



PORTS OF JERSEY PRICING FRAMEWORK

POJ1395J

Draft Decision

Jersey Competition Regulatory Authority

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1. EXECUTIVE SUMMARY

1.1 The Jersey Competition Regulatory Authority (the **Authority**)¹ is issuing this Draft Decision proposing to allow Ports of Jersey Limited (**PoJL**) to increase product prices for regulated services (that is, where PoJL has been found dominant) annually throughout the five year price control period by a maximum of Jersey RPI +1% applied to each charge to customers.

1.2 In order to report on the performance of the business as whole, PoJL will also manage cumulative regulated and non-regulated revenue on a 'single till' basis within 5% 'tramlines', both positive and negative. Should revenues fall outside these tramlines, PoJL will agree a corrective course of action with the Authority.

1.3 This control will be monitored on an annual basis with a review commenced in year 3 to allow for any adjustment to be made for a second five year control. Should any tariff restructuring be proposed within the framework which would bring prices above the price cap, these will be subject to the usual CICRA consultation process.

1.4 This Draft Decision paper sets out the draft decision of the Authority, and invites comments from interested parties. In due course, the Authority will issue a Final Decision, and start the statutory process to implement this price control framework.

2. STRUCTURE OF THIS DOCUMENT

2.1 This document constitutes a non-statutory Draft Decision. The document sets out the conclusions which the Authority has reached, having taken full account of information gathered for CICRA 19/05 – Ports of Jersey Long-term Pricing Framework, and the Ports of Jersey Pricing Submission 2020-2024 received on 9 April 2019.

2.2 The document is structured as follows:

Section 3	Outlines the background to the introduction of a price control framework for PoJL
Section 4	Sets out the Pricing Framework proposal made by PoJL and consideration of the Authority
Section 5	Contains the Draft Decision
Section 6	Sets out the next steps

¹ The Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities in the Channel Islands. However, for the purposes of this document, the Authority refers to the JCRA only as the Decision relates to Jersey only.

2.3 Respondents are requested to comment on the Draft Decision. All comments should be submitted before 17:00 on 24 May 2019 to:

Jersey Competition Regulatory Authority
2nd Floor, Salisbury House
1 – 9 Union Street
St Helier
Jersey JE2 3RF
Email: info@cticra.je

2.4 All comments should be clearly marked ‘Comments on PoJ1395J Draft Decision – Ports of Jersey Long-term Pricing Framework’.

2.5 In line with CICRA’s consultation policy, the Authority intends to make responses to the Draft Decision available on the CICRA website, the combined website of the JCRA and GCRA. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. The Authority regrets that it is not in a position to respond individually to the responses to this consultation.

3. BACKGROUND

3.1 Port operations are regulated in Jersey by way of the Ports of Jersey (Incorporation) (Jersey) Law 2015 (the **Law**). In general terms, the aim of such regulation is to protect users of port operation services (**Port Users**) from the risk of abuse of any dominant position in the provision of such services.

3.2 Port operations (**Port Operations**) are defined in Article 2 of the Law as:

- the provision of facilities and services for and in relation to commercial passenger travel and freight transport into and out of Jersey, by air or by sea,
- the provision of facilities and services for and in relation to non-commercial travel and leisure pursuits around, into and out of Jersey, by air or by sea, and specifically (in the case of harbour operations) within Jersey territorial waters, and
- the management, maintenance and operation of such facilities and services

3.3 Article 7 of the Law provides that, subject to certain exceptions, no person may carry out port operations in Jersey unless they hold a licence issued by the Authority. The primary duty of the Authority is **to best to protect and further the interests of users of port operations, in the short and long term, and to do so where appropriate by promoting competition in the provision of port operations**. The duties of the Authority and the Minister are attached at Annex A.

3.4 Article 15(1)(i) of the Law provides that the licence issued by the Authority may contain conditions relating to the level of prices, premiums and discounts which may be charged or allowed by a licensee having a dominant position in the conduct of port operations.

3.5 Ports of Jersey Limited (**PoJL**) is the company established by the Law that owns and operates the airport, harbours and marinas in Jersey. It is 100% owned by the States of Jersey and the only licensed port operator for Jersey. The primary object of PoJL is defined in the Law as **to provide, or ensure the provision of, safe, secure and efficient port operations for Jersey**. PoJL is also responsible for the discharge of certain public service obligations under the Law.

3.6 The PoJL Port Operations Licence² (the **Licence**) contains conditions in respect of price regulated services. Licence Condition 22.2 provides that the JCRA may determine the maximum level of charges the Licensee may apply for port operations within a relevant market in which the Licensee has been found to be dominant.

3.7 Such determination may:

- (a) Provide for the overall limit to apply to such port operations or categories of port operations or any combination of port operations
- (b) Restrict increases in any such charges or require reductions in them whether by reference to formula or otherwise, or
- (c) Provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies

3.8 Licence Condition 22.3 further provides that all published prices, discount schemes and special offers of, or introduced by the Licensee for port operations shall be transparent and non-discriminatory; all prices and discounts shall be cost justified and all special offers shall be objectively justifiable.

3.9 PoJL has been found to be dominant in the provision of certain services³ relating to:

- (i) Airport operation services (excluding private users)
- (ii) Airport operation services to private users
- (iii) Commercial sea port operation services
- (iv) Sea port operation services to marine leisure port users

3.10 In September 2018, the Authority began the process to introduce a long term pricing framework for PoJL by issuing a Call for Information, seeking the views of interested parties about the assumptions proposed by PoJL to underpin a pricing framework. These assumptions were finalised in CICRA 19/05 of 18 February 2019⁴ (the **Assumptions Decision**).

² <https://www.cicra.gg/licences-in-issue/ports-of-jersey-ltd/>

³ <https://www.cicra.gg/cases/2016/poj1204j-ports-of-jersey-significant-market-power-smp-dominance-designation/poj1204j-final-notice-ports-of-jersey-assessment-of-market-power/>

⁴ <https://www.cicra.gg/cases/2018/poj1395j-ports-of-jersey-long-term-pricing-framework/poj1395j-ports-of-jersey-long-term-pricing-framework-assumptions-decision/>

States of Jersey Ports Regulation Policy

3.11 In 2015, the Jersey Regulatory and Competition Framework Review⁵ recommended that government should develop a clear policy for each of the sectors regulated by the Authority, including its policy for promoting competition or direct regulation.

3.12 In March 2019, the Office of the Comptroller and Auditor General published a follow up to its Report into 'The States as Shareholder'⁶. This follow up report recommends that the development of Ports Regulation Policy is prioritised by the States of Jersey.

3.13 In the absence of such a policy, guidance has been taken from the primary objective of incorporation included in the Case for Incorporation⁷, and the Assumptions Decision, including the States of Jersey response⁸ to the consultation. In summary:

To enable PoJL to continue to be the provider of essential public services to Jersey but to do so in a commercial and self-sustainable manner that will both enhance services for customers and remove the significant future financial burden to the States.

4. PRICE CONTROL FRAMEWORK

4.1 In order to fulfil its duties under the Law, one measure the Authority is seeking to introduce is a pricing framework. The Authority is adopting a proportionate and pragmatic approach to the development and implementation of the pricing framework for PoJL, by relying, whenever possible, on the information already used by PoJL, subject to an ongoing assessment of the effectiveness of this approach.

Ports of Jersey Proposal

4.2 Ports of Jersey Limited has provided a Pricing Submission 2020-2024 (the second 'Call for Information' stage of the process), which is attached at Annex B. This is based on the PoJL internal long-term business model (**PoJL Financial Model**), incorporating the Assumptions Decision.

4.3 The submission proposes the following model for a regulated pricing framework, which it believes will provide comfort to customers that if the assumed volumes are exceeded, prices will be constrained:

- (i) Regulated prices may be increased annually throughout the five year control period by up to the Jersey Retail Price Index (JRPI) + 1% (the **Proposed Price Cap**).

⁵ <https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=1744>

⁶ <https://www.jerseyauditoffice.je/wp-content/uploads/2019/03/States-as-Shareholder-Follow-up-Report.pdf>

⁷ <https://www.gov.je/Government/Consultations/Pages/PortsIncorporation.aspx>

⁸ <https://www.cicra.gg/cases/2018/poj1395j-ports-of-jersey-long-term-pricing-framework/poj1395j-ports-of-jersey-long-term-pricing-framework-assumptions-decision/>

- (ii) Should PoJL intend to restructure its prices within that allowance in a way that would increase any group of prices above the Proposed Price Cap, it would undertake an appropriate consultation process approximately 3 months prior to implementation.
- (iii) In addition, PoJL will aim to manage cumulative revenues, calculated on a single till basis (i.e. both regulated and non-regulated revenue), in line with that cumulative forecast but within 'tramlines' recognising a 5% tolerance (both positive and negative) (the **Forecast Revenue**).
- (iv) Should PoJL revenue fall outside these tramlines (either positively or negatively) PoJL will agree a corrective course of action with the Authority. Where additional revenue, above the tramlines, has been generated, the expectation would be that future price increases would be lowered, subject to understanding the drivers for the disparity were caused by a structural or one-off shift. A similar principle would apply in the event of a less favourable outturn.

Consideration

PROPOSED PRICE CAP

- 4.4 The Authority is minded to agree to allow PoJL to increase prices for individual regulated services (that is, services where PoJL has been found dominant) annually throughout the 5 year price control period by a maximum of JRPI +1%. This proposal has been put forward based on the Assumptions Decision already made.
- 4.5 There is also already an additional level of protection for PoJL customers in Licence Condition 22.3 and 22.4 which provide that all published prices, discount schemes and special offers shall be transparent and non-discriminatory. All prices and discount schemes shall be cost-justified, and all special offers objectively justifiable. If it has reason to believe that this obligation is not being met, the Authority may issue a Direction to PoJL to bring any relevant prices, discounts schemes or special offers into conformity with the Law or its licence.
- 4.6 However, whilst the Authority supports the ability for PoJL to restructure its prices, the flexibility proposed by PoJL does not fit with the proposal for a price cap on individual products. Rather than allowing PoJL to effectively self-regulate following a three month consultation, the Authority is therefore proposing that any changes should be brought back for a new price control, with that basket of products and services 'carved out' from this framework. This would then be subject to the usual statutory process.
- 4.7 This Pricing Framework will be reviewed following year 3 with a view to a new control being confirmed for 2025. This will provide the opportunity for a review of this framework as a whole, including the impact of any price changes.

FORECAST REVENUE

4.8 When the Assumptions (CICRA 19/05) and Proposed Price control are applied to PoJL Financial Model, a projected revenue has been produced (see Annex A, page 5)⁹. By managing revenue within 5% tramlines either side of this line, the volume uncertainty identified in the Assumptions Decision can be managed. If required, this could be enforced through the existing 'provision of information'¹⁰ requirements in the Licence.

4.9 In particular, this addresses some of the issues raised in the Assumptions Decision:

- (i) Funding Philosophy: taking account of 'all activities (both regulated and non-regulated) when determining the level of charges
- (ii) Business Volumes – Pass Through: if PoJL exceeds its volume predictions, the benefit will be passed directly through to customers. Likewise, for any shortfall in volume, costs would pass back to customers
- (iii) Capital Programme: PoJL will not be allowed to recover any cost overrun on capital projects through regulated income
- (iv) Should PoJL revenue fall outside these tramlines (either positively or negatively) PoJL will agree a corrective course of action with the Authority. Where additional revenue, above the tramlines, has been generated, the expectation would be that future price increases would be lowered, subject to understanding the drivers for the disparity were caused by a structural or one-off shift. A similar principle would apply in the event of a less favourable outturn.

5. DRAFT DECISION

5.1 The Draft Decision of the Authority is:

- (i) PoJL regulated prices for individual products be allowed to increase annually throughout the 5 year price control period by a maximum of Jersey RPI +1%.
- (ii) Should PoJL restructure its prices for individual products within that allowance in a way that would increase any individual prices above that maximum amount, the relevant basket of products and services will be considered by the Authority as a new price control submission, carved out of this framework, and subject to statutory process.
- (iii) PoJL will aim to manage cumulative revenues, calculated on a single till basis (i.e. both regulated and non-regulated revenue), in line with that cumulative forecast but within 'tramlines' recognising a 5% tolerance (both positive and negative).
- (iv) Should PoJL revenue fall outside these tramlines (either positively or negatively) PoJL will agree a corrective course of action with the Authority. Where additional revenue, above

⁹ For the avoidance of doubt, the Authority has not performed a full analysis of the PoJL Financial Model, however draws comfort from the KPMG Review.

¹⁰ Licence Condition 5

the tramlines, has been generated, the expectation would be that future price increases would be lowered, subject to understanding the drivers for the disparity were caused by a structural or one-off shift. A similar principle would apply in the event of a less favourable outturn.

- (v) This control will be formally monitored on an annual basis with a full review at year 3 to allow for any adjustment to be made for a second five year control.

6. NEXT STEPS

6.1 The Information Notice CICRA 18/29 'Regulatory Consultation Process' published in July 2018 outlines the process to be undertaken before carrying out certain regulatory functions in accordance with the relevant statutory process. This process has been extended for the purposes of the Ports of Jersey Long-term Pricing Framework to allow for more detailed consultation on the Assumptions behind the model before discussion on the Price Control Framework itself.

6.2 This Draft Decision stage now provides the opportunity for public responses, in line with the Regulatory Consultation Process, following which a Final Decision will be issued. In order to implement the maximum prices which PoJL may charge, the statutory process prescribed in the Law will then be followed.

6.3 While the Authority considers any Decision made as part of this pre-statutory process to be the starting point for later parts in the process and as a statement of current expectations, this Decision is not binding until such time as it has been included in the Statutory Notice of a Final Decision

6.4 The Authority invites responses to this Draft Decision as detailed above.

ANNEXES

Annex A: Legal Background

6.5 The States of Jersey enacted the Air and Sea Ports (Incorporation) (Jersey) Law 2015 (the **Law**) on 2 June 2015. This requires that any person carrying out Port Operations (as defined in Article 2 of the Law) must have a licence issued by the Jersey Competition Regulatory Authority (**JCRA**).

6.6 The following extract from the Law shows the duties of the JCRA, in the context of which the pricing framework will be set:

26 Duties of both Minister and JCRA

(1) In relation to port operations, the Minister and the JCRA shall each have a primary duty to perform their respective functions under this Law –

(a) so as best to protect and further the interests of users of port operations, in the short and long term, and to do so where appropriate by promoting competition in the provision of port operations; and

(b) so as best to ensure –

(i) that provision is made to satisfy all reasonable demands, both current and prospective, for port operations.

(ii) that port operations are provided efficiently and effectively, and

(iii) that a company (in particular including PoJL), to the extent that it is or is to be licensed under this Law, has sufficient financial resources to discharge its liabilities under securities issued by the company to the States.

(3) So far as consistent with paragraphs (1) and (2), the Minister and the JCRA shall each have duties to perform their respective functions under this Law –

(a) so as best to encourage sustainable growth in the economy of Jersey in the medium to long term;

(b) so as to impose a minimum of restriction on persons engaging in commercial activities;

(c) with due regard to any relevant policies of the States;

(d) with due regard to preserving and maximizing the benefits of Jersey's resources; and

(e) with due regard to the special needs of persons who are disabled.

Annex B: PoJL Pricing Submission 2020 -2024

(attached)