



**APPLICATION BY JERSEY POST LTD FOR WAIVER  
UNDER CONDITION 20.7 OF LICENCE  
IN RESPECT OF BULK MAIL SERVICES**

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**INITIAL NOTICE**

Document No: CICRA 12/36

26 July 2012

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

## **A. INTRODUCTION**

1. On 19 July 2011, the Jersey Competition Regulatory Authority (**JCRA**) issued a Final Notice of a Direction to Jersey Post Limited (**JP**), which required JP to comply with Condition 20.2 of the licence issued to JP by the JCRA under the *Postal Services (Jersey) Law 2004 (Licence)*.
2. Condition 20.2 states that where the JP intends to introduce:
  - a) New prices for any Licensed Services or any Postal Services provided to fulfil the USO, or prices for new Licensed Services or new Postal Services provided to fulfil the USO to be introduced by the Licensee; or
  - b) Any discounts to published prices for Licensed Services or Postal Services provided to fulfil the USO; or
  - c) Special services to all or any of its Users for particular categories of Licensed Services or Postal Services provided to fulfil the USO,

it shall publish the same at least twenty one (21) days prior to their coming into effect and provided full details of the same to the JCRA.

3. The Direction determined that JP had breached the terms of the Licence in respect of new prices for bulk mail services, and that JP should have published the terms and conditions in accordance with Condition 20.2. The JCRA did not accept JP's submission that publication or notification was not required.
4. The Direction required JP to publish all prices for bulk mail services within one month of the date of the Final Notice i.e. by 19 August 2011. It also required JP, in the absence of full regulatory accounts, to demonstrate that the prices charged for the services offered to Play.com Limited and Indigo Lighthouse Group Limited were cost-justified, again within one month of the date of the Final Notice.
5. On 15 August 2011, the JCRA received a letter from JP responding to the Direction. The response did not satisfy the requirements of the Direction. On 24 August 2011, the JCRA and JP met, at which time the JCRA stated its concerns regarding JP's compliance with the Direction. This was followed by a letter sent on 31 August 2011, requiring JP to comply with the terms of the Direction by 30 September 2011.
6. On 30 September 2011, the JCRA received a formal application from JP for the grant of a waiver under Condition 20.7 of the Licence in respect of bulk mail items, on the grounds that JP is not dominant in the provision of bulk mail services in Jersey. Condition 20.7 provides that the JCRA may decide to waive Condition 20 in whole or in part where the Licensee demonstrates to the satisfaction of the JCRA that it does not have a dominant position in a relevant market.
7. At its meeting on 23 April 2012, the Board of the JCRA considered JP's application for a waiver and concluded that JP had not provided sufficient evidence to establish that it was not dominant in the provision of bulk mail services in Jersey. The JCRA therefore requested further information from JP.

8. On 22 June 2012, JP provided a further submission to the JCRA (*JP Submission*), which is summarised below.
9. This document comprises an Initial Notice of the JCRA's proposal to grant a waiver to JP under Condition 20.7 of the Licence in respect of compliance with Condition 20 for bulk mail services.
10. For the purposes of this Notice, "bulk mail services" is defined as services relating to the conveyance of Large Letters (being a communication which is of maximum dimensions of 381mm x 305mm x 20mm or a weight of up to 500g, but is not a "Letter", as that term is defined in the *Postal Services (Jersey) Law 2004*) and Packets (being a communication having dimensions greater than 381mm x 305mm x 20mm or a weight exceeding 500g) from Jersey, subject to the following minimum volume requirement:
  - at least 50 items per mailing for Large Letters; and
  - at least 25 items per mailing for Packets.

## **B. DISCUSSION**

11. As noted in the JCRA's guidelines on abuse of a dominant position, dominance is "a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on a relevant market, by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers"<sup>1</sup>.
12. A useful starting point for analysing dominance is the market share of the undertaking in question. The JCRA estimates that JP has approximately 92% share of the supply of bulk mail services in Jersey. However, in assessing dominance, it is important to consider the product and geographic dimensions of the relevant market. In particular, JP submits that the geographic scope of the market for bulk mail services is broader than Jersey.
13. The removal of Low Value Consignment Relief by the UK Government on 1 April 2012 has had a dramatic impact on the structure of demand for bulk mail services in Jersey, resulting in volumes being reduced by almost 60% up to the end of May 2012, with another 20% of demand forecast to leave the island by the end of 2012. JP submits that most of this demand is being relocated to the UK, Europe, Switzerland and the USA. JP therefore argues that the relevant geographic market for bulk mail services is much wider than Jersey, as it competes for bulk mail customers with postal operators based in Guernsey, Switzerland, the UK, Switzerland, the USA and other countries. It also submits that the dramatic collapse in bulk mail volumes from Jersey over the past 9 months is compelling evidence of the fact that bulk mail customers are able to relocate from Jersey to other jurisdictions when faced by changes in price or cost.
14. Constraints imposed by the credible threat of entry by potential competitors or by the bargaining strength of the undertaking's customers can also imply that a large provider is not in a dominant position. Importantly, against the background of Citipost DSA Limited and Hub Europe Limited having been granted bulk mail postal licences in November 2010, JP submits that it has been forced to improve its service offering to customers, and, rather than pass on Royal Mail price

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<sup>1</sup> *United Brands v Commission* Case 27/76 [1978] ECR 207

increases, has absorbed these extra costs itself. Since November 2010, JP has lost 4 bulk mail customers, representing 8% of total bulk mail volumes, to rival Jersey postal operators.

15. JP has also noted that the JCRA, in its Initial Notice for the 2008-10 Price Control for JP, stated that:

*“Based on a review of Jersey Post’s activities and the actual and reasonably foreseeable market conditions that exist in Jersey, the JCRA concludes that the services listed in Appendix 1 are not subject to effective competition at this time and therefore these should be subject to price control.”*<sup>2</sup>

JP observes that Appendix 1 of that document did not include bulk mail or fulfilment services.

16. The JCRA’s Final Notice in respect of the 2008-2010 price control made the following observation:

*“In relation to Jersey, the JCRA considered that international competition from other jurisdictions acts, or would be likely to act, as constraints on JP in the provision of fulfilment services and, therefore, there was insufficient evidence to conclude that the fulfilment sector in Jersey was subject to market failure.”*<sup>3</sup>

The JCRA’s Final Notice of 17 January 2011 in respect of JP’s 2011 Price Control also kept bulk mail and fulfilment services out of the price control basket.

17. In February 2012, the JCRA licensed two more bulk mail operators in Jersey, namely Hi-Speed Freight Services Ltd and TNT Post (UK) Ltd, to provide bulk mail postal services into Europe. Whilst neither is yet exporting bulk mail items from Jersey due to a combination of the rapid decline in the industry and problems with European customs clearance procedures they nevertheless do pose a further threat to JP within Jersey.

## **CONCLUSION**

18. For the reasons set out in paragraphs 12-17 above, the JCRA has provisionally concluded that JP is not dominant with respect to the supply of bulk mail services.
19. Given this provisional conclusion, the JCRA proposes to waive the application of the obligations in Condition 20 of the Licence with respect to bulk mail services. As a consequence of this, the JCRA also proposes to withdraw its Direction to JP issued on 19 July 2011.
20. Should the JCRA find in future that JP has a dominant position in the provision of bulk mail services, the JCRA reserves the right to cancel the waiver and re-invoke Condition 20 with respect to bulk mail services.

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<sup>2</sup> [http://www.cicra.gg/\\_files/070924%20Price%20control%20initial%20notice%20FINAL%20VERSION.pdf](http://www.cicra.gg/_files/070924%20Price%20control%20initial%20notice%20FINAL%20VERSION.pdf)

<sup>3</sup> [http://www.cicra.gg/\\_files/071122%20Final%20Notice%20to%20Jersey%20Post%20re%20price%20control.pdf](http://www.cicra.gg/_files/071122%20Final%20Notice%20to%20Jersey%20Post%20re%20price%20control.pdf)

21. The proposed waiver under Condition 20.7 of the Licence and the withdrawal of the Direction to JP of 19 July 2012 will take effect on 28 August 2012, unless representations or objections are received in relation to these proposals, in which case the relevant date will be set out in a Final Notice published under Article 24(4) of the *Postal Services (Jersey) Law 2004*.
22. Responses to this Initial Notice should be submitted in writing and should be received before 9.00am on 24 August 2012. Written comments should be submitted to:

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

Or by email to [info@bicra.je](mailto:info@bicra.je)

A copy of this notice is available for inspection at the address listed above.

23. In accordance with CICRA's policy, non-confidential responses to the Initial Notice will be made available on CICRA's website ([www.bicra.je](http://www.bicra.je)). Any material that is confidential should be put in a separate annex and clearly marked so that it can be kept confidential.

**By Order of the JCRA Board**

**26 July 2012**