

## Home Affairs Department

### Customs and Immigration Service

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Our ref: DN/LB/1.9/Postal

Dear Paul

### **Comments on Citipost DSA Ltd's**

#### **Application for a Class 1 Postal Licence - Consultation Paper**

I present this paper in response to the public consultation announced by the Jersey Competition Regulatory Authority (JCRA) on 8<sup>th</sup> April 2009 concerning Citipost DSA Ltd's (Citipost), application for a Class 1 Postal Operator's Licence. I shall limit my comments to those aspects of Citipost's application which have an impact upon customs matters. I have copied this response to the relevant officers in both HM Revenue and Customs (HMRC) and Jersey Post.

In order to inform the JCRA's considerations, I need firstly to explain the operation of the 'UK Import VAT Accounting Scheme' (the Scheme), as unfortunately no reference was made to this vital element of the fulfilment industry in the background section of the JCRA consultation paper. Based on the assumption that Citipost is granted a Postal Operator's Licence, I shall outline the impact for Scheme traders who choose to despatch postal packets to the United Kingdom via this Operator and also give an explanation of how, in the absence of equivalent arrangements, Citipost's mail would have to be routed for customs purposes when despatched to the UK. I shall then identify those general customs requirements which must be met by any Licensed Postal Operators; and finally offer some views by way of a conclusion.

### **1. UK Import VAT Accounting Scheme**

1.1 Paragraph 3 of the section entitled 'Fulfilment Services' within the Background to the consultation paper states *"The success of the Island's fulfilment industry is predicated upon the existence of an EU tax relief called Low Value Consignment Relief (LVCR) which means that goods the value of £18 or less that are exported from offshore jurisdictions are VAT free"*. This is true but it is certainly not the whole picture.

1.2 LVCR provides the legal 'opportunity' for the existence of the local fulfilment industry but it is not the only reason for its success. The vast majority of fulfilment businesses operating from Jersey do so from within the Scheme.

1.3 The basics of the Scheme are set out in section 3.4 of Public Notice No. 143 issued by HMRC (see APPENDIX 1), in short, it allows authorised traders to pre-pay VAT on goods that would normally be chargeable to VAT at the time of import into

the UK. On condition that goods shipped by these traders are subject to rigorous compliance checks, postal packets shipped from Jersey within the Scheme are permitted to be delivered directly by Jersey Post to Royal Mail for immediate distribution via the domestic UK postal hub; there is no routing via 'Offices of Exchange', (Post Offices with a HMRC fiscal control). The advantage is that such traders can make subsequent internet sales to UK customers certain in the knowledge that their postal packets will be delivered without delay. A further advantage is that traders can also offer for sale a full range of goods on their websites, not solely those which would qualify for LVCR and that no additional charges will be made by HMRC or Royal Mail to these customers, (see paragraph 1.5 below).

1.4 The UK Import VAT Accounting Scheme for the Jersey fulfilment industry is based upon a Memorandum of Understanding between HMRC, Jersey Post and Jersey Customs and came into being on 1<sup>st</sup> March 2005.

1.5 This Service is aware that there are a small number of internet Traders based in Jersey who choose not to operate within the Scheme; these traders generally ship in very small volumes and their goods are directed via HMRC fiscal controls where they are examined. If the goods do not qualify for LVCR they are charged to Import VAT in accordance with HMRC Public Notice 143, Royal Mail also charge the importer a handling fee for items subject to a customs charge. For these reasons the overwhelming majority of postal packets despatched from Jersey by fulfilment businesses do so under the terms of the Scheme.

1.6 I have attached a copy of the Terms and Conditions applicable to traders within the Scheme (see APPENDIX 2) and I shall also give an outline of the basic principles of the Scheme and how it operates in practice.

1.7 Although the MoU binding the three signatories is deemed confidential, it essentially makes Jersey Customs responsible for ensuring that appropriate levels of compliance exist within the Scheme. It has to be stated that these are not 'assigned matters'<sup>1</sup> for this Service and we receive no additional manpower or funding in relation to this work. Jersey Customs does recognise, however, the benefits which accrue to the Island from fulfilment activity and indeed your consultation paper also alludes to this fact. Therefore, in the light of these factors Jersey Customs agreed with Jersey Post that it (Jersey Post) would identify and fund a member of postal staff who this Service would train and empower to undertake various compliance functions within the remit of the Scheme. As a consequence the position of the Jersey Post Compliance Control Officer (JPCCO) came into being. (Additionally Jersey Post has recently agreed to provide a further member of staff to provide cover for the JPCCO during periods of leave or sickness). The principal accountabilities of the JPCCO are as follows:

- To act as a point of contact for members of the public and authorised traders within the Scheme who have enquiries about the operation of the Scheme
- To accept and check for completeness, applications from those traders who wish to join the Scheme
- To conduct the required site visit to applicant's business premises to validate applications and make a recommendation as to whether the application should be accepted or not
- To refer all complete applications received to Jersey Customs and HMRC
- To enrol new traders who are approved to join the Scheme
- To receive monthly sales reports from traders authorised within the Scheme

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<sup>1</sup> As specified in Article 1(1) of the Customs and Excise (Jersey) Law 1999

- To receive, on a monthly basis, the relevant amount of UK Import VAT charged by each trader and to remit these revenues to HMRC
- To maintain records concerning the operation of the Scheme (a bespoke database exists for the purpose)
- To conduct appropriate periodic compliance checks on the activities of Scheme traders
- To conduct additional compliance checks on Scheme Traders as requested either by HMRC or Jersey Customs

1.8 The JPCCO has sworn the Oath of Office before the Royal Court for an Officer of the Impôts and has been authorised by the Agent of the Impôts to undertake specific examinations of postal packets shipped via the Scheme.

1.9 Since the introduction of the Scheme, this Service has submitted four Annual Reports to HMRC on its operation and any compliance issues arising. I can report that in each case HMRC has expressed satisfaction with the manner in which the Scheme is operated in Jersey. It is not an understatement to say that this continued approval by HMRC is a vital corner stone upon which the Island's fulfilment industry is based and you will understand therefore that the success of the Island's fulfilment sector is not solely predicated upon the existence of LVCR.

1.10 Additionally, I feel it is important to emphasise how the operation of the Scheme, whilst allowing for the efficient collection of UK Import VAT, has also correctly aligned itself and indirectly given effect to States' policies in relation to the fulfilment sector. In February 2006 the Economic Development Department revised its policy in relation to the fulfilment sector and actually identified categories of businesses deemed harmful to the Island. The signatories to the Scheme MoU took note of this change of policy and voluntarily amended Scheme Terms and Conditions to make it a requirement that all authorised Traders should possess a valid Licence issued under the Regulation of Undertakings and Developments Law 1973 or show that such a licence was not required. As a consequence of these changes a group of traders were removed from the Scheme and their mail was re-routed through Offices of Exchange. Within a short period of time they all relocated outside the Island. The Scheme therefore, in this respect, helped to give practical effect to the policy of the States in this area.

## **2. Scheme traders who choose to despatch postal packets other than via Jersey Post**

2.1 As Citipost is not a signatory to any MoU upon which the Jersey Scheme is based, if it was granted a Postal Licence to convey, on behalf of bulk mail producers based in Jersey, unsorted mail and packets to UK addresses (this on behalf of fulfilment companies based in the Island) any Scheme trader choosing to ship postal packets via this Operator would be in breach of paragraph 5(d) of their Terms and Conditions. Any such failure to comply would be treated in accordance with paragraph 8 of the Scheme Terms and Conditions (Cancellation of Authorisation).

2.2 If Citipost wished to seek to agree an equivalent MoU to that which has already been agreed between HMRC, Jersey Customs and Jersey Post, then in the first instance, it would have to approach HMRC; this Service would have no influence in this regard. (See also paragraph 5.3 below)

## **3. Routing of Citipost's postal packets for Customs clearance in the UK**

3.1 The relevant Officer at HMRC has been alerted to the existence of the JCRA public consultation on Citipost's application for a Postal Operator's Licence. Although I am advised that HMRC will not be submitting a formal response, the relevant officer did re-iterate, however, that any postal packets despatched from Jersey by any Licensed Postal Operator other than Jersey Post, would necessarily, in the absence of any equivalent arrangements, have to route their postal packets via UK Offices of Exchange for normal fiscal controls to be applied.

#### **4. Customs requirements for Postal Operators**

4.1 I have previously discussed with the JCRA our general requirements in relation to the customs clearance of goods *imported* by post (Agent's Directive No 6 applies). I have to point out, however, that this Service also has legal obligations in relation to the exportation of goods and, of course, those shipped by postal routes are no different in this regard. Essentially, any business granted a Postal Operator's Licence must in relation to goods exported by post abide by the terms of the Customs and Excise (Jersey) Law 1999. Articles 22 (b) and 22(c) of that Law states that "the proper postal officer - shall produce to any officer<sup>2</sup> such postal packets as have been imported into or posted for export from Jersey as the Agent of the Impôts may require and shall, if so required by that officer, open for customs examination any packet so produced".

4.2 It is the view of this Service that the issuance of any Postal Operator's Licence should be conditional upon conformity with the above requirements.

4.3 Given that these legal obligations exist I was concerned to read the article in the Jersey Evening Post on 11<sup>th</sup> April entitled 'Competing mail firm may not need Island premises' (see APPENDIX 4). The export of goods by postal routes is essentially an un-manifested export; this is the key factor which in customs terms distinguishes postal traffic from other means of shipping goods. When goods are exported by post a customs declaration is required to be affixed to the outside of the postal packet, when goods are exported by other means this Service is advised, in simple terms, of the nature of the goods and consignor / consignee details, etc, by means of a ship's or aircraft's manifest. You will understand, therefore, that I regard as unacceptable the proposition that a Licensed Postal Operator could collect goods from an exporter and directly export them from the Island without passing through 'Approved Premises' where Officers may have the opportunity to put in place any controls required upon those goods.

#### **5. Conclusions**

5.1 If Citipost was granted a Postal Operator's Licence it would not enjoy direct access to UK postal routes under existing arrangements.

5.2 If Citipost was granted a Postal Operator's Licence and wished to agree a new MoU to replicate arrangements allowing direct access to the UK postal hub, any compliance could not be delivered by the existing JPCCO who, as has been stated, is employed and paid by Jersey Post and merely empowered by this Service. (I would be surprised if any would-be postal operator would agree to a competitor's employee undertaking compliance functions within their business).

5.3 If Citipost obtained agreement in principle from HMRC to negotiate an equivalent MoU to that which already exists between HMRC, Jersey Customs and Jersey Post

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<sup>2</sup> Under Article 1(1) of the Customs and Excise (Jersey) Law 1999 "officer" means the Agent of the Impôts or any other officer of the Impôts

then this Service would have to review its commitment to supporting *existing* arrangements. The reasons for such a review are firstly, that additional administrative responsibilities would necessarily arise for this Service (these are not 'assigned matters' and no Service resources are available to undertake these tasks); and secondly, the market would be transformed from an area where formerly a single postal operator existed, to one in which there would be two or conceivably more such Licensed Operators each requiring an MoU and each requiring satisfactory compliance mechanisms. Naturally if this Service concluded that it could not continue to support any such arrangements, it would undertake to work with all stakeholders to find a satisfactory resolution to any issues arising.

5.4 It is the view of this Service that any further consideration of Citipost's application for a Class 1 Postal Licence must involve close liaison with this Service. If agreement can be reached on the issues raised in this response document, this Service recommends that the issuance of any Postal Licence to Citipost is made conditional on the delivery of those agreed arrangements within the terms of the Licence itself; this would be especially important if the Licence granted was a broad one that permitted the conveyance of inward post. In these circumstances it would be imperative that agreement is reached in advance with this Service about arrangements for the Operator to meet its obligations under Agent's Directive No 6 regarding the customs clearance of imported goods.

I hope that you find this response informative and helpful to you in your deliberations. I look forward to hearing from you in due course as this matter is progressed.

Yours sincerely

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