

JERSEY COMPETITION REGULATORY AUTHORITY

INITIAL NOTICE

CONCERNING PROPOSED MODIFICATIONS TO JERSEY POST'S LICENCE

Under Articles 19 and 24 of Postal Services (Jersey) Law 2004

In this Initial Notice, the Jersey Competition Regulatory Authority ("JCRA") proposes to modify at the request of Jersey Post ('JP'), pursuant to Articles 19 and 24 of the Postal Services (Jersey) Law 2004 (the "Law"), the Class II Public Postal Operator's Licence (the "Licence") issued to Jersey Post Limited ("JP") by reducing the number of delivery and collection days per week for letters to addresses in Jersey from six to five.

I Background to the Proposed Licence Modifications

JP has requested that the JCRA amend the Postal Licence granted to it on 1 July 2006 to enable it to provide a five day a week postal service. In its written request to the JCRA in November 2010, JP stated that its request is driven by the significant downward trend in letter volumes which have fallen by 25% since 2004 and which JP believes is set to continue at a rate of 7% pa over the next 3-5 years. This is a trend which is also being experienced by many national postal operators worldwide. JP argues that this decline in mail volumes is impacting on JP's ability to fund adequately the Universal Service Obligation ("USO"). According to JP, a reduction in the number of delivery and collection days will help to reduce its operational costs by some £400,000.

JP's postal licence requires JP to fulfil the Universal Service Obligation ("USO") as defined in Condition 12.3 (See Annex 1). Currently included in the USO is the requirement for JP to provide at least one delivery of mail, to every delivery point in Jersey, each working day. A "working day" is currently defined as meaning every day except Sunday and public holidays in the case of letters, and every day except Saturday, Sunday and public holidays in the case of all other mail. Essentially at the moment, the USO is a six day a week postal service.

In January 2005, the Economic Development Committee (now the Minister for Economic Development) issued the JCRA with Directions and Guidance under Article 9 of the Law. Paragraph 11 (a) of this Guidance requires that at least one delivery of relevant postal packets posted in Jersey should be made on at least five working days each week to each delivery point. It is proposed to delete the definition of "Working Day" in the Licence and replace it with "Delivery Day" and "Collection Day" which would be in accordance with the EDD Minister's Directions and Guidance stated above. It is proposed therefore that the definition of "Delivery Day" and "Collection Day" would be:

"Collection Day": means any day on which a collection of mail is made provided there are not less than five such days each week, save for any week in which there is a public holiday, in which case the number of such days shall be reduced by the number of public holidays in that week; and

“Delivery Day”: means any day on which a delivery of mail is made, provided there are not less than five such days each week, save for any week in which there is a public holiday, in which case the number of such days shall be reduced by the number of public holidays in that week.

Therefore the current licence obligation on JP requires a higher level of service than that the minimum stipulated by the Minister for Economic Development.

Additionally, on 30 June 2010, the Minister for Economic Development presented R.92/2010 ‘Postal Services in Jersey: Universal Service Obligation – Consultation Green Paper’ to the States. In that Report, the Minister noted that the Island’s USO in postal services was under threat and asked the public for their thoughts on how the USO might be changed, what sort of service the Island should have, and how it might cope with the increasing pressures being felt by Jersey Post within the Jersey market. The consultation was run during July and August 2010 and the consultation paper was sent to every household on the Island. Almost 500 responses were received to this consultation.

Following the consultation, the Minister for Economic Development presented a report to the States on 23 November 2010¹ which amongst other things, summarised the results of the consultation, and suggested a way forward with regard to issuing Directions and Guidance.

One of the questions in the consultation asked consultees whether or not they agreed that the only viable solution was to reduce the current collection and delivery service. The Minister’s report stated that just over half of the respondents (52%) agreed that the services should be reduced, although there was also support that JP should become more efficient and manage its resources more efficiently.

The Minister’s report also endorsed the 2005 Directions and Guidance by stating that *‘the Minister is NOT minded to change the Guidance to the JCRA, although the JCRA may wish to modify the USO to allow JP to deliver on 5 days pw, as they already have the power to do so’*

The Minister did however acknowledge that this was dependent upon JP’s ability to sustain the USO without any public funding, but he recognised that the USO needs to be flexible to adapt to changing customer demands. In any event, the Minister confirmed that the ultimate decision on whether or not to reduce the scope of the USO from six to five days per week was a decision for the JCRA as the States had issued Directions and Guidance in November 2005 which would allow this change to be made. The Minister mentioned that if a new USO was required, i.e. there was a need to reduce the delivery days below five days a week, then this would be debated by the States in due course.

¹ R.136/2010 - <http://www.statesassembly.gov.je/frame.asp>

II Considerations of the proposed change under the Postal Law

1. Article 8(1)(a) — satisfaction of demand for all postal services

Under Article 8(1)(a) of the Law, the JCRA has a primary duty to perform its functions in such a manner as it considers is best calculated to ensure that all current and prospective demands, wherever arising, for postal services are satisfied, both within Jersey and between Jersey and the rest of the world, so far that it is in the JCRA's view reasonably practicable to do so.

There is a growing body of evidence that consumer habits with respect to letters are changing, as the result of consumers substituting alternative technologies such as email. For example, according to a recent independent review of the UK postal services sector,² for the first time on record, the volume of letters sent in the UK is falling each year as consumers make greater use of electronic media. The same downward trend is also being seen in Jersey where mail volumes have declined by 14% in 2009, 7% in 2010 and the forecasts for the next 3-5 years are declines of approximately 5%-7% pa. JP states that this is a result of consumers switching to alternative technologies; mailing databases migrating from Jersey to other jurisdictions, resulting in their mail being prepared and posted off-Island; and the worldwide recession, which is reducing the overall size of the available market.

Based on this evidence, the JCRA is of the provisional view that JP should be given the commercial freedom to reduce the number of delivery days for letters to the approximately 41,000 Jersey addresses from six to five days a week. This would reflect the falling overall demand for postal services. Such a change would be consistent with a growing trend among postal regulators in other European jurisdictions. For example, out of the 27 European Union Member States, 21 now have a mandatory minimum of five mail deliveries each week – mostly Monday to Friday. In addition, the USA and Guernsey are currently considering whether or not to reduce its USO from six days to five.

2. Article 8(2)(b) – promotion of efficiency

Article 8(2)(b) requires the JCRA to exercise its functions in the way it considers is best calculated to promote efficiency, economy and effectiveness in commercial activities connected with postal services in Jersey. According to JP, reducing the required number of letter deliveries from six to five days a week has the potential to reduce costs and increase efficiencies. JP estimates that the ending of the Saturday delivery could produce cost savings of approximately £400,000 a year, which is the equivalent of approximately 400 operational hours a week directly associated with the actual delivery of mail on that day. Other costs associated with the sorting and preparation of the mail for that day would still remain, but the actual activities would be added into the five remaining delivery days.

² *Modernise or decline – policies to maintain the universal postal service in the United Kingdom* [page 8] (16 Dec. 2008)

On the other hand, however, according to JP, a possible disadvantage of moving from six days a week delivery to five days is that it may lead to later deliveries on certain routes, due to the requirement to process a higher volume of mail over five days, instead of six.

In considering the above factors, the JCRA is of the provisional view that reducing the letter deliveries from six days per week to five would promote efficiency, economy and effectiveness in commercial activities connected with postal services in Jersey.

3. Article 8(2)(d) – minimum of restrictions

Article 8(2)(d) requires the JCRA to impose minimum restrictions on persons engaged in commercial activities connected with postal services in Jersey. The JCRA is of the provisional view that the proposed modification satisfies this requirement, because it would give JP the commercial freedom to reduce the number of letter delivery days from six to five days a week.

4. Overall Conclusions under Article 8

Based on the foregoing considerations, the JCRA has preliminarily concluded that the proposed modification is consistent with its duties listed in Article 8 of the Law.

IV Date when the Proposed Modification would take effect

The proposed licence modification will take effect on 29 January 2011, unless the JCRA receives written 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.

V Documents Giving Effect to the Proposed Modifications

The documents that would give effect to the proposed modification are attached. Specifically, Annex 1 is a copy of the licence conditions before modification, while Annex 2 is a copy in draft form of the licence conditions as modified. These documents also are available for inspection at the JCRA's offices and on its website (www.jcra.je).

VI Period for Written Representations or Objections

Any written representations or objections in respect of the proposed licence modification may be made by **5pm on 28 January 2011** to the JCRA at:

Paul Hamilton
Postal Case Officer
Jersey Competition Regulatory Authority
2nd Floor, Salisbury House
1-9 Union Street, St Helier
Jersey, JE2 3RF

or by email to p.hamilton@jcra.je or by fax to 01534 514991.

The JCRA reserves the right to publish on its website any submissions to this or other consultations. Any commercially sensitive information that a stakeholder may wish to submit as part of a response should therefore be clearly marked as such.

Finally, please note that it is offence under Article 71 of the Law to knowingly or recklessly provide materially false or misleading information to the JCRA in response to this consultation.

13 December 2010

By Order of the Board of the JCRA

ANNEX 1

12. UNIVERSAL SERVICE OBLIGATION

12.3 The USO means the following set of obligations:

- a) To provide at least one Collection of Mail, generated within the Island of Jersey, which should be made from each Access Point on each Collection Day;
- b) To provide at least one Delivery of Mail, whether generated within or outside the Island of Jersey, which should be delivered to every Delivery Point in the Island of Jersey, on each Delivery Day;
- c) To procure, to the extent within the Licensee's control, the delivery of Mail to destinations outside the Island of Jersey at least at the same frequency as at the Licence Commencement Date, or at such other frequency as may be agreed by the JCRA;
- d) The Licensee shall use all reasonable endeavours to set collection times at the latest possible times to access key transport connections;
- e) To provide preferential Postage rates for literature for the blind and partially sighted as defined in the relevant Postal Scheme up to Universal Postal Union weight limits;
- f) To provide access, by the means of Access Points and Post Boxes or other appropriate means to allow the Users reasonable access to the Postal Services;
- g) To provide those Postal Services which the Licensee is required to provide to satisfy the USO at affordable prices and at a uniform tariff throughout the Island of Jersey;
- h) To provide services for registered and insured Mail;
- i) To treat Mail generated from outside the Island of Jersey no less favourably than Mail generated from within the Island of Jersey in terms of delivery times, or as otherwise agreed by the JCRA; and
- j) To procure the provision, from time to time, of preferential rates in respect of Mail to addresses within the BFPO (British Forces Post Office), or as otherwise agreed by the JCRA.