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Dear Mr Dodd

The future of taxis – public consultation

Thank you for the opportunity to comment on your Department's consultation on the reform of taxi regulation in Jersey: the Green Paper entitled "The Future of Taxis" published on 28 March 2012 (the "**Consultation**").

As you are aware, in December 2010, following a request from Transport and Technical Services ("**TTS**"), the Jersey Competition Regulatory Authority ("**JCRA**") produced a report (the "**Report**") suggesting changes to the current taxi regulatory regime, to help inform TTS's Sustainable Transport Policy. The Report strongly suggested that the existing system of taxi regulation in Jersey was not working in consumers' best interests. To address the concerns, the JCRA recommended changes to the way taxis are regulated in Jersey; namely, the removal of quantitative restrictions, and a new stipulation that any qualitative restrictions should be proportionate. Moreover, the JCRA noted there was a lack of transparency on issues such as how rank taxi fares were determined by the Minister for Transport and Technical Services (the "**Minister**") and in the fare structures of individual private hire taxi companies, and therefore advocated an increased transparency in fares to facilitate greater consumer choice. We therefore warmly welcome the Consultation as the first step in implementing changes that we believe are needed to improve the taxi service in Jersey for the benefit of consumers.

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The JCRA now co-ordinates its activities with the Guernsey Competition and Regulatory Authority, and they together comprise the Channel Islands Competition and Regulatory Authorities (“CICRA”). CICRA’s objective in responding to the Consultation is to assist TTS in implementing changes to the current system of taxi regulation in such a way as to promote the interests of present and future customers. CICRA aims to ensure that prices and quality of services produce good value for customers, that prices are transparent and that taxi companies compete effectively. Our observations on the Consultation focus very deliberately on measures that we believe will put consumers at the heart of any changes to the regulatory regime. We strongly believe that it is only with this focus that a system of effective regulation can be developed which in the long run would benefit all stakeholders.

The Consultation acknowledges the need for a sustainable transport policy to be balanced with better services and quality of service for consumers and agrees with the JCRA’s view, outlined in the Report, that the primary focus of regulation should be the customer. However, the acknowledgment is then caveated with the statement that regulation should be drawn up “with due regard to the supply side”. The Consultation further notes that any changes proposed “need to be thought through carefully so that both during any transitional phase, and in the longer term, there exists a strong, vibrant industry...”. While CICRA supports the need for a vibrant taxi industry and fully agrees that taxi services are a key part of the wider transport infrastructure of the Island, we would argue that establishing a unitary licensing regime, resulting in all drivers competing on equal terms, reducing the waiting time to secure a licence (which we strongly believe acts as a barrier to entry), increasing tariff transparency and placing the consumer at the heart of any proposals for change will create a vibrant, competitive industry for the future.

The views expressed by the JCRA in the Report in relation to taxi regulation, and re-iterated in our specific comments below in response to the Consultation, are consistent with the approach taken by many expert bodies when they have reviewed taxi regulation. We have referred below to the substantial study conducted by the Organisation for Economic Cooperation and Development (“OECD”), and the current review by Professor Allan Fels for the State Government of Victoria in Australia. In addition, we would urge TTS to consider the detailed report by the Law Commission in the United Kingdom reviewing the existing framework of taxi and private hire vehicle regulation, which was published in May 2012 and is open for consultation until September.¹ The Law Commission does recommend the retention

¹ <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>

of a two-tier system in the UK. However, it provisionally rejects quantity regulation, and recommends qualitative licensing standards based on safety considerations only.

Turning to the specifics of the Consultation, CICRA would make the following observations:

To reform the two-tier system - a phased approach to a unitary licensing model to eliminate the distinction between individual plates and company plates - CICRA strongly supports a move to a unitary licensing model, but urges that any change to the current system that involves the issuance of permits or licences should be non-exclusive, subject to meeting relevant entry quality controls such as training. We believe such criteria should not seek to unduly restrict the number of licensees or protect existing licensees from new entrants. The current time for a new entrant to get a restricted taxi licence² and then a controlled taxi licence is itself a barrier to new entrants. We note also that the Consultation suggests that TTS considers that regulation should be framed in order to protect taxi drivers' incomes. The JCRA still believes that a unitary licensing system should not preclude, and in fact should encourage, new entrants in order to make the market more competitive and innovative for the benefit of consumers which, in turn, may in fact boost taxi utilisation. Explicit (or even implicit) regard to protecting incomes as suggested lowers the competitive pressure which will result in a worse service for consumers and increase the need for regulation. Furthermore, there is absolutely no reason why taxi drivers should be singled out for special treatment through income protection when the same protection is not afforded to other vocations e.g. hairdressing or plumbing.

CICRA remains unconvinced that there is a need to adopt a phased approach, to "reduce any negative impact on license holders". Staged reform has previously been seen as a means of making reform more politically feasible. However, according to the OECD, "*there is much doubt as to the effectiveness of this approach: producers are likely to lobby equally strongly against staged reform, while continued lobbying is likely to lead to the halting or reversal of staged reform programmes before their completion.*"³ Given the significant risks entailed in adopting staged reforms, it is important to underline that the experience of countries including Ireland and New Zealand shows that immediate reforms can be implemented successfully, even when the market is one in which supply is severely restricted and licence prices are high.⁴ The Consultation acknowledges that the current system is not well understood by the public, which CICRA considers is at odds with the view of implementing a unitary licensing model in

² The Consultation reports that it takes approximately 5 years to secure a Restricted Taxi licence.

³ OECD (2007), *Taxi Services: Competition and Regulation*, page 8.

⁴ Ibid

stages. If the consumer is confused currently then this would suggest that the introduction of a unitary model should be prioritised. It would be for the States of Jersey and/or the new licensing body to communicate these changes effectively to consumers. Consumers will fully understand the changes once they observe an improvement in the taxi service.

More licenses should be issued by means of quality control rather than quantity control - The current quantitative restrictions applied in Jersey go against best practice in both the UK and further afield, and CICRA notes the qualitative restrictions suggested. However such rules and standards should be tailored as narrowly as possible to satisfy legitimate public policy objectives. Again the OECD notes that *"It is increasingly widely accepted that restricting taxi numbers constitutes an unjustifiable restriction on competition and reduces economic welfare."*⁵

Restrictions on supply coupled with decreasing demand will necessitate the setting of higher fares than would otherwise be the case, particular if TTS wishes to take drivers' incomes into account when framing policy. The Consultation acknowledges that excess profits are being made but argues that if this is occurring when access to the market is restricted by quantity control, then introducing tighter quality controls will assist in converting the excess profits into consumer benefits. CICRA sees no evidence that the proposed approach would benefit consumers. Consumers having adequate choice would, of itself, drive improvements in a number of the quality measures referred to in the consultation. This would also lessen the burden on TTS as the regulator. A recent example of the detrimental impact of current high fares on consumers, which highlights the unintended consequences of the existing regulatory regime, was the informal taxi service that is reported to have been created on Facebook⁶, due to the high cost of taxis in Jersey.

Even if one were to agree with the proposals, there is no detail provided in relation to the monitoring and review of the proposed qualitative measures so as to ensure, among other things, that consumers will reap the benefits. Monitoring, enforcement and review provisions exist in other regulated sectors in Jersey and would provide opportunities for regulators and policy makers to review performance and ensure drivers remain incentivised to provide efficient, fairly priced services, while affording the States the opportunity to review whether the services provided are meeting their objectives. In conjunction with the review of licences it is suggested that the States build in periodic reviews of the regulatory system to ensure it is

⁵ Ibid

⁶ Jersey Evening Post, 20 June 2012, *Police warning after illegal taxi service discovered on Facebook*

proportionate and achieving its goals. The current system involves several ad hoc arrangements, referenced in the Consultation, which appear to have no criteria for either measuring success or assessing whether the arrangements are achieving their objectives.

CICRA believes TTS should consider issuing licences that are for a fixed term, as well as producing procedures for licence renewal and, in certain circumstances, the revocation of licences if performance measures are not met. CICRA's experience in regulating a number of industries is that monitoring criteria must be transparent and supported by strong enforcement powers – for example, fining capabilities - to act as an alternative to the revocation of licences, which should only ever be a last resort.

Taxi pricing is not transparent and fares may not be predictable in advance - CICRA agrees that the current opaque charging arrangements work to the detriment of consumers and would appear to be yet a further reason to expedite changes to the regulation of taxi services. We would support one set of maximum fare scales and different fare bands but feel the Consultation lacks detail about how the different fare bands would be calculated and reviewed. We believe it would benefit the consumer and the taxi industry if the manner in which maximum fares are determined was more transparent. CICRA would also strongly support the introduction of fixed prices on regular pre-booked routes, for example the Airport–St Helier route, a practice which is used in many jurisdictions.⁷

While acknowledging that pricing is not transparent, the Consultation urges caution as to the introduction of any changes in this area and states that there is a “relationship between maintaining a healthy market where drivers are able to make a reasonable living and the service which customers experience.” CICRA is unconvinced by this argument. Competition policy does not generally accept the proposition that entry to an industry should be constrained in order to protect the income position of incumbents. Restricting entry to the taxi industry potentially causes significant equity problems - surveys in other jurisdictions suggest that low income groups are disproportionately higher users of taxi services, and this might also be the case in Jersey. The impact of entry restrictions in increasing price and reducing

⁷ Professor Fels, Chair of the Taxi Industry Inquiry for the State of Victoria in Australia, 30/4/12, argues that there is an opportunity for effective price competition in relation to pre-booked work. See <http://www.taxiindustryinquiry.vic.gov.au>.

availability would therefore be highly regressive in its consumer impact if low income consumers are hurt more by entry restrictions than wealthier consumers.⁸

It is also unclear how TTS, as regulator, intends to satisfy itself as to the level of a reasonable income for drivers. We would expect that TTS could, if it remained of the view that this is an important objective of taxi regulation, more efficiently achieve this objective by freeing up the market.

In closing, while there may be differences in the priorities of the Report and the Consultation, both agree that regulatory changes are needed. However, we do note that no timeframes are outlined in the Consultation for the implementation of a new regulatory regime. As it is generally accepted that the two tier system is confusing and that pricing is opaque and not at all easily understood, resolving these matters as a priority should be a clear objective of TTS.

The JCRA produced its Report in December 2010 and the Consultation is not the first time that a review of the taxi industry in Jersey has been undertaken. Indeed, twenty years ago, in 1992, a review of the industry recommended progressing to a single tier system and in Spring 2011, the then Minister recognised the importance of the issue of taxi regulation for drivers and the travelling public alike and asked that TTS's work, reviewing the taxi industry, be provided faster than originally planned. In addition, we would make the observation that any change to the unitary licence may require legislative change, such as amendments to the *Motor Traffic (Taxi-Cabs – General)(Jersey) Order 2002* and as law drafting time is a very scarce resource, it is strongly recommended that this process and regulatory changes begin without delay.

CICRA appreciates the opportunity to respond to the Consultation and gives permission for this submission to be published in its entirety. This response will also be placed on the CICRA website.

Yours sincerely



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⁸ OECD (2007), page 9