



Change of control of TNT Post UK Limited

Provisional decision

Document No: CICRA 14/01

13 January 2014

*Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street,
St Helier, Jersey, JE2 3RF
Tel: +44 (0)1534 514990
Web: www.cicra.je*

1. Introduction

The Jersey Competition Regulatory Authority (**JCRA**) has received a notification of the proposed change of control of TNT Post UK Limited (**the Licensee**), holder of a Class I Postal Operator's Licence issued under the Postal Services (Jersey) Law 2004.

The Licensee is currently a wholly owned subsidiary of PostNL N.V. (**PostNL**)¹. However, it is proposed that PostNL will restructure its business to retain a significant minority interest in the Licensee of c32%. A financial investor, Lloyds Development Capital (Holdings) Limited, will acquire a matching stake and the existing and future management and employees of the Licensees group will acquire an interest of 36%.

The Licensee is obliged under its licence to notify the JCRA of the proposed change of control. The JCRA is then required to consider whether to approve or reject the change of control, or to approve the change of control with conditions (e.g. by modifications to the licence or other regulatory action). For the reasons set out in section 3 below, the JCRA has provisionally concluded that it should approve the change of control of the Licensee unconditionally.

The proposed acquisition of joint control of the Licensee by PostNL and Lloyds Development Capital (Holdings) Limited is being considered separately by the Guernsey Competition and Regulatory Authority for the purposes of The Competition (Guernsey) Ordinance, 2012 since the transaction passes the relevant notification turnover tests for mergers and acquisitions in Guernsey.

The JCRA invites comments on its provisional decision to approve the change of control of the Licensee. Interested parties are invited to submit comments to the JCRA in writing or by email to the following address:

2nd Floor, Salisbury House
1-9 Union Street
St Helier
Jersey
JE2 3RF
Email: info@cicra.je

All comments should be clearly marked "Change of control of TNT Post UK Limited Provisional Decision" and should arrive by 4.00 pm on 20 January 2014.

¹ PostNL provides mail, parcels and support services, both physical and digital, in its home market of the Netherlands, as well as in the United Kingdom, Germany, Italy, Luxembourg and Belgium (and elsewhere). PostNL has no physical presence, staff and carries out no activities in Jersey.

2. Legal Background

Change of control provisions in licences held by postal operators in Jersey

The Licensee's licence contains change of control provisions and provides as follows:

2.7 The Licensee shall notify the JCRA of any proposed Change of Control of the Licensee or an Associated Company forthwith upon the Licensee, or its chairman, chief executive officer, chief operating officer or any director becoming aware of the proposed change, and in any event prior to the acceptance by the Licensee or its shareholder of any such proposal.

2.8 Within thirty (30) days of the JCRA's receipt of a notification from the Licensee of a proposed Change of Control under Condition 2.7, the JCRA may:

- (a) approve, in writing, the proposed change; or*
- (b) disapprove, in writing, the proposed change, giving reasons; or*
- (c) approve, in writing, the proposed change or the change subject to the Licensee accepting a modification of the Licence under Article 19 of the Postal Law;*

and, in addition to any of the above measures, the JCRA may issue such Directions to the Licensee or invoke any of the applicable sanctions, penalties or remedies in the Postal Law or the Licence as the JCRA reasonably considers necessary and appropriate.

In taking action under this Condition, the JCRA may have regard to whether or not the JCRA would have awarded the Licence to the Licensee, had the Change of Control taken effect prior to the award.

The concepts of control and change of control are defined in Condition 2.9 of the Class I licence granted to the Licensee:

In this Condition 2, "Control" shall mean any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee or an Associated Company by any means. In any event, a person or group of persons shall be deemed to Control the Licensee or an Associated Company of the Licensee if:

- (a) he or they exercise(s) or control(s) the exercise of fifty (50) per cent or more of the votes able to be cast at general meetings of the Licensee or the Associated Company on all, or substantially all, matters; or*

(b) he is or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters or he is or they are, able to appoint or remove a majority of the governing body of the Licensee or the Associated Company; or

(c) he or they exercise(s) or control(s) the exercise of fifty (50) per cent or more of the partnership or other ownership interests of the Licensee or the Associated Company;

and, in each case, reference to the Licensee or an Associated Company shall include any person or group of persons who Controls the Licensee or an Associated Company in any of such ways, and "Change of Control" shall mean any change as a result of which any other person or group of persons acquires Control.

3. Provisional Decision

The JCRA is of the view that the focus of an assessment of a change of control should be on whether the change to the control of the relevant licensee jeopardises its willingness or ability to provide high quality, sustainable postal services, or to comply with its licence conditions or other regulatory requirements.

In keeping with its approach to changes of control of telecoms licensees, the JCRA is also of the view that the question of whether to approve a change of control of a postal licensee, and the appropriate intensity of the review, should depend to a large extent on the importance of the licensee's assets and services to the overall postal market, noting that the impact on consumers and the wider economy of a serious breakdown in the operations of a particular postal service provider would be considerably greater where that postal provider is a large operator as compared to a smaller operator.

The Licensee does not trade and has not traded in Jersey since the issuance of its existing licence. On that basis, the JCRA is satisfied that the change of control is unlikely to have an adverse effect on postal users in Jersey, and does not, therefore, consider that a detailed review of the change of control of the Licensee would be appropriate.

The JCRA has reviewed the information provided in the notification of the proposed change of control of the Licensee and it is now minded to approve the notified change of control of the Licensee which will result from the acquisition of joint control by Lloyds Development Capital (Holdings) Limited of the Licensee.

The JCRA provisionally concludes that no change to the existing licence terms or conditions is necessary under this Condition 2.7 notification.