as part of bigger trade deals and that you would come back simply within a few days – this is some weeks back now – to identify what the urgent reasons were. You did not do that. I am still waiting to find out what those reasons are.

155 So perhaps this afternoon you would be kind enough to explain in detail why it is that this Competition Bill as it currently stands is, in the eyes of the UK government, an imperative to get through.

160 **Mr Perkins:** Well, first of all, I apologise for not getting back to you on a personal basis, as two MHKs talking after the sitting.

The UK and Brexit cast an eye over the Crown Dependencies, and in order for the UK to negotiate on our behalf they asked us – and I think Mr Peet has got some email confirmation of this – to bring our competition laws in line with what they would consider a good standard to be able to negotiate on our behalf.

170 Jersey and Guernsey had legislation in place already that the UK was happy with, and when we approached the UK equivalent to the OFT, they entered into correspondence with us and it was quite clear that we needed to beef up our competition laws, which was under way anyway, so by incorporating their requirements, that is the reason that we have brought the Competition Bill about.

I think you are on mute, Mr Robertshaw.

175 **Q16. Mr Robertshaw:** Thanks, Martin.

So would Mr Peet be kind enough then to tell us what the last advice from the UK government on this was? Apparently there is an email he has. Could he take us through that?

Mr Peet: Since I got involved in June 2019, we have had a series of meetings with our counterparts in the UK. So that is the Department for Business, Innovation and Skills (BIS),

180 Competition and Markets Authority (CMA), representatives of our Cabinet Office and
representatives from the OFT had a series of meetings to discuss Brexit issues.

They were aware that we were progressing the Competition Bill, and it soon became apparent
that it was quite important for us to try and align – not necessarily copy, but try and align – with
the potential consequences of a competition charter within the EU–UK Trade and Cooperation
185 Agreement (TCA). So we tried to do that, and we eventually got the nod to say that what we had
come up with was adequate. It is by no means equivalent, but it does align and the UK were happy
on that basis that if they had to negotiate on our behalf in any future FTAs, that they would do so.

That was of significant importance until about October/November last year. I will stand to be
corrected, but there is probably nobody from the Cabinet Office here to do so, but they would do
190 so, I am sure. It was of paramount importance until then, until I think the Crown Dependencies
were left out of the competition chapter in the Fair Trading Agreement, so it became less
important.

Regardless of that, we should still have fit-for-purpose competition legislation and that was the
aim all along. Brexit had had more significant importance than we thought it would initially have.
195 We satisfied everything that the UK asked of us and we now have a piece of legislation which I
hope will go through, which is fit for the purpose for a long time in the future.

Q17. Mr Robertshaw: Thank you very much.

I have before me some notes from David Corlett. I take it he is Cabinet Office, I do not know.
200 Anyway, his commentary with regard to the urgency of this departs from yours and I think you
have even suggested yourselves that the same urgency is not there, because he said: ‘It is not
therefore necessarily the case that the UK government has to approve Isle of Man legislation *per*
se, and in terms of the timeline there is no longer the same pressure. If the TCA competition
chapter had covered the Island, then we would have needed implementation legislation by
205 31st December.’

So this really very much, as it sat within the Theresa May UK regime, as it was negotiating prior
to the 31st December, had relevance then, but it does not have the same relevance now. I think
from the advice I have before me here, that is the case.

But, Mr Perkins, you have never indicated that to Members of Keys as we have been dealing
210 with the Competition Bill, have you?

Mr Perkins: I must admit I was not aware of the fact that it was not as needed as you make
out. I have not had any correspondence with the Cabinet Office in that respect, and I do not think,
Mr Peet – could you confirm that you have had anything, Mr Peet?

215 **Mr Peet:** I would agree with what David Corlett said, that it was of paramount importance that
we progress this Bill in the format that it is in. Up until just before ... it was not long before
31st December, it became apparent that we probably would not be included in the competition
chapter, but I would argue still – and as I think David Corlett has pointed out in correspondence –
220 we still need a fit-for-the-purpose Competition Bill in case the UK has to negotiate any future FTAs
on our behalf, not just ...

Q18. Mr Robertshaw: I am the first to admit that there is a future potential for that, but do
you not both feel that it is very important that OFT is open and transparent with the membership
225 of Keys; and the membership of Keys is under the distinct impression, because of utterances by
you, Mr Perkins, that this is a matter of extreme urgency? The fact that you did not know what
was in the advice from David Corlett, frankly is more than astonishing and I will, you will
understand, be bringing this up when you bring the next section of clauses to the floor of Keys – I
think is it this week or next? – whenever, because really, that is not acceptable: that you should
230 ... I would not say ‘berate us’, that would be taking it too far, but to suggest that it is of the utmost
importance that this gets through, that the Isle of Man is damaged if it is not and therefore, we

the Members of Keys are required to get this Bill through. Well, you know from what Mr Peet has said and what evidence we have had from Mr Corlett that your position was an incorrect one. Do you accept that?

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Mr Perkins: I accept that, but I also would put forward the fact that I had no correspondence with Mr Corlett from the Cabinet Office and I would have said that as a matter of courtesy he would have made sure that the Chair of the Office of Fair Trading would have been informed that that was the case.

240

Now, I was under the distinct impression that the fact that we had the legislation going through was acceptable to the United Kingdom in negotiating on our behalf. That is my position on that, Mr Robertshaw.

245

Q19. Mr Robertshaw: Thank you. I think we do not need to dwell on this point any longer, because clearly you are, as Chair of OFT, extremely badly informed, but we will have to move on there.

250

So what you brought forward to Keys is a Competition Bill which directs issues of competition to quite small businesses on the Isle of Man. It is the case that most monopolies are owned or at least controlled by the Isle of Man Government, as opposed to the private sector, which has pretty well, to my knowledge, hardly any monopolies at all.

255

Where the OFT has had a duty to look at competition matters – and here we were talking about something that may very well come up later on in relation to Bus Vannin and the taxis – you have failed, the OFT has completely failed in its duty to consider this matter over the last 18 months to two years. How on earth do you expect Members of Keys to have confidence in the OFT, if in the very area you should have shown performance, you have not?

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So not only do you not know whether or not your Competition Bill should be a matter of urgency, when you have said it is, but in terms of matters you should have attended to, you have not done so. Do you understand the frustration of this Committee in terms of its consideration of OFT's performance and issuances?

Mr Perkins: So are we talking about competition on the private sector or in the public sector or in general?

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Q20. Mr Robertshaw: We are talking about both because in fact one of the clauses talks about you being responsible for overseeing public bodies. So you are going to be responsible for deliberating on monopolies currently held by Government or arm's-length organisations. So you have got a massive task ahead of you in that regard and yet most of the Bill concerned ... one tiny clause seems to – it is almost one line, as I recall – concern itself with public bodies. But you are going to be concerned with small private sector businesses.

270

If you cannot even deal with a competition matter related to Bus Vannin and the taxis, how on earth can we have any confidence in the future structure and organisation of OFT, if your performance and track record has been so poor; and particularly, as we now know, that the integration of your so-called independent organisation is significantly integrated with a Department of Government? Does any of this concern you at all?

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Mr Perkins: I will take your first point first, if I may. I think you are underestimating the complexity of the investigation into the taxis and Bus Vannin. I cannot go into the individual nature of it, because I do not want to jeopardise any future investigation going forward, but I would just ... I think we can publish the timeline as to how the investigation is proceeding and I would respectfully remind you, there are something like nearly 900 files that we have to investigate, some 550 megabytes of electronic documentation that needs to be gone through. With the COVID situation, it has not been at all easy.

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285 We are now in a position where the 'quick quote' has been organised and we will be reporting back to the Council as and when we arrive at a decision on how we are going to take the investigation forward, if we are going to.

290 **Q21. Mr Robertshaw:** Okay. So what you are saying is that your current organisation, OFT, has found, in your own words, trying to deal with the matter of Bus Vannin on one hand and the taxis on the other is a very complex issue. Are you not really making my point for me: that if you cannot even cope with that, how can you possibly cope with being an arbiter over matters of monopolies within the public sector and the rest of the private sector?

Really, are this Competition Bill and the position of the OFT not just 'front', really? How on earth are we going to have confidence in the Competition Bill, which I understand and correct me if I am wrong, please do, I seek that guidance from you ...?

295 If it is the case that we cannot trade externally without this Competition Bill going through, is that what you have said or not? Have you said that it is so imperative that this Competition Bill goes through, that if it does not, we are in a very difficult position in terms of trading and externally? Have you said that or have I misunderstood you?

300 **Mr Perkins:** I think you have misunderstood. What I have said is that we have been requested by the UK authorities to put in place legislation that they are happy for them to negotiate on our behalf in future trade deals.

305 **Q22. Mr Robertshaw:** Yes, but you know that is out of date. Your own officer has said that, hasn't he? I certainly said it here, and certainly the advice from David Corlett suggests that that is the case. Why on earth are you not up to speed on this? I am baffled! I really do not know what to say to you. The whole thing looks a complete mess to me.

Anyway, you were going to finish off your answers to my previous questions.

310 **Mr Perkins:** On the monopoly situation? (**Mr Robertshaw:** Yes.)

Well, if you look at what the OFT has on its plate, we are dealing with an awful lot of things going on, and I am sure John can outline some of the things that we have dealt with. Of course, the OFT is on a hiding to nothing because the people who do not get the result they want on an OFT decision, they are the ones that go and hit the social media. The people who are on the investigations that we do come up and get the result that people want, you very rarely hear from them and so consequently, you get these reports on social media that you have probably seen the OFT has got no teeth; and I can assure you, that is not the case.

320 **Mr Robertshaw:** Well, thank you for that. Chairman Clare, I think I am getting to the end of my tirade here with the OFT, as I am at a complete loss now as to what to make of all this. The Chairman does not really know what is going on, is not up to speed, has failed to deliver an important report concerning the Bus Vannin and taxis, and yet makes it appear on the floor of Keys that this whole matter is urgent and needs to be dealt with in a very speedy fashion. In fact, he has even asked us to, as I recall, roll over the Third Reading immediately at the end of clauses –
325 for what reason, I simply do not get.

So Clare, I think I have probably exercised myself enough. I am exasperated, so can I pass it back to you please.

Q23. The Chairman: You can.

330 Mr Perkins, you touched on the relevance around the FTAs and the need for us to be able to negotiate with the UK and wider as necessary, and that was the predominant reason for pushing the Competition Bill. I just wonder if you could make it clear as to whether there would potentially still need to be an Amendment Bill to this, if there were found to be additional elements that were needed; or are we comforted that this is absolutely the final position?

335 **Mr Perkins:** As far as I am aware, it is the final position, but I would just correct you slightly on that. This is for the UK to negotiate on our behalf.

Am I correct in saying that, Mr Peet? Can you verify that?

340 **Mr Peet:** You are correct in saying that, Mr Chairman. Yes, let's get this right. We needed a new Competition Bill, full stop, because the Fair Trading Act provisions are inadequate, so we were always going to have new fair trading ... certain new competition legislation.

The importance was made very clear to us that we should try to align with the Crown Dependencies and the UK and have had similar provisions, although not equivalent provisions. We have done that. Just before the New Year, as I have alluded to, it would appear the Crown Dependencies were not included in the competition chapter. That does not mean it is any less important, in my opinion, for us to progress this legislation. I see no reason, going off what the UK authorities have said, that we will need any amendment, if the Bill becomes law.

350 **Q24. The Chairman:** Okay. So if we can then try to parallel the capacity issue, in terms of resources and capacity, what effect will the coming into being of the Competition Bill have on the OFT in terms of being able to conduct both the work you already do and any additional work that may come online as a result of the changes?

355 **Mr Peet:** There are issues surrounding capacity. We are a small organisation. I do not deny that, but the Bill gives us the wherewithal to bring in external expertise as and when we need it. It may be the case that we think right, this is too big an investigation, so we do bring in external expertise.

360 **Q25. The Chairman:** And do you have your own budget for that or does that have to go through an approval process from the Department?

Mr Peet: The way I understand it at the moment is we do have money set aside, but it would probably have to go through the approval process.

365 **Q26. The Chairman:** So would you make an application directly to Treasury, do you know? Or do you make the application to DEFA and then they would submit that to Treasury?

Mr Peet: I cannot answer that, I am sorry. I do not know the right budget –

370 **Q27. The Chairman:** I would be grateful if you could provide that detail around the governance process for the funding to us, because I think it would just try and help us to understand. I think it is clear that there is a feeling that there is a conflict. I think that came out loud and clear in previous debates within the House. I think it would be really helpful to understand the processes and mechanisms, both now and how they might look in the future.

375 So in terms of the demand-responsive bus services investigation, I wonder, without going into any specific detail if you could just outline the process and the timeline. So from an OFT perspective, when that was first referred to you, there was obviously a wider discussion about initially just letting it play out, see what happened, and then the decision to do a preliminary investigation, as per the Fair Trading Act. I wonder if you could just give the broad dates of that, just so we have them on the record.

380 **Mr Peet:** Okay, I do not mind doing that. It is not appertaining to the ongoing investigation. The decision to go ahead with the investigation was taken at a board meeting on 31st October 2019. I was asked to check that we had the *vires* for the investigation, just because basically it was another Government agency. I checked that *vires*, and it was confirmed that we did have it on 385 7th November 2019.

Then on 31st January 2020 at a board meeting, we had a draft project initiation document, and we discussed that.

390 On 4th February 2020, I circulated that document, having made a few amendments, and it was approved by the board.

Between 14th and 20th February 2020, letters went out to the 'noticed parties'. I am not going to divulge who the noticed parties were but the letters went out, so that 14th to 20th February, the first letters went out. That was the first stage of the investigation.

395 The next stage would be to get the information back that we were requesting with the letters and then analyse it.

Then in March 2020: COVID lockdown. It has obviously had a massive effect on the investigation, but that is the timeline. Does that help?

Q28. The Chairman: Thank you. I think, yes, that does help.

400 So just to confirm, the officers within OFT: how many of the substantive officers were moved into the COVID teams? I know that there has been a huge piece of work around supporting, and I really commend the officers for that work, but obviously the underlying pressure is that that has left you without the capacity to carry on these things that are having a significant impact, I suppose, for some businesses.

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Mr Peet: Can I just go back? (**The Chairman:** Yes.) Somebody has very kindly sent me the information you were seeking. It says: the OFT funding bids have to go via DEFA, as they bid for us.

I thank the Secretary of the board for that information, so that clarifies that situation.

410 In the first lockdown, we did not have any staff seconded to two 111 or the equivalent, but what we did do was take on an enormous amount of work that we would not otherwise have done. We were advising businesses whether they could open or shut; what conditions if they opened they had to comply with. We got involved in the production of hand sanitisers, the authorisation thereof. We got involved in authorising ... an email or letter that we put together helped with the loan schemes and enabled businesses to talk to each other, so that was not seen as being anti-competitive – just for the COVID period.

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You could go on and on, with that amount of so much work we did during the COVID ...

Also, sorry, protection of tenants from evictions: we had landlords and tenants making enquiries as to what was going on in terms of eviction.

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The second lockdown was a bit quieter, but we still had lots of enquiries about evictions and lots of enquiries about whether business could open or shut or not. The hand sanitiser I think has died down.

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This lockdown has been just as busy. The difference is, during this lockdown, we have allocated some staff to the 111 service. So, in the first two lockdowns, we did not actually allocate any staff, but staff were that busy doing other things and getting used to working from home, which we were not used to doing – we had never done that before. It is the same with every Department.

So some of the noticed parties – I am not going to say who – had other things to do, major things, and they asked for more time in terms of providing us with the information.

430

That is the genuine reason why – and I regret it but that is the genuine reason – why this particular investigation has fallen behind.

Q29. The Chairman: Okay, so I think that is very helpful.

435 One of the primary things has not only been the inability from an OFT perspective to go through that huge number of files that you talked of earlier, Mr Perkins, but also that the people you were requesting information of have not had the capacity to go through and provide you with the relevant information.

Mr Perkins: I think that is probably a fair comment.

440 **The Chairman:** Okay, so there is a combination of both, which I think we understand.
I will just bring Mr Mercer in at that point, if that is okay. He has got a couple of questions.

Q30. Mr Mercer: Thank you, Chair.

445 It has been very useful to me to read in to this meeting by going through the minutes that are published of the OFT. Unfortunately the last one that is up there is from 27th August 2020. Has there been a change of policy regarding the publication of minutes?

Mr Perkins: Not that I am aware of.

450 **Q31. Mr Mercer:** We are operating nine months in arrears here now.

Okay, I will assume there is some lag, but it would be useful if they were brought up to date so they are in the public domain.

455 Going to the other half of this, letters were issued to 'noticed parties' in February 2020. I understand that we have had various lockdowns and COVID, reallocation of staff, etc. But I would like to come back to those minutes of 27th August that 'responses were still awaited from certain areas of Government'.

Are responses still awaited? How does the OFT deal with an unresponsive party? What powers has the OFT got in this regard and how often have you had to use them?

460 **Mr Peet:** Can I answer that on behalf of the Chairman? (**Mr Perkins:** Yes, thanks.) There is an official notice that we send and obviously we have the power to require them to produce information within a certain time. But we had to have due regard to what was going on.

465 Like I say, I cannot name the noticed parties, but everybody has jumped on to help and when I get a letter from somebody saying 'Do you mind if we delay it because of this?' then I have to have due regard to that.

I have not really been involved in previous investigations, and this is only off the top of my head – I cannot recall the OFT ever having to use his powers under the notice to get the information in previous investigations. But that is only off the top of my head without checking.

470 **Q32. Mr Mercer:** It would be very useful to publish the timeline so that can go into the public domain as well.

I just wanted to confirm that I have this right: that the Manx Taxi Federation first requested an investigation into the ConnectPORTS and ConnectVILLAGES services, and that was from June 2018. Do I have that right?

475 **Mr Peet:** I only took over this role in May 2019 and I dealt with this latest complaint that led to the investigation. I would have to go back and check. I am not hiding anything at all. I have not got that information to hand, but I can certainly find out and supply you with that information.

480 **Mr Mercer:** Thank you. That would be useful.

The Chairman: That would be very helpful.

Mr Mercer: Thank you, Chair.

485 **Q33. The Chairman:** Thanks, Mr Mercer.

I wonder if I could just go back slightly. You referred to the document that the board received on 31st October 2019. I think that is also referenced in one of your responses that was provided to the House of Keys. I just wonder who makes that initial document that comes to the OFT board

490 to enable them to then decide to pursue an investigation? How does that process happen? Not
specific to this case; just more generally, just so we can understand.

Mr Peet: The vast majority of board papers are prepared by myself, obviously with expertise
being added by some of my colleagues. But the name on that paper was mine. We gather as much
495 information as we can to help the board make an informed decision.

So the board on 31st October would have been in my name, just like probably other board
papers on the Agenda, it would have been my name. Whether I wrote all of them ... For example,
somebody might do a paper on debt counselling and write three quarters of it, and then I have a
check of it and add a bit and it is in my name. But yes, the vast majority of papers are prepared by
500 what was the chief officer before May 2019 and the Head of the OFT since then.

Previously, it was reorganised in May 2019: before that we had chief officers and they would
generally prepare papers – although if it was, for example, a subject like cowboy builders or
something like that, then the senior trading standards officer might have prepared it.

505 **Q34. The Chairman:** Okay, that is really helpful actually.

I just wonder then: you would anticipate that there would have been a paper, assuming
Mr Mercer's timeframe is correct, back in June 2008 that would have then led to the decision by
the OFT to not investigate at that point. Mr Perkins might be better placed to answer as it was
before your time, Mr Peet.

510

Mr Perkins: Is this referring to the ConnectPORTS issue or is it to do with the on-demand bus
services –

Q35. The Chairman: This was ConnectVILLAGES, when this first came out as ConnectVILLAGES.
515 ConnectPORTS, I think had already been – my understanding – initiated at that point, so it was
extended into ConnectVILLAGES. I have to confirm.

Just based on the dates, I know it was initially referred to OFT. There was then a period of time
elapsed where it was almost a sort of sit and wait and see what happened, before then this second
paper, I assume, came in October 2019, so I just wonder: would there have been a paper initially?
520 Am I correct in my understanding, in terms of how the decision-making and the governance
works?

Mr Perkins: I think there probably would have been a paper, but I do not actually recall it
personally.

525

Q36. The Chairman: Would you be able to check that and then just let us know?

Mr Perkins: We can check that.

530 **Mr Peet:** Yes, I have got ... I might be able to answer presently, if you just bear with me.

The Chairman: Happy to do so.

Mr Peet: Again from the Secretary of the board: in 2018 the decision was to wait until the trial
535 period of a year ended.

So it would appear that there was a board paper prepared in 2018 and the board took a
decision to wait until the end of the trial period of one year before deciding whether to investigate
or not.

540 **The Chairman:** Thank you.

Mr Robertshaw, are you wanting to come back in at this point? I just see your hand up there.

Q37. Mr Robertshaw: Thank you, Chair.

545 Stop me, Chairman, if it is the wrong moment to ask this, but could we explore how it is, now that OFT have finally decided that they are not competent to deal with this, after I do not know how long – some number of years? They have now decided to go externally. Could they tell us about the process they are attaching to that?

Perhaps from you, Mr Perkins, how are you going to go about that?

550 **Mr Perkins:** How we went about deciding we needed external assistance?

Q38. Mr Robertshaw: No, no. I think you have decided that. What I am saying is, how will you go about selecting an appropriate body to look at that? Have you started that process yet?

555 **Mr Perkins:** Yes, we have. We have actually lodged a ‘quick quote’ under the procurement side of Government.

John, would you like to pick up on exactly what that entails?

560 **Mr Peet:** It is exactly as it says. We know why we have fallen behind. We do regret doing so. So we have decided to try and expedite it, if we can, by seeking external help. It is simply for that reason to try and expedite it.

So in the original timeline in the project initiation document – I do not think this is giving any secrets away – I think the letters were to go out in February 2020, and we would hope to have had a report for Council by September 2021.

565 Now, obviously, we are now in March 2021. We have probably done stage 1. We have got the information from the noticed parties and if they were to stick to the timeline as per the original project initiation document, we would probably be looking at September 2021. Obviously we need to expedite that, and we recognise that. We need to get this done as quickly as possible to be fair to all parties.

570 **Q39. Mr Robertshaw:** Okay. So with regard to the quick quotes – I do not know whether you have had any in yet, but let’s assume that you have not or that they are about to come in. Will the OFT board in isolation make a decision as to who should pursue the investigation, or will it involve DEFA in any shape or form, be money or finance or is that already agreed, or the selection of the body that is chosen to do the examination?

575 **Mr Perkins:** The information, as I understand it, will come back from the inquiry that has been sent out and then we will prepare a paper for the Council of Ministers, which will have one of three things. One is that the OFT does the investigation themselves; two would be that the OFT does the investigation with assistance from somebody else within Government, from a different Department; and three, the other option would be that we hand over the investigation to the successful party that has bid to do the work. With that, you would hope that there will be a costing and then the Council of Ministers will make an informed choice. I think I am correct in saying that is the way it will be going forward.

585 Can you confirm that, Mr Peet?

Mr Peet: Yes, I can confirm that. I do not think we need to go to Council. I think it will be a board decision as to whether we progress it ourselves or we try to get a team together within Government to expedite it, or we do it with external expertise to expedite it, or a combination.

590 Our job now is to try to get that report as soon as possible.

Q40. Mr Robertshaw: Okay, back to link a few things together here: finance is authorised by DEFA; the Chief Executive of OFT is DEFA; on an issue of complete independence, the Chairman

says that a decision is going to be made by Council, not the so-called independent OFT; and the senior officer of OFT is now disagreeing with the Chairman of the OFT.

595

Mr Peet: It is a board decision. We are a Statutory Board and so we report to –

Q41. Mr Robertshaw: So the Chairman does not even know the process around such an important investigation. Mr Perkins, is that true or false?

600

Mr Perkins: I think that the board would probably put some sort of paper to the Council of Ministers.

Mr Robertshaw: Why? You are supposed to be – Go on, Clare, I give up.

605

Q42. The Chairman: I was just going to say, I wonder if we can work it through in terms of the actual Fair Trading Act. When you reference the Act, then we have the initial undertaking relating to anti-competitive practice and that preliminary report. We are talking at the minute about the preliminary report being put together. Am I correct there? (**Mr Perkins:** Correct.)

610

Okay, so once the preliminary report is done that is then published in accordance with Schedule 3. That report is the one that we are now discussing whether it goes to CoMin or not, but then that will make a decision as to whether we pursue a full report. Am I correct then?

Mr Perkins: As I understand it, correct.

615

Q43. The Chairman: Then the full report – I am just working through – then becomes the ‘competition references’ as defined in the Act? Because that has got a statutory six-month limit for producing that element of it. (**Mr Peet:** Yes.) Okay, so that is the full report and then that has to be done within a short timeframe.

620

It just seems to me that at the minute you have got this very long period that it is going to take to get the feedback as to how to pursue the reporting, but then quite a short period to do the actual big report, if that is decided to be the most appropriate way forward, which seems backwards. I am struggling to just comprehend, with the Fair Trading Act, how that works. I would be grateful if anyone could talk me through it.

625

Mr Peet: Okay, the initial timeline was February 2020, to have the report to Tynwald by September 2020, which I do not think is unreasonable. That was not an unreasonable target. It was based on previous investigations and giving people time to submit information, us time to analyse the information, go back and ask questions, get answers to the questions. Then we have to send draft reports or sections of draft reports to the noticed parties to see if they agree, etc. So I was comfortable with that.

630

We have fallen behind for the reasons to which I have alluded.

Once we have done the report and it goes to Council, as far as I am aware, Council can then make a reference and have a further report done. The likelihood –and I stand to be corrected here – of the OFT doing that is minimal, if not zero, because we have already got a position. So it is highly unlikely that we would be asked to do another report under the reference. So they would probably have to get in expert ... They would be in the same position as us: Council would either have to get external expertise in to do a report, or they could form a Government team. I do not know. That is entirely up to Council.

635

Our job is to get the preliminary report to Council.

640

Q44. The Chairman: Okay, so the preliminary report – just go through the options that that can come out with as a conclusion for me again.

645 **Mr Peet:** The conclusions are that somebody has behaved in an anti-competitive way or they have not; or I presume we could say they have behaved in an anti-competitive way, but there are reasons why that is the case.

So that is our job: to give the information to Council, so that Council can then decide whether to take it further or not.

650

Q45. The Chairman: Okay and then, as OFT you report directly to Council and does that need to go through DEFA first?

Mr Peet: The OFT report goes to Council.

655

The Chairman: Okay.

Mr Robertshaw: Chairman –

660 **Mr Peet:** Sorry, I do apologise. That is what it says in the Act: the OFT shall ... Sorry, I do apologise.

Mr Robertshaw: Clare, Chairman – can we consider drawing this meeting to a close, because I am getting more and more confused by the OFT's various positions on what they are saying and not saying.

665

We have this notice from them effectively that something – I do not know what the hell it is – *something* is *sub judice*. I think we need to call this meeting to a close and invite OFT back again, once we have established the veracity of their position and exactly where they are, because we are just getting nowhere here. This is a pretty pointless process.

670

My recommendation to you, Chairman, is that we close this meeting down.

Q46. The Chairman: I wonder whether we can maybe hold this point of the meeting, but just explore that broader Transfer of Functions Order proposal, as to how the RTLC and OFT and DEFA relationship works. Just if we could just touch on that briefly before we close.

675

Bearing in mind this was initially referred to the OFT in 2018, what engagement did the OFT have relating to the proposal to bring RTLC under the remit of the OFT in July 2019? Were OFT as a board consulted on that and if so, what was their position?

Mr Perkins: As I recall, I do not think we were consulted on it. I think Mr Thomas, when he was in his position within the Cabinet Office, wanted to do something regarding the amalgamation of various bodies, the RTLC and the OFT, and also come under one regulatory body of some sort, but I do not recall us being directly consulted under that.

680

Q47. The Chairman: Okay, you do not have any different recollection, Mr Peet, I assume.

685

In terms of your perspective, you did not make any representation as a board, once you saw that on the Order Paper, that this would present a huge conflict having a body that you were potentially engaged in exploring at that point directly under your remit; or was that not discussed by the board?

690

Mr Perkins: No, we did not.

The Chairman: Mr Mercer, do you have anything else you want to add?

Mr Mercer: Sorry, Chair, no, not at this time. Thank you.

695

The Chairman: Mr Robertshaw, anything else?

Mr Robertshaw: No, thank you, Chairman. No.

The Chairman: Okay. So with that, we will thank Mr Perkins and Mr Peet for your time today.
700 I think we need to explore further the potential conflict that has been raised in this regard.
We will now end today's session and thank you for your time.

Mr Perkins: Thank you.

The Committee sat in private at 3.57 p.m.