



C1119J

Jersey Doctors Out of Hours Cooperative (“JDOC”)

**Application for exemption from article 8(1) of
the *Competition (Jersey) Law 2005* prohibition
on anti-competitive arrangements**

DECISION

Document No: CICRA 15/28

17 June 2015

Jersey Competition Regulatory Authority
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Introduction

The *Competition (Jersey) Law 2005* (“Jersey competition law”), article 8(1), prohibits arrangements between undertakings which have the object or effect of hindering competition in the supply of goods or service in Jersey. However, the Jersey Competition Regulatory Authority (JCRA), under the provisions of article 9(1) the Jersey competition law, may grant exemptions to this prohibition provided that it has regard to a number of specific relevant circumstances set out in Article 9(3) of the Jersey competition law.

The JCRA received an application from Jersey Doctors on Call (JDOC), a group of doctors who co-operatively provide out of hours care in Jersey, for renewal of an exemption from article 8. The JCRA first granted an exemption to JDOC in 2006, for a period of 5 years, which was subsequently renewed, most recently for a period of 12 months from April 2014. A redacted copy of the application was published on the JCRA website alongside the consultation.

The rationale behind this exemption was set out in document CICRA 15/21, a public consultation to which the JCRA invited responses. No responses or objections were received to the consultation and draft decision. The JCRA intends to now implement the decision as proposed.

Background

In Jersey, there is no statutory obligation for practices to provide out of hours care for their patients¹. The services provided under the JDOC arrangements are out of hours GP services, which comprise evening, weekend and bank holiday cover at surgeries or at the hospital, and overnight cover to visit patients at home (there is no overnight “clinic” based cover after 11pm). These services are not considered commercially viable in their own right, so one approach to reduce the burden of providing out of hours care is for a number of separate practices to share the costs of providing the service.

Consideration

The JCRA has examined this issue previously (first in August 2006) and is satisfied that this is an activity which should in principle be granted an exemption, because the benefits in provision of out of hours GP care to the wider community are likely to outweigh potential harm through the distortion of the market for GP services. There is a significant risk that without an exemption to allow the service to be provided in this

¹ Note that in Guernsey, GPs argued that there is a firm professional obligation to provide access out of hours care for their patients. Since both answer to the same professional regulators and governing bodies, there is clearly a difference in interpretation between practices in the two islands.

way, it would not be available to many patients in Jersey, the cost would be prohibitive or the burden of provision would fall entirely on Jersey's Health and Social Services Department through the Accident and Emergency Service at Jersey hospital.

In order to qualify for exemption, the JCRA must be satisfied that the arrangement meets the four criteria laid out in article 9(3) of the Jersey competition law, specifically that it:

- (a) is likely to improve the production or distribution of goods or services;
- (b) allows consumers a fair share of any benefits resulting from the arrangement;
- (c) does not impose unnecessary restrictions on competition, which are not indispensable to the achievement of objectives (a) and (b);
- (d) does not allow the undertakings involved to eliminate competition in respect of a substantial part of the goods or services in question.

In its application, JDOC argued that the conditions were met within the existing arrangements. The JCRA broadly agreed, but was not convinced that the market for out of hours primary care in Jersey constituted a separate market in its own right and was a subsidiary service within the market for GP services.

A significant concern for the JCRA was the potential for the introduction of economic barriers to restrict competition or entry to this broader market through restricting access to out of hours service. It was important to ensure that new or smaller practices entering the market would not be disadvantaged and that all practices and patients would be able to access such services on fair and non-discriminatory terms.

In assessing the application against the four criteria set out in article 9(3) the JCRA consideration is as follows;

A. Improvement in the distribution of goods or services

The JDOC arrangement significantly extends the delivery of GP primary care services through out of hour periods when the demand for services is generally low. The sharing of costs and resources to support the service provides a substantial improvement in the efficiency of the service and significantly reduces its overall costs.

B. Allows consumers a fair share of the benefits

The service is used by more than 7,000 patients each year accessing a combination of consultations, home visits and telephone advice. The benefits of the reduced costs of providing the service co-operatively are passed on to customers through lower fees for consultations and visits than would be the case if the service was provided by each practice separately. The JCRA considers that without such an arrangement fees could be

significantly higher which would either make the service uneconomic or result in a significant reduction in its coverage.

C. Contains no indispensable restrictions to competition

The JCRA is satisfied that the agreements to share costs and to fix common fees are necessary to provide the service, and that there are no other restrictions to competition in the market for GP services that are dispensable to the agreement.

D. No elimination of competition in respect of a substantial part of the goods or services in question

The JCRA does not believe that the arrangement as it stands has had the effect of eliminating competition for GP services. To ensure that it does not do so in the future there are a number of specific provisions that are included in the exemption. Participation in the JDOC arrangement should be open to patients of all GP practices who wish to do so on fair terms. The charges for use of the service (to patients and to participating practices) should broadly reflect the cost of providing the service and not cross-subsidise the provision of services in the broader market for GP primary care. Finally, practices should remain free to make their own arrangements for out of hour provision in competition with JDOC if they wish to do so.

Conclusion

The JCRA approves the exemption with conditions to ensure that access to the out of hours services offered by JDOC is available to all practices and their patients and that the prices charged to patients and GP practices broadly reflect the cost of providing the service and to provide information to the JCRA on request. The specific terms are set out below.

Given that there is some uncertainty over the precise arrangements JDOC will want to make for providing these services in future² and ongoing review by the States of Jersey of the way in which primary care services are provided, the JCRA has decided that the exemption should be granted for 12 months with the option to extend the exemption if there are no significant changes in the market or the way in which the service is delivered. JDOC will be required to keep the JCRA apprised of its plans to restructure the service, with a view to considering a longer term exemption once any changes are completed.

² In Guernsey for example, out of hours care is provided by separate company owned by the GP practices, which employ a pool of salaried GPs, supplemented by practice GPs, to provide out of hours cover.

Decision

The JCRA determines that the GPs and practices which are part of the JDOC arrangements (and any practices or GPs which join subsequent to this decision) be granted an exemption under article 8(1) of the *Competition (Jersey) Law 2005*. This exemption is for the provision of out of hours GP services, comprising evening, weekend and bank holiday consultations and home visits and associated services. This exemption will last a period of one year from the date of issue and in addition the period from the expiry of the previous exemption (16 April 2015). The JCRA may, at its discretion and on request by JDOC, extend this exemption for up to two further periods of 12 months, subject to confirmation that the exemption has not detrimentally affected or distorted the overall market for GP services in Jersey.

In addition this exemption is issued on the principle that the service should not act as a barrier to entry to market for providing GP services or distort the overall operation of the market. Therefore the following specific conditions are attached to the exemption:

1 Access & Non-discrimination

Any practice or group of patients requesting access to the service should be granted access on fair, reasonable and non-discriminatory terms. Access should be granted within 28 days of any request from a practice. There is no obligation on practices to participate in the service, or for those that participate to make exclusive use of the facility and they may make alternative arrangements at any time as they see fit.

2 Cost reflective charges

The overall charges for the service (which may be a combination of charges to patients and to GP practices) shall broadly reflect the costs of providing the service and charges to all participants should be similar.

3 Provision of information

JDOC and the practices involved in operating the service, will, on request, provide the JCRA with the prices charged, copies of the agreements between JDOC and the practices involved in operating or receiving the services, and will notify the JCRA of any changes to the arrangements including new memberships and the departure of existing member practices. JDOC will provide any other information which the JCRA may request to review or assess the service in relation to the exemption or which it may require in order to investigate any complaints received in relation to the provision of the service.

Note that in some circumstances the JCRA may cancel an exemption before its expiry date. However, following the principles of good regulatory practice, the JCRA would not normally do so except as the result of an investigation or after consultation with those affected by its decision.

Implementation

By this decision the JCRA grants exemption to Jersey Doctors on Call (JDOC) for the agreements to provide out of hours GP care subject to the conditions set out above. The duration of this exemption shall be 12 months from the date of issue, and in addition it will be backdated, in accordance with Article 9 (7) of the *Competition (Jersey) Law 2005*, to 16 April 2015, the expiry date of the previous JDOC exemption.

The JCRA will consider renewal of this exemption, on written request from JDOC or its constituent GP members, for up to two further periods of 12 months, provided it is satisfied that the arrangements are operating fairly and are not unnecessarily detrimental to the market for GP services.

Copies of documents, consultations and previous JCRA decisions are available on the CICRA website, www.cicra.je.

By order of the Board

17 June 2015

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