

JERSEY COMPETITION REGULATORY AUTHORITY

INITIAL NOTICE OF THE PROPOSED GRANT OF A CLASS I POSTAL OPERATOR'S LICENCE TO CITIPOST DSA LIMITED

Under Article 24 of the Postal Services (Jersey) Law 2004

The Jersey Competition Regulatory Authority ("JCRA") in exercise of its powers under Article 15 of the Postal Services (Jersey) Law 2004 ("the Law") proposes to grant to Citipost DSA Limited ("Citipost") a Class I Postal Operator's Licence. The Licence would permit the conveyance of Large Letters and Packets, subject to a Minimum Volume Requirement, but not the conveyance of Letter Format mail.

The Law requires the JCRA to perform its functions in a manner consistent with the duties set forth in Article 8(1) and 8(2). The JCRA's consideration of these duties is detailed below.

Background

In December 2008, Citipost submitted an application to the JCRA for a Class I Postal Operator's Licence to provide postal services for Jersey based fulfilment companies. The JCRA held a public consultation in April and May 2009 seeking views of interested parties on Citipost's application and on whether the grant of a Licence would be consistent with the JCRA's duties under Article 8 of the Law.

There were five responses to the consultation and these were published on the JCRA's website. The JCRA has carefully considered the points made by respondents and those points have informed the JCRA's thinking in relation to Citipost's application.

Apart from the consultation, since Citipost submitted its application, the JCRA and its professional advisers have carried out a significant amount of work concerning the cost to Jersey Post Limited ("JPL") of providing the Universal Service ("USO"). Clearly, the question of the cost of the USO and JPL's ability to fund it is highly relevant to the question of the proposed grant of additional postal Licences.

Finally, by way of background, in recent years there have been published a number of studies and reports commissioned by or on behalf of postal regulators and other organisations concerning, in general terms, the question of the liberalisation of postal services, the introduction of competition and its effect on the ability of the incumbent operator to provide and fund a USO. Where relevant, the JCRA has considered the findings of such studies and reports to inform its view, always mindful of the fact that the studies and reports in question concern jurisdictions other than Jersey¹.

¹ Such reports and studies include: Hooper (2008) "*Modernise or decline: Policies to maintain the universal postal service in the United Kingdom*" available at <http://www.berr.gov.uk/files/file> 49389;

Consideration of Citipost's application in the light of the JCRA's duties under the Law

I. Considerations under Article 8(1) of the Law

1. The JCRA has a primary duty under Article 8(1)(a) of the Law to perform its functions in such manner as is best calculated to ensure that (so far as in its view is reasonably practicable) postal services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising. In considering whether postal services satisfy demands under Article 8(1)(a), under Article 8(3) the JCRA must have regard, *inter alia*, to whether the services are rapid, of high quality and reliable, and are affordable by and accessible to the highest number of business and domestic users.
2. The evidence suggests that there is demand, both current and prospective, for the postal services which would be subject to the proposed Licence. Specifically, eight of the main fulfilment companies in Jersey were interviewed about the desirability of having other providers of postal services to satisfy their requirements. All eight were supportive of the introduction of further competition which should lead to a reduction of prices, an improvement in quality of service (such as rapidity of delivery) and the choice of services on offer.
3. The scope of Article 8(1)(a) also requires the JCRA to consider the effect, if any, that the grant of a Licence to Citipost may have on existing Licensees to satisfy demands for postal services. In the current context this principally concerns the effect upon JPL's ability to provide the USO in Jersey.
4. JPL's Licence requires it to defray the cost of the USO from profits generated by its Licensed Services and allows it to cross-subsidise the USO from other parts of the business². JPL currently uses revenues derived from services it provides to fulfilment companies to help offset the cost of providing the USO. Thus any loss of business on its services to fulfilment companies could have a detrimental effect on its ability to fund the USO.
5. As indicate above, the JCRA has recently carried out work on the cost of providing the USO and has carefully considered the impact which the grant of a Licence to Citipost may have on JPL's ability to provide the USO.

WIK-Consult (2009) "*The role of Regulators in a more competitive postal market*" available at http://ec.europa.eu/internal_market/post/doc/studies/2009-wik_regulators.pdf; WIK-Consult and ITA Consulting (2009) "*Evolution of the European postal market since 1997*" available at http://ec.europa.eu/internal_market/post/doc/studies/2009-wik-evolution_en.pdf.

² See Conditions 12.2 and 24.1.

6. For the following reasons, the JCRA does not consider that the grant of a Licence to Citipost would result in JPL no longer being able to provide the USO. In no particular order, these reasons are:
 - Jersey Post International Limited has sufficient cash reserves which could be used in part to fund the USO if JPL were to lose a significant amount of business to Citipost;
 - That JPL has scope for efficiency savings which could be used to contribute to the cost of the USO;
 - The proposed Licence expressly limits both the format of the items that Citipost will be permitted to convey, and the customers in Jersey that they will be able to provide their services to, namely:
 - a) the proposed Licence is expressly limited to the conveyance of Large Letters and Packets only, and not the conveyance of Letter Format mail; and
 - b) the proposed Licence has a Minimum Volume Requirement, which means that under the proposed Licence, Citipost can only convey mailings from customers in Jersey of 50 or more items for Large Letters, and/or mailings of 25 or more items for Packets.
 - The JCRA still retains a discretion to introduce a USO funding mechanism should JPL be able to show that the provision of the USO represents an unfair burden on JPL³.
7. In terms of the matters set out in Article 8(3), Citipost's application, the non-confidential version of which was published with the April 2009 consultation, sets out its position. In short, Citipost says that the proposed services are rapid (comparable to any other provider) and that Citipost has a track record of high quality and reliability. Furthermore the services to be offered will be competitively priced and accessible to users sending Large Letters or Packets, subject to the Minimum Volume Requirement, as well as being tailored to meet potential users' requirements. Finally, customers of Citipost will have the opportunity to express views on the service provision. The JCRA has no reason to doubt any of these statements.
8. The JCRA therefore believes that the proposed grant of the Licence to Citipost is consistent with its duty under Article 8(1)(a) of the Law.

II. Considerations under Article 8(2) of the Law

9. Article 8(2) of the Law specifies additional duties to which the JCRA must have regard, although only in so far as is consistent with its primary duty under Article 8(1). The JCRA's consideration of these Article 8(2) duties is set forth below.

³ See Condition 12.2 of JPL's Licence and Condition 19 of the proposed Citipost licence.

A. Article 8(2)(a)

10. The JCRA has a duty under Article 8(2)(a) to perform its functions in such manner as it considers best calculated to protect and further the short and long term interests of users within Jersey of postal services and to perform them, wherever it considers appropriate, by promoting competition among persons engaged in commercial activities connected with postal services in Jersey.
11. The benefits of competition in terms of the benefits which it brings to users in the way of lower prices, greater choice and innovative products and services are well known. In the postal sector, the recent Hooper Report⁴ looked at policies which may be needed to ensure the continued provision of the universal service. As regards competition, the Report concluded that competition between postal operators can support the universal service by encouraging cost reductions by the universal service provider, and therefore greater efficiency. Furthermore, such competition should encourage innovation in the products and services offered which can create further revenue streams which may be used to support the universal service (see, in particular, page 95 of the Report).
12. The Hooper Report did, however, recognise that whilst competition is beneficial to consumers, it does also entail some risks, such as a potential reduction in the revenue stream available to support the universal service. It also stated that some forms of competition can be inefficient if they take advantage of constraints which might be placed upon the universal service provider. On balance, however, the Report concluded that these risks were manageable.
13. As noted at paragraphs 4 to 6 above, the JCRA has considered the potential risks to JPL's provision of the USO but for the reasons set out in paragraph 6 does not consider that the grant of the proposed Licence to Citipost would prevent JPL from continuing to satisfy the USO. For those reasons the JCRA believes the grant of the Licence is consistent with its duty under Article 8(2)(a).

B. Article 8(2)(b)

14. The JCRA has a duty under Article 8(2)(b) to perform its functions in such manner as it considers best calculated to promote efficiency, economy and effectiveness in commercial activities connected with postal service in Jersey. It is widely recognised that the introduction of competition serves to increase productive, dynamic and allocative efficiencies. Currently JPL is the only provider of the services in Jersey intended to be offered by Citipost. The grant of the proposed Licence would therefore facilitate the promotion of competition for postal services and thereby advance the Article 8(2)(b) objectives.

⁴ Hooper (2008) "*Modernise or decline: Policies to maintain the universal postal service in the United Kingdom*".

C. Article 8(2)(c)

15. The JCRA has a duty under Article 8(2)(c) to perform its functions in such manner as it considers is best calculated to further Jersey's economic interests.
16. The JCRA still holds the views it expressed in the consultation of the grant of a Licence to Citipost⁵, namely:

“Should the grant of a licence to Citipost DSA result, through competition, in lower prices for postal services to existing providers of fulfilment services, this could potentially enable them to cut their costs and become more competitive against fulfilment companies located in other jurisdictions. More diverse postal fulfilment services may also attract new providers of fulfilment services to Jersey. Finally, greater competition in the provision of postal services to fulfilment companies may also benefit Jersey by giving incentives to current providers of fulfilment services in Jersey to stay located in this jurisdiction. The JCRA has observed in the past that while JPL currently holds a monopoly for the provision of fulfilment services in Jersey, Jersey itself faces competition from other offshore jurisdictions (such as Guernsey and Switzerland) as a platform from which to provide such services⁶.”

17. The grant of the Licence would therefore be in the economic interests of Jersey.

D. Article 8(2)(d)

18. The JCRA has a duty under Article 8(2)(d) to perform its functions as it is best calculated to impose a minimum of restrictions on persons engaged in commercial activities connected with postal services in Jersey.
19. The proposed Licence does have restrictions on the format of items and the customers (in terms of quantities of items) that Citipost may deal with. The JCRA has included these restrictions in the proposed Licence to limit its application to fulfilment companies in Jersey. The JCRA would review these restrictions in 2013, in light of market developments.

E. Article 8(2)(e)

20. The JCRA has a duty under Article 8(2)(e) to have regard to the need to ensure that postal providers have sufficient financial and other resources to conduct those activities.

⁵ Consultation on Citipost DSA Ltd's application for a Class I postal operator's Licence, published 8th April 2009, available on the JCRA website.

⁶ JCRA Final Notice to Jersey Post Limited Concerning Price Control.

21. Citipost is a privately owned company that is a global specialist mail distributor. Over the past 20 years Citipost has grown to be a major provider in global business-to-business mail. The JCRA has been provided with sufficient evidence to satisfy itself that Citipost has sufficient financial and other resources to conduct the activities to be covered by the Licence.
22. Similarly, for the reasons given in paragraph 6 above, the JCRA does not believe that the grant of the Licence will result in JPL having insufficient financial and other resources to satisfy its current USO obligations.

F. Article 8(2)(f)

23. Article 8(2)(f) requires the JCRA to have regard to any special needs of persons who are disabled, have limited financial resources or other special needs. The JCRA believes that the grant of the Licence will be neutral in terms of its effect on the categories of persons identified in Article 8(2)(f).

III. Date when the proposed Licence will take effect

24. The proposed Licence will take effect on **1 May 2010** unless the JCRA receives representations or objections about the proposal prior to that date, in which case the effective date will be specified in any Final Notice issued by the JCRA under Article 24(5) of the Law.
25. A copy of the draft Licence is available for inspection between the hours of 09-00 and 17-00 Monday to Friday at the offices of the JCRA (address set out below). A copy is also available on the JCRA's website, www.jcra.je .

IV. Period for written representations or objections

26. Any written representations or objections in respect of the proposal to grant this Licence may be made by midnight on **30 April 2010** to the JCRA at:

Jersey Competition Regulatory Authority
2nd Floor, Salisbury House,
1-9 Union Street,
St. Helier, Jersey
JE2 3RF

Or by e-mail to p.hamilton@jcra.je or by fax to + 44 (0) 1534 514991

29 March 2010

By order of the Board of the JCRA