



# Port Operations Licence

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## Initial Notice

**Document No: CICRA 15/41**

**October 2015**

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## **1. Executive Summary**

Following its consultation the Jersey Competition Regulatory Authority (“JCRA”) is issuing this Initial Notice (“IN”) under Article 23(2) of the Air and Sea Ports (Incorporation) (Jersey) Law 2015 (the “Law”) to award Ports of Jersey Limited (“PoJL”) a licence to carry out port operations as required by Article 7 of that Law.

## **2. Introduction**

The States of Jersey approved the Air and Sea Ports (Incorporation) (Jersey) Law 2015 on 2 June 2015. The Law requires that any person carrying out Port Operations must have a licence issued by the JCRA. To that end, between 11 June and 20 July the JCRA consulted on a proposed licence for Port Operations.

Licensing by the JCRA of Port Operations is carried out based on the roles and duties of the JCRA under the Law. The policy framework underpinning the incorporation of PoJL is also an important consideration in applying the licensing framework, since clarity around the policy outcomes sought by the States of Jersey is critical to the successful application of the regulatory framework.

In fulfilling its role and duties, the JCRA’s intention is to apply standard principles of economic regulation. This is relevant to its approach in price setting as well as quality standards and promotion of competition. However, the States of Jersey may in some cases wish to have regard to other priorities or factors. In these circumstances, policy direction is required and a settled policy framework will need to be established to achieve that.

In finalising a licence for port operations, the JCRA has taken into account the objectives given to Ports of Jersey Limited (“PoJL”), the company created under the Law.

The JCRA is also mindful of the Public Service Obligations (“PSO”) required of PoJL in accordance with any agreement between the Minister and PoJL or as directed by the Minister. When these are publically available they will be taken into account in the regulatory framework. In particular, the basis for funding such obligations will be particularly relevant to the JCRA’s consideration of pricing by PoJL.

The Law also makes provision for the States of Jersey to make Regulations for the licensing of ‘Lifeline Services’. At present, no such Regulations have been proposed and therefore this matter is not under consideration by the JCRA at this time.

### 3. Structure of the document

This document constitutes an Initial Notice (“IN”). The document sets out the conclusions that the JCRA has reached, having taken full account of the response to the consultation and having carried out further research to ensure it has fully addressed the respondent’s points. The document contains summaries of particular points raised to illustrate the JCRA’s reasoning.

The document broadly follows the structure of the June consultation and is organised around the questions which were posed in that consultation as follows:

Section 4	Consultation Response – Licensing of Port Operations
Section 5	Consultation Response – Ports of Jersey Licence
Section 6	Initial Notice
Annex 1	Legislative and Licensing Background
Annex 2	Port Operations Licence for Ports of Jersey Limited

Respondents are invited to comment on the proposed Initial Notice.

All comments should be submitted before 5.00pm on 23 October 2015 to:

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

Email: [info@cjra.je](mailto:info@cjra.je)

All comments should be clearly marked ‘*Comments on the Initial Notice – Ports Operators Licence*’.

In line with JCRA policy, the JCRA intends to make responses to the Initial Notice available on the CICRA website, the combined website of the GCRA and the JCRA. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. CICRA regrets that it is not in a position to respond individually to the responses to this consultation.

## 4. Consultation Response – Licensing of Port Operations

### 4.1 Introduction

A consultation was carried out by the JCRA during June and July 2015. One response was received from Ports of Jersey (“PoJ”). The JCRA’s comments and response are outlined in the sections below.

### 4.2 JCRA’s duties and approach

In general, in applying an economic regulatory framework the JCRA will be guided by the Six Principles of Better Regulation which were set out in the consultation document. The economic regulatory framework forms part of a wider framework of regulation of Port Operations, including that of safety at sea and in the air, the safe operation of ports and other international standards.

#### ***Ports of Jersey Comments***

*‘We welcome the fact that the JCRA accepts that the roles of the Harbours Authority and Airport Authority, as defined in the Air and Sea Ports Incorporation Law, are an extension of government rather than the commercial activities of Ports of Jersey Limited. The operational and enforcement powers of the Authorities will not be encompassed in the licensed conditions.’*

#### ***JCRA Response***

Port Operations requiring a licence issued by the JCRA are prescribed in Article 2 of the Law as:

- (i) The provision of facilities and services for and in relation to commercial passenger travel and freight transport into and out of Jersey, by air or sea;
- (ii) The provision of facilities and services for and in relation to non-commercial travel and leisure pursuits around, into and out of Jersey, by air or by sea, and specifically (in the case of harbour operations) within Jersey territorial waters; and
- (iii) The management, maintenance and operation of such facilities and services.

There is clearly an overlap between these facilities and services and the role of the Harbour and Airport Authorities. In particular, as the definition does include the operation of facilities and services.

As well as licensing Port Operations, the JCRA has a non-licensing function whereby it may act as facilitator and co-operate with other regulators<sup>1</sup>. This role will include developing working relationships with both the Director for Civil Aviation and the Minister for Economic Development in his role under maritime law, as well as appropriate engagement with both the Harbour and Airport Authorities, to ensure that any potential overlap does not impact on the operation of the ports.

### **JCRA Conclusion**

The JCRA will work with the other sector specific regulators to ensure that Port Operations are carried out efficiently and effectively, so as best to protect and further the interests of users of port operations in the short and long term, in line with its duties under the Law<sup>2</sup>.

### **4.3 Licensed Port Operations**

The licence regime within the Law is not limited to PoJL. Any person in Jersey carrying out Port Operations will be required to be licensed. However, in preparing the Licence the JCRA has taken account of the Six Principles of Better Regulation<sup>3</sup>, its duties under the Law and, in particular, its role to protect and further the interests of users of Port Operations. In particular, the JCRA is mindful that it has a duty to impose a minimum restriction on persons engaging in commercial activities, and the approach must be proportionate.

To this end, the JCRA consulted on the scope of the activities to be licensed and proposed as follows:

#### **Port facilities and services provided by a Principal Port Operator within a Designated Sea Port Area or Airport Area in Jersey**

A person is the Principal Port Operator if that person has overall responsibility for the management of all of the area. A person will be considered as having overall responsibility for the management of an air or sea port area by consideration of factors such as:

- The types of facilities or services that are or may be provided in the area
- The prices that are or may be charged for facilities or services provided in the area
- The quality of service provided in the area
- Access to the area
- Development of the area

A Sea Port Area is an area that forms part of a sea port, including:

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<sup>1</sup> Article 28 – Non-Licensing Functions of the JCRA

<sup>2</sup> Article 26 – Duties of the Minister and JCRA

<sup>3</sup> As set down by the UK Department for Business, Innovation and Skills, namely accountability, focus, predictability, coherence, adaptability and efficiency

- Land, buildings and other structures used for the purpose of the shipping or unshipping of goods or passengers, manoeuvring and serving of sea-going vessels at the port
- Passenger terminals
- Freight processing areas
- Marinas and moorings
- Within marine port limits

An Airport Area is an area that consists or forms part of an airport, including:

- Land, buildings and other structures used for the purpose of the landing, taking off, manoeuvring and servicing of aircraft at the airport
- Passenger terminals
- Freight processing areas

**Q2. Views are sought on the JCRA's interpretation of the scope of Port Operations required by law to have a licence**

***Ports of Jersey Comments***

*'The JCRA... has a very wide remit when deciding which aspects of the businesses should be licensed or not. The proposed definition in the consultation reflects this very wide remit. The approach is largely driven by geographic boundaries rather than specific services that are 100% controlled by the Ports of Jersey.'*

*Clearly those activities where Ports of Jersey controls 100% of the access, such as the runway and RoRo (roll on, roll off) ramps, should be licensed and hence price regulated, as they will represent dominant market positions. However, there are activities where competition for the service exists (or could exist), that may inadvertently be caught in license requirements if the very wide definition contained in the consultation proposal was adopted.*

*For example, warehousing. If a warehouse for business and operational reasons must be situated within the secure perimeter of the Harbour or Airport operations, the Ports of Jersey would control 100% access to that facility (whether owned by Ports of Jersey or not) and hence that facility should be subject to greater regulation. Where a warehouse is located on Ports of Jersey land, but outside the secure perimeter, there is competition for use of that facility from other locations around the Island by multiple owners of facilities. The same example may apply to many tenants on Ports of Jersey land, whereby their business activities may support commercial passenger and freight transportation or leisure activities in regards to land or sea. Adopting the very wide definition could lead these operations to require a licence. We would welcome a clear statement of position from the JCRA in due course.*

*Whilst our view is certainly that the licence for Port Operations should remain geographically defined, we believe that it should be focussed on those areas where the licensee effectively operates in an environment in which physical access is materially controlled. This would create a more coherent defined area in which it would more efficiently correlate to the areas of the relevant port which are considered to be 'secure zones'. We would of course be ready to provide, for the purposes of clarity, relevant marked plans/maps.*

*We further suggest a review of this initial licence definition is conducted 24 months into the licence term to ensure the definition remains relevant to the activities of Ports of Jersey. This would still provide scope for adaptability should circumstances change.'*

### **JCRA Analysis**

The definition of 'Port Operations' in the Law is very broad and not necessarily limited to PoJL. The definition within the Licence has been designed to ensure a proportional approach (in line with the Six Principles of Better Regulation).

It is important to note that the licensing requirement is not limited to PoJL, and for this reason, the scope has been limited to a requirement for a licence to be held by a Principal Port Operator, within a Defined Port Area. Initially, this will be PoJL only.

In its response, PoJ supports the concept of a geographically defined Licensed Port Area, however differs on the boundary of this area in the first instance.

The definition of 'Port Operations' in the Law includes all port operations facilities and services, for both commercial passenger travel and freight, and non-commercial travel and leisure pursuits. These markets need to be defined, and their operation will clearly cover a wider area than is contained within the secure areas of the ports.

There is, however, scope for different levels of regulatory oversight by the JCRA. This will in turn rely on a full assessment of market factors and will involve engagement with all stakeholders. Such an assessment will be undertaken by the JCRA, but it does not take the view that the scope of the Licence should be narrower or that there should be any presumption as to the appropriate regulatory oversight prior to such an open process at this early stage.

### **JCRA Conclusion**

Given that the different markets within the assets and facilities transferred to PoJL have yet to be defined, there are risks to users of port facilities and services in limiting the geographical area to be licensed to just that within the secure areas at the air and sea ports. For this reason, rather than start from a smaller area and add areas in as further analysis is



carried out, the JCRA defines the Licensed Port Area as those areas transferred to PoJL on incorporation.

Through an appropriate consultation process, individual areas within the Licensed Port Area can be reviewed to determine whether they should remain within the boundary or the nature of regulatory oversight modified to reflect market conditions.

In particular, analysis of areas where PoJL is dominant in a particular market may identify areas which should require particular obligations under the Port Operations Licence. Such reviews will be subject to the normal JCRA consultation process.

#### **4.4 Article 7(7) Exemption**

The Law provides that the JCRA may grant an exemption from the requirement to hold a licence. The question of whether all port facilities and services provided by persons other than a Principal Port Operator should be exempted arises and views are sought whether an exemption may be appropriate.

**Q3. Where persons engaged in activities are likely to be caught by the legal definition of Port Operations, there may be arguments that it is more appropriate that certain activities should be exempted from the licensing obligations. Views are sought on whether exemptions from licensing should apply and on what basis?**

##### ***Ports of Jersey Comments***

*'We believe that by focusing the licensed operations on the areas within the secure perimeter of the Ports of Jersey we should avoid any unintended consequences arising from the wider definition. Largely, activities outside the secure perimeter have consumer choice or alternative provision available.'*

*Applying the wider definition could bring in activities conducted by tenants, service partners and business partners into the scope of the licence. These could include for example marine engineering, warehousing, hangarage provision, security & cleaning firms, catering facilities and even the carriers themselves.'*

*We believe that where contestable markets are in operation the need to establish a licensing regime with incentives/penalties is unlikely to provide a coherent framework in which to operate and is more likely to lead to greater inefficiency. Of course, should particular activities need to be added during the term of licence, the JCRA may do this at its discretion with the specific activities analysed and considered.'*

*As with our response to question 2, a review of licence scope after 24 months of operation would ensure the scope has remained relevant to the Ports of Jersey operations.'*

## JCRA Analysis

The types of activities listed in the PoJL response are those which the JCRA is proposing to exempt from the requirement to hold a licence under Article 7(7) of the Law. A licence would only be required by a **Principal Port Operator** having overall responsibility for management of an area of the air or sea port.

With regard to the definition of the **Licensed Port Area**, the PoJL proposal to limit the scope to just those areas within the secure perimeter would exclude large areas of Port Operations. Some of port operation services and facilities offered outside this area may be more open to competition, either today or in future, however others may not. For example, the marinas and associated services and facilities are all outside the area proposed by PoJL, as are all carparks at the harbour and airport.

There is a risk in excluding large areas of the property transferred to PoJL on incorporation without further detailed analysis of potential consequences.

Rather than starting with a limited definition for review in 24 months time, as proposed by PoJ, the Licensed Port Area will be that transferred to PoJL on incorporation. Should PoJL consider it appropriate that an area be considered for removal from the licence requirement, it can make an application to the JCRA at any time. Any such application would need to be supported by more detailed economic analysis and be the subject of an open consultation process.

## JCRA Conclusion

The JCRA will exempt from the requirement to hold a licence all Port Operations other than those carried out by a Principal Port Operator in a Licensed Port area. The Licensed Port Area being the land transferred to PoJL on incorporation.

This does not prevent PoJL from making an application for certain defined areas to be excluded from the Licence in future.

## 4.5 Policy Setting

The experience of the JCRA in the Channel Islands and regulators in other jurisdictions is that the effectiveness of economic regulation of state-owned enterprises can be significantly affected by governance structures of commercialised businesses. This structure is a responsibility of government, with its policy-setting authority and in its shareholding role. At the present time, there is no formal policy statement that suggests standard principles of economic regulation would not be applied in relation to economic regulation of Port Operations.

**Q1. Views are sought on the JCRA's approach and the role of policy informing its approach to economic regulation of Port Operations**

***Ports of Jersey Comments***

*'Ports of Jersey supports the proposed JCRA approach. It is also evident that the commercial operations of the Ports of Jersey will come under Competition Law, whether they are licensed or not. To this end, it is also probably important to reflect on Article 5(2) of the Air and Sea Ports Incorporation Law, which states:*

*5(2) Without derogation from the primary object stated in paragraph (1), in carrying out commercial port operations POJL shall act in the manner best calculated to secure sustainable growth in the economy of Jersey in the medium to long term.*

*We expect that policy decisions in respect of what constitutes 'sustainable growth in the economy of Jersey in the medium to long term' would be made by the Ports Policy Group (Chief Minister, Treasury Minister and Economic Development Minister), which would then seek JCRA advice on how to best to reflect such decisions in its economic regulation model. It is worth emphasising that this particular duty is also given to the JCRA in the Law. There will need to be ongoing dialogue about making it effective including regulatory implications*

*With policy direction provided by the Ports Policy Group, the context for regulating the Ports of Jersey should be clear. Our intention is to provide as much information as possible about our financial and operational performance. Should information of a confidential nature be required we are happy to provide either structured periodic reports to the JCRA, or in the event of ad hoc inquiries provide more bespoke information.'*

***JCRA Response***

The States of Jersey has two roles with respect to the governance of PoJL:

- In its shareholder role (through the Treasury and Resources Department), the government holds the PoJL Board to account, essentially to ensure good stewardship of the assets entrusted to its care.
- In its policy-setting role (through the Economic Development Department), the government determines the main long-term objectives for PoJL, particularly as they relate to its overall policies for transport and, perhaps, tourism and other sectors.

The JCRA welcomes the establishment of a Ports Policy Group which is being established to provide advice to the Minister for Treasury and Resources, as shareholder and Minister for

Economic Development, in relation to setting government policy for PoJL and the Public Service Obligations.

### **JCRA Conclusion**

The JCRA will take into account policy in undertaking its roles as regulator of ports and will contribute to such considerations as appropriate.

## **5. Consultation response – Ports of Jersey Licence**

### **5.1 Introduction**

On incorporation, land and other assets will be transferred to the new company. In the first instance, the JCRA proposes to designate as Airport and Sea Areas those areas transferred to PoJL by Regulation.

In the case of a single operator like PoJL, the central objectives of increasing a licensee's efficiency and protecting customers is supported by setting price controls. The JCRA may look to set either maximum prices for particular services or (as seems more likely given the broad range of services supplied) an overall capped revenue requirement dependent on whether market conditions justify such levels of intervention.

Other licence conditions prescribe various standards of behaviour in serving users of Port Operations. In particular, licence conditions provide that PoJL should support the establishment of a strong independent representative body of the main PoJL customers, including airlines and shipping companies, and should consult it regularly on a range of issues.

This approach is particularly suited to a small jurisdiction such as Jersey by increasing transparency and accountability. It will further contribute to constructive stakeholder pressures on PoJL to ensure it is effective and efficient. In common with Licences held by other regulated utilities in Jersey, the licence for PoJ will include requirements for complaint / dispute handling and the setting of minimum service standards.

The consultation included a table explaining the Licence and as well as a draft Licence.

**Q4. Views are sought on the appropriate structure and role of representative bodies that might inform the JCRA's regulatory duties and function**

**Q5. Respondents are asked for their views on the proposed licence structure and appropriateness of the conditions as set out. We would particularly welcome**

**respondents' views on whether there are any omissions or amendments required to the proposed structure and conditions that support the JCRA's duties and functions**

### ***Ports of Jersey Comments***

*Comments have only been made in respect of items that require further consideration or clarity. No comment, in respect of specific items, indicates Ports of Jersey full support.*

## **5.2 General Provisions**

### ***Ports of Jersey Comments***

#### ***14.1 Consumer Code***

*Ports of Jersey respectfully requests that the condition to, within 3 months of the Licence Commencement Date, to publish an appropriate code of practice ('Consumer Code') for the resolution of User disputes, be extended to 12 months from the date of Licence Commencement. This is to enable the Ports of Jersey to ensure all consumers, of differing user groups, can be fully consulted with, whilst procedures are aligned across the consumer portfolio, including both direct and B2B customers*

#### ***14.7 Minimum Service Levels for Users***

*Ports of Jersey respectfully requests that the condition to, within 3 months of the Licence Commencement Date, to publish a statement setting out the minimum service levels for users in respect of each category of Port Operations, be extended to 12 months from the date of Licence Commencement. This is to enable the Ports of Jersey to ensure all consumers, of differing user groups, can be fully consulted with, whilst procedures are aligned across the User group portfolio. Ports of Jersey Users are a diverse group and it is envisaged that 6 months would be required to adequately consult with all.*

#### ***14.10 Establishment of User Council***

*Ports of Jersey already actively engages with users across a number of established groups as well as direct engagement with airline and harbour B2B accounts (specifically those representing the views of high volume operators). We also undertake regular customer service surveys, with results being collated quarterly.*

*Such groups include bodies, such as many Boat Owner Associations around the island, development groups in the leisure sectors as operate in, established entities such as the Chamber of Commerce (and subcommittees) and many more. The specific requirements and issues of each group can be very distinct, and are certainly diverse. There are over 12 groups*

*who we regularly engage with, let alone the individual community engagements conducted as a matter of routine business.*

*Ports of Jersey do feel our level of customer and community engagement are currently quite robust and appropriate for our activities. Further, attempting to establish a single group (or even a smaller number of groups) encompassing the full scope of activities of the Ports of Jersey would be unworkable given the breadth of issues and representation that would be required.*

*Ports of Jersey would welcome input from the JCRA in respect of these established groups however we do not believe that additional user's forums would be particularly useful due to the diverse nature of our customer base.*

#### *15.1 Progressive achievement of standards in line with 'international best practice'*

*As per the Ports of Jersey Memorandum of Understanding with the States of Jersey, the Ports of Jersey Strategic Business Plan must include Key Performance Indicators – both financial and non-financial as agreed in consultation with the Minister. The Ports of Jersey suggests that these Ministerial agreed Key Performance Indicators will form the basis against which 'progressive achievement' will be measured. Ports of Jersey would welcome input from the JCRA re which standards they would expect to monitor, so they can be included in the Strategic Business Plan.*

#### *15.2 Port Operations Development Plan & Monitoring Plan*

*The Strategic Business Plan, as prescribed in the State of Jersey Memorandum of Understanding, will be the basis for any Port Operations Development Plan. Monitoring of achievement of this plan will be an integral part of the annual and half yearly reports which are mandatory reporting requirements as per the Memorandum of Understanding. The Strategic Business Plan, Annual and Half-Yearly Reports will be provided to the JCRA. Ports of Jersey would welcome confirmation from JCRA that these mandated plans and reports will be suitable to meet their needs.*

### **JCRA Analysis**

#### *Consumer Code and Minimum Service Levels*

A Consumer Code and established Minimum Service Standards are sound customer practice and not an additional regulatory burden which is to be imposed as a result of the new Law. Minimum service levels are likely to be already established in many of the contracts already in place.

The lack of established standards for a period of 12 months after the incorporation of PoJL seems to be a long time without this protection. However, the JCRA acknowledges the challenge faced by the lack of precedent in the regulation of Port Operations. Accordingly, the JCRA would agree to accept interim arrangements within 3 months and allow a practical approach to developing a more comprehensive Code and Service Levels following full consultation with the various users of port facilities and services within 12 months.

#### *Establishment of a User Council*

Given the diverse and wide-ranging groups of users of port facilities, the JCRA agrees with the approach proposed by PoJL in the first instance. However, the JCRA reserves the right to establish user groups, either on a regular basis or ad hoc, if required to collect independent user views in future.

#### *Development of Port Operations Facilities and Services*

As the JCRA has not yet had sight of the PoJL Strategic Business Plan, it is not possible to say whether this will meet the requirements of the JCRA for a Port Development Plan; likewise, the regular reporting and key performance indicators. If the information provided in these documents provides that which is needed by the JCRA to carry out its role, this would clearly be an advantage in terms of time and resources for PoJL.

### **JCRA Conclusion**

#### *Consumer Code and Minimum Service Levels*

The Licence has been amended to reflect interim arrangements to be in place within 3 months of the grant of the Licence, with a full review within 12 months.

#### *Establishment of a User Council*

Condition 14.10 remains in the Licence to allow for the establishment of a User Council in future, if required.

#### *Development of Port Operations Facilities and Services*

The conditions relating to the development of Port Operations facilities and services remain in the Licence. The JCRA will review the documents being provided by PoJL under the terms of its Memorandum of Understanding with the Minister for Economic Development to establish whether this will meet the requirements of the Licence.

## **5.2 Additional Conditions**

### **Ports of Jersey Comments**

#### *18.0 Separation of Accounts*

*Ports of Jersey supports the principle of accounts separation, and has been making considerable effort to ensure an appropriate chart of accounts to enable this separation. The six month timetable is considered achievable.*

#### *19.0 Cross Subsidisation*

*Ports of Jersey supports the principle that the Licensee shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Port Operations, but would ask the JCRA to provide some illustrative, but hypothetical, exemplars of what is meant by unfair.*

#### *22.0 Price Regulated Services*

*Ports of Jersey fully supports this concept. However, we would request a transitional period whilst our tariffs and charges undergo adjustment. We expect to consult fully with the JCRA on any structural adjustments as part of our licence conditions.*

***Focus:*** *We expect that in the first instance the licenced port operations will be price regulated. We expect too that the way the JCRA approaches this task will be governed by its assessment of the extent to which Ports of Jersey may or may not exercise significant market power in a given relevant market. The current process of the Ports of Jersey entails obtaining Ministerial approval for changes to our tariffs, and then publishing those tariffs. We expect the process to be broadly similar, but with the JCRA endorsing the structure of relevant tariffs and proposed changes to them.*

### **JCRA Analysis**

The central objectives of increasing a Licensee's efficiency and protecting customers will be achieved by setting price controls. The Licence therefore includes conditions that enable the JCRA to set either maximum prices for particular services or an overall capped revenue requirement, or a combination of the two. There are related conditions requiring the provision of information to the JCRA.

The Licence states that the JCRA may determine the maximum level of charges the Licensee may apply for Port Operations within a relevant market in which the Licensee has been found to be dominant (Condition 22.2). The first stage in this process will be to establish that the accounting records required under Condition 18 of the Licence provides sufficient information to allow the JCRA to make such determinations.

### **JCRA Conclusion**

Whilst price regulation is likely to be brought in for certain facilities and services, the detail of this will be the subject of further detailed analysis and consultation with PoJL and other
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interested stakeholders.

## **Initial Notice**

In line with Article 23 of the Air and Sea Ports (Incorporation) (Jersey) Law 2015, the JCRA gives Initial Notice of its proposal to grant to **Ports of Jersey Limited** a Port Operations Licence on the terms attached to this Notice.

If there are no material representations as a result of this consultation process, the licence shall be deemed to come into effect on 1<sup>st</sup> November 2015.



**Principal Port Operator's Licence**  
**for**  
**Ports of Jersey Limited**

# **JERSEY COMPETITION REGULATORY AUTHORITY**

**Licence issued to**

**Ports of Jersey Limited**

**under the**

**Air and Sea Ports (Incorporation) (Jersey) Law 2015**

The JCRA, in exercise of the power conferred on it by the Air and Sea Ports (Incorporation) (Jersey) Law 2015, grants to the Licensee, as Principal Port Operator, a Licence to carry out Port Operations in Jersey (as these terms are defined in the Conditions of this Licence) within, to and from Jersey and subject to the Conditions, all lawful Directions of the JCRA, and all applicable laws, rules, regulations, ordinances and orders of the States of Jersey.

**DATED** 1 November 2015

**SIGNED**

**Michael Byrne,  
Chief Executive,  
Jersey Competition Regulatory Authority**

## CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.

- 1.1 A word or expression that is used in the Licence and the Conditions and is also used in the Law has, except where otherwise stated in the Licence or Conditions, the same meaning in the Licence and the Conditions as it has in the Law. In addition, the expressions set out below have the same meanings given to them below:

**“Access”**: means the ability to obtain a required service, facility or function;

**“Airport Area”**: means an area, designated by the JCRA, which requires a Port Operations Licence

**“Associated Company”**: means a company that controls or is controlled by the Licensee or which is under the control of the same person or persons as control the Licensee;

**“Conditions”**: means Conditions 1 through to 23 of this Licence, as may be amended, revoked or added to by the JCRA from time to time;

**“Direction”**: means a written statement issued by the JCRA to the Licensee with which a Licensee must comply;

**“Equal Access”**: means a facility provided whereby a User can access the Port Operations offered by another Licensed Operator;

**“Force Majeure”**: means any cause affecting the performance by the Licensee of any obligation hereunder arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental or States’ acts or regulations, fire, flood, inclement weather, terrorism or any disaster or an industrial dispute affecting the provision of Ports Operations. Any act, event, omission, happening or non-happening only will be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its officers, contractors, sub- contractors, agents, servants or employees;

**“JCRA”**: means the Jersey Competition Regulatory Authority;

**“Joint Venture”**: means a business arrangement in which undertakings are jointly controlled by two or more other undertakings, allowing the sharing of skills and resources.

**“Law”**: means the Air and Sea Ports (Incorporation) (Jersey) Law 2005

**“Licence”**: means this Licence to run Port Operations, subject to the Conditions;

**“Licence Commencement Date”**: means the date on which this Licence is signed by the JCRA;

**“Licence Fee”**: means the fee prescribed by the JCRA under Article 16 of the Law and payable by the Licensee;

**“Licensed Port Operator”**: means a person with overall responsibility for the management of all of the Air or Sea Port Area, as designated by the JCRA;

**“Licensee”**: means Ports of Jersey Limited;

**“Other Licensed Operator”**: means any person who, other than the Licensee, holds a licence granted and in force under the Law;

**“Port Operations”**: has the same meaning as set in the Law;

**“Principal Port Operator”**: means a person or organisation that has overall management of all of a Port Area;

**“Public Service Obligations”**: means the functions referred to in the Law as ‘Public Service Obligations’ which may be amended by Order of the Minister;

**“Sea Port Area”**: means an area, designated by the JCRA, which requires a Port Operations Licence

**“Subsidiary”**: has the same meaning as in the Companies (Jersey) Law 1991;

**“User”**: means a person, organisation or other entity that is a consumer of Port Operations;

- 1.2 In the Licence and these Conditions, unless the context indicates a contrary intention:
2.
    - (a) references to Conditions, paragraphs and subparagraphs are to Conditions, paragraphs and subparagraphs of the Conditions, as varied from time to time in accordance with the Conditions;
  3.
    - (b) a document will be incorporated into and form part of the Conditions if it is referred to in the Conditions, and reference to such a document is to that document as varied from time to time;
    - (c) headings used for Conditions, paragraphs and subparagraphs are for ease of reference only and will not effect the interpretation of the Conditions;
    - (d) references to any law, rule, regulation, ordinance, order or other legal instrument includes any modification, re-enactment or legislative provisions substituted for the same;

- (e) use of the word ‘includes’ or ‘including’ should be construed as being without limitation;
- 4.
- (f) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 5.
- (g) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 6.
- (h) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
- 7.
- (i) A reference to any party shall include that party’s personal representatives, successors and permitted assigns; and
- 8.
- (j) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 9.
- 10.

**2. SCOPE OF LICENCE**

**11.**

- 2.1 This Licence authorises the Licensee to carry out Port Operations in Jersey.
- 2.2 The Licensee shall ensure the provision of safe, secure and efficient Port Operations for Jersey, whether by itself or by any other person acting as its subsidiary, agent, employee or subcontractor.
- 2.3 For the avoidance of doubt, this Licence shall be non-exclusive.
- 2.4 The Licence is personal to the Licensee and the Licensee shall not:
  - (a) sub-licence, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other person; or
  - (b) sell or pledge any of its assets which are necessary to provide the Port Operations which the Licensee is obliged to provide under this Licence, unless such assets are immediately replaced with equivalent assets, without the prior written consent of the JCRA, such consent not to be unreasonably withheld.

Condition 2.4 does not apply to:

- (i) a mortgage or other transaction entered into for the purpose of securing borrowing of the Licensee or a Subsidiary of the Licensee, or a Joint Venture being borrowings for the purpose of the Licensed Port Operations or the provision thereof or anything incidental thereto; or

12.

- (ii) a transfer, assignment or other disposal of an interest in assets under an arrangement whereby the Licensee retains the use and benefit of such assets for the remainder of the useful life of such assets and for the duration of the Licence; or
- (iii) a transfer, assignment or other disposal of assets made in the ordinary course of business.

2.5 Subject to Condition 8, the Licensee shall notify the JCRA of the occurrence of any of the following:

13.

- (a) any fact or event likely to materially affect the Licensee's ability to comply with any Condition including any change to the Port Operations which may detrimentally affect the permanence, availability or quality of the Port Operations;
- (b) an insolvency-related event in respect of the Licensee or a Subsidiary of the Licensee or a Joint Venture, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon the Licensee becoming aware of the event.

2.6 The Licensee shall notify the JCRA:

14.

- (a) of any proposed Change of Control of the Licensee or 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
- (b) in any event, on the occurrence of any Change of Control of the Licensee, within thirty (30) days of that event.

2.7 On receipt of notification of Change of Control, the JCRA may:

15.

- (a) approve, in writing, the change or the proposed change;

16.

- (b) disapprove, in writing, the change or the proposed change, giving reasons; or
- (c) approve the proposed change or the change subject to the Licensee accepting a modification of the Licence under Article 17 of the Law,

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

In taking such action under this licence 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.

2.8 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 Associated Company by any means and in any event. A person or group of persons shall be deemed to Control the Licence if:

17.

- (a) he or they exercise or control the exercise of fifty (50) percent or more of the votes able to be cast at general meetings of the Licensee 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 is able to appoint or remove a majority of the governing body of the Licensee or Associated Company; or
- (c) He or they exercises or controls the exercise of fifty (50) percent or more of the partnership or other ownership interests of the Licensee or Associated Company

18.

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

2.9 The Licensee shall advise the JCRA, in writing, of any change of Chairman or Chief Executive Officer within thirty (30) days of the occurrence of that change.

19.

2.10 The Licensee shall supply to the JCRA, in relation to itself and any Subsidiary which is controlled by the Licensee:

- (a) a copy of its annual return on the same date on which it is required to be filed in accordance with the laws of Jersey;

20.

- (b) a copy of its annual report and accounts on the same date on which it is circulated to shareholders of the relevant body corporate; and
- (c) in relation to any Subsidiary or the Licensee, where the relevant body corporate is not incorporated in Jersey, any returns, reports, accounts or other information under the laws of any applicable jurisdiction which are, in the opinion of the JCRA, analogous or equivalent to the above, at such times and in such forms as the JCRA directs.

2.11 The Licensee shall comply with any other requirement in law or practice to obtain any additional consents, permissions, authorisations or licences as may be necessary for the provision of the Port Operations and for the exercise of its rights or discharge of its obligations under this Licence.

21.



2.12 The Licensee shall ensure that:

- (a) the administration and management of the business associated with the running (including establishment, maintenance and operation) of the Port Operations shall be conducted from the Bailiwick of Jersey; and
- (b) its business is conducted in a manner which the JCRA is satisfied is on a normal commercial basis and at arm's length from the business of any of its shareholders or Subsidiaries, Associated Companies or Joint Ventures.

### **3. LICENCE FEE**

3.1 The Licensee shall pay the Licence Fee in the manner directed by the JCRA.

3.2 Without prejudice to any remedies of the JCRA under this Licence or the Law, if the Licensee fails to pay any amount due to the JCRA under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at four (4) percentage points above the published base rate of the Bank of England.

### **4. COMPLIANCE**

4.1 In addition to the Conditions, the Licensee shall comply with:

- (a) any obligation imposed on it by the Laws or by any law, regulation, rule, ordinance or order; and
  - 22. (b) any Direction duly issued by the JCRA under the Law or by any law, regulation, rule, ordinance or order of the States of Jersey or this Licence.
- 23.

### **5. PROVISION OF INFORMATION**

5.1 For the purpose of monitoring the Licensee's compliance with the Conditions and the law, the Licensee shall provide to the JCRA in the manner and at the times required by the JCRA, any documents, accounts, returns, estimates, reports or other information (whether financial, operational, technical or otherwise) including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence.

5.2 The Licensee shall, within ninety (90) days of the Licence Commencement Date, provide the JCRA with a comprehensive report on its provision of port facilities and services, and the anticipated future use, and provide updates on the report as requested by the JCRA from time to time.

5.3 The JCRA may require an examination, investigation or audit of any aspect of the Licensee's business relating to the Port Operations or its compliance with the Conditions and the Laws, and the Licensee shall provide any assistance requested by the JCRA in relation to any such examination, investigation or audit. The JCRA may

issue Directions with regard to the manner in which such an examination, investigation or audit is carried out, including the creation of financial and/or technical specifications or documentation.

- 5.4 In particular, the JCRA may authorise a person to carry out an examination, investigation or audit or may require the Licensee to arrange for an examination, investigation or audit of any aspect of the Port Operations to ensure compliance with the Conditions. The Licensee shall allow the JCRA's authorised representative to attend at, enter and inspect any premises under the Licensee's or any of its Subsidiaries or Joint Ventures' control, and to take copies of any documents and to acquire any information in the control of the Licensee or any of its Subsidiaries or Joint Ventures, as may be required in order to carry out the examination, investigation or audit.
- 5.5 The Licensee shall bear all reasonable costs associated with any examination, investigation or audit connected under this Condition.

## **6. MODIFICATION**

- 6.1 The JCRA may from time to time modify, delete or add to any Condition in this Licence. Any modification, deletion or addition to the Conditions shall be made in accordance with Article 17 of the Law and any other requirements under any applicable law.

## **7. ENFORCEMENT AND REVOCATION**

- 7.1 The JCRA may at any time revoke this Licence in accordance with the provisions and procedures set out in Articles 21 of the Law. The JCRA may also take any action to enforce any Condition of this Licence in accordance with Article 19 and 20 of the Law or any Direction issued relating to this Licence.

## **8. EXCEPTIONS AND LIMITATIONS OF THE LICENSEE'S OBLIGATIONS**

- 8.1 If the Licensee is prevented from performing any of its obligations under this Licence because of Force Majeure:
- (a) the Licensee shall notify the JCRA of those obligations it is prevented from performing and the reason why as soon as reasonably practicable; and
  - (b) the JCRA may suspend those obligations and the Licensee will not be liable to perform those obligations, for so long as the Force Majeure continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this Licence or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at its expense through the use of alternative sources, work-around plans or other means.

## **9. INTEGRITY OF PORT OPERATIONS**

- 9.1 The Licensee shall take all reasonable steps to ensure the integrity of Port Operations and may refuse to carry out operations or provide services which it is obliged to a particular User if providing those services would or would be likely to cause damage or interference to Port Operations for Jersey.
- 9.2 The Licensee shall provide details with regard to any proposed refusal to the JCRA. The JCRA shall issue a determination on the matter.

## **10. MATTERS OF INTEREST TO JERSEY**

- 10.1 The Licensee shall, in connection with its establishment, operation and maintenance of the Port Operations take reasonable steps to prevent any Port Operations from being used in, or in relation to, the commission of offences against the laws of Jersey.

## **11. TERM**

- 11.1 The Licence commences on the Licence Commencement Date and continues, subject to the Licensee's compliance with the Conditions and the Law and subject to any revocation by the JCRA.

## **12. MISUSE OF DATA**

- 12.1 The Licensee shall not make use of any data of any nature which becomes available to it directly or indirectly as a result of its activities as a Principal Port Operator, in any way which, in the reasonable opinion of the JCRA, would unduly prefer the interests of any business carried on by the Licensee or a Subsidiary, Associated Company, or Joint Venture of the Licensee, or place Other Licensed Operators at an unfair disadvantage.

## **12. PUBLIC SERVICE OBLIGATIONS**

- 12.1 The Licensee is responsible for discharging certain functions referred to in the Law as 'Public Service Obligations' ("PSO"). The Licensee shall comply with any Agreement with the Minister for the purpose, or in the absence of an Agreement, as directed by the Minister.
- 12.2 The PSO functions may be amended by Order of the Minister, and the Licensee shall advise the JCRA of any such amendments.
- 12.3 For the avoidance of doubt, the PSO do not form part of Port Operations covered by this licence.

## **13. DIRECTIONS OR GUIDANCE TO THE JCRA FROM THE MINISTER**

13.1 The Licensee may be required to assist with the implementation of any Directions or guidance given to the JCRA under Article 27 of the Law which can only be implemented by, or with the assistance of, the Licensee.

#### **14. CONSUMER PROTECTION**

14.1 The Licensee shall, in the manner and at the times specified by the JCRA, publish the standard terms and conditions, including tariffs, under which it provides each category of Port Operations to Users. In the absence of any other Direction from the JCRA, the Licensee shall ensure that a current statement of all applicable terms and conditions is:

(a) filed with the JCRA; and

25.

(b) promptly made available for inspection at the request of any member of the public or promptly sent to them by post and/or electronic means on request.

14.2 The JCRA may direct the Licensee to change the Licensee's standard terms and conditions.

14.3 The Licensee shall within three (3) months of the Licence Commencement Date publish an appropriate code of practice ("Consumer Code") for the resolution of User disputes. This may be an interim document, with the final version published within twelve (12) months. The JCRA may issue Directions to the Licensee specifying any modifications or additions that it considers should be made to the Consumer Code.

14.4 The Consumer Code shall identify a transparent, simple, inexpensive procedure in order to address, inter alia, the following:

(a) the appointment of a representative of the Licensee to be the first point of contact for Users;

(b) a means of recording complaints against and disagreements with the Licensee;

(c) the procedure and timeframe in which the Licensee will respond to complaints and disagreements;

(d) the method and duration of retention of records of complaints and disagreements; and

(e) the level of any compensation that the Licensee may offer where complaints have been upheld or not satisfactorily resolved.

If a complaint or disagreement remains unresolved for three (3) months, either party may refer it to the JCRA for determination.

14.5 The Consumer Code may be amended by the Licensee, provided that the Licensee shall notify the JCRA and publish the proposed changes twenty-eight (28) days in

advance of their coming into effect. The JCRA may issue Directions to the Licensee as to the changes, including but not limited to Directions not to make the changes, Directions to amend the changes further or Directions as to the timing of the changes.

- 14.6 The Licensee shall participate in good faith in any dispute resolution procedure established by the JCRA for the resolution of disputes.
- 14.7 The Licensee shall publish within three (3) months of the Licence Commencement Date a statement setting out the minimum service levels for Users in respect of each category of Port Operations it offers, and exceptions to these, and the compensation or refunds it will offer to Users or prospective Users where service levels are not met. The Licensee shall also submit the statement to the JCRA. This may be an interim document, with the final version published within twelve (12) months.
- 14.8 The JCRA may consult publicly on the statement provided in accordance with Condition 14.7 and issue Directions to the Licensee specifying any modifications or additions that it considers should be made to the statement. The Licensee shall then re-publish the statement in the agreed form, in accordance with any Directions as to publication made by the JCRA, and shall forthwith implement the same. The JCRA may from time to time issue further Directions requiring modifications or additions to the statement and as to its re-publication and implementation.
- 14.9 The Licensee shall submit at the end of every six (6) month period or at such intervals as the JCRA directs, a written report to the JCRA setting out:
- (a) the extent to which the Licensee has succeeded in meeting the targets described in Condition 14.7;  
26.
  - (b) the compensation that has been paid in relation to complaints or disagreements where the Users' complaints were upheld and why complaints were dismissed; and
  - (c) such other matters that the JCRA directs should be included in the report.  
27.
- 14.10 The JCRA may require the Licensee to set up, at its expense, a user council or Councils for the specific purpose of obtaining and representing the views of Users.

## **15. DEVELOPMENT OF PORT OPERATIONS FACILITIES AND SERVICES**

- 15.1 The Licensee shall develop and operate the Port Operations so as progressively to achieve standards in line with international best practice, relevant standards and other benchmarks as the JCRA may direct from time to time.
- 15.2 In order to meet the objectives set out in this Condition, the Licensee shall, within three (3) months of the Commencement Date submit to the JCRA a plan setting out the target levels it will achieve for Port Operations (to be known as the 'Port Operations Development Plan') and a monitoring plan (to be known as the 'Port

Operations Monitoring Plan’) (together, “the Plans”), which provides for accurate measurement of each of the target levels.

15.3 The Plans will describe:

- (a) how actual performance will be monitored;
- 28.
- (b) the process for the collection and analysis of suitable data; and
- (c) the procedures for internal review and performance improvement planning by the Licensee.

15.4 The JCRA may direct the Licensee to update and resubmit the Plans.

15.5 The JCRA may direct the Licensee as to matters to be included in the Plans and may amend or replace such Direction.

15.6 The JCRA may include as a Condition of this Licence the targets specified by the Licensee in the Plan and the Licensee shall be deemed to be in breach of its Licence if the target levels are not achieved.

15.7 Within forty-five (45) days of the end of each six (6) month period, the Licensee shall provide the JCRA with a written report in a form required by the JCRA on its achievements under the Plans during the preceding six (6) months.

15.8 The Licensee shall comply with any Directions issued by the JCRA from time to time regarding any other quality of service indicators and measurement methods for Port Operations and shall, as and when required, supply to the JCRA in a form specified by the JCRA, the results of its measurements of actual performance against any quality or service indicators and measurements so specified, and the JCRA may publish or require publication of such information as it considers appropriate.

15.9 The Licensee shall provide such information as is required by the JCRA for the purpose of assessing service levels and the development of Port Operations.

## **16. CESSATION OF THE PROVISION OF THE PORT OPERATIONS**

16.1 If the Licensee proposes to cease to provide all or a material part of the Licensed Port Operations it shall give not less than four (4) months notice in writing to the JCRA of the proposal and its plans in relation to the cessation. Such cessation shall be affected only with the consent of the JCRA in relation thereto and the Licensee shall comply with any such Directions.

16.2 At any time within four (4) months before the expiry of the Licence or if the JCRA receives a notice under this Condition or if the JCRA has made a decision pursuant to Article 21 of the Law to revoke the Licence, the JCRA may, after consultation with the Licensee, direct it in writing to take such steps as are specified in the Direction,

being steps the JCRA considers necessary or expedient to ensure the safety of the Port Operations or the continuity and continuation of the provision of Port Operations or any constituent parts thereof, and the Licensee shall comply with any such Directions.

## **17. EQUAL ACCESS**

- 17.1 The Licensee shall at the request of an Other Licensed Operator or if directed by the JCRA make equal access available to that Other Licensed Operator. The JCRA may direct the terms upon which such Equal Access shall be provided and the JCRA may make subsequent Directions modifying or supplementing the regulation of Equal Access.

## **18. SEPARATION OF ACCOUNTS**

- 18.1 Within six (6) months of the Licence Commencement Date, the Licensee shall confirm to the JCRA that it maintains accounting records in a form that enables the activities specified in any Direction given by the JCRA to be separately identifiable, and which the JCRA considers to be sufficient to show and explain the transactions of each of those activities.
- 18.2 The JCRA may require reports on the accounting records and/or activities from time to time. The JCRA may direct the Licensee as to the basis and timing of such reports as the JCRA may require.

## **19. CROSS SUBSIDISATION**

- 19.1 The Licensee shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Port Operations.
- 19.2 To enable the JCRA to evaluate where any unfair cross-subsidisation or unfair subsidisation is taking place, the Licensee shall record at full cost, as defined by the JCRA, in its accounting records any material transfer of assets, funds, costs, rights or liabilities between a part and any other part of its business, and between it and its Associated Companies or any Subsidiary or Joint Venture of the Licensee, and shall comply with any Directions issued by the JCRA for this purpose.

## **20. UNDUE PREFERENCE AND UNFAIR DISCRIMINATION**

- 20.1 The Licensee shall not show undue preference to, or exercise unfair discrimination against, any User regarding the provision of any Port Operations. The Licensee will be deemed to be in breach of this Condition if it favours any business carried on by the Licensee or a Subsidiary or Joint Venture or Other Licensed Operator so as to place Other Licensed Operators competing with that business at an unfair advantage in relation to any licensed activity.

## **21. LINKED SALES**

- 21.1 The Licensee shall not make it a condition of providing any Port Operations, or providing Access that a User or Other Licensed Operator should acquire from the Licensee, or any person specified by the Licensee, any port services other than one that is specifically required by the person concerned, unless the Licensee has:
- (a) notified the JCRA of its intention to do so; and
  - 29.
  - (b) has satisfied the JCRA that either there is a technical reason why such a bundling of port services should occur, or that there is a sufficient economic benefit to the Users to justify the bundling.
- 21.2 The provisions of this Condition shall not prevent the Licensee from offering discounts in accordance with any discount scheme which complies with the Condition relating to Price Regulated Services as set out in Condition 22.

## **22. PRICE REGULATED SERVICES**

22.1 Where the Licensee intends to introduce:

- (a) new prices for any Port Operations, or prices for new Port Operations to be introduced by the Licensee;
- (b) any discounts or premiums to published prices for Port Operations within a relevant market in which the Licensee has been found to be dominant, or for any Users to whom additional services or goods are provided by the Licensee or any of its Subsidiaries or Joint Ventures; or
- (c) special offers to all or any of its customers for particular categories of Port Operations where those Port Operations have been found to be within a relevant market in which the Licensee has been found to be dominant,

it shall publish the same at least twenty-one (21) days prior to their coming into effect or otherwise as required by the Law, and provide full details of the same to the JCRA.

- 22.2 The JCRA may determine the maximum level of charges the Licensee may apply for Port Operations within a relevant market in which the Licensee has been found to be dominant. A determination may:
- (a) provide for the overall limit to apply to such Port Operations or categories of Port Operations or any combination of Port Operations;
  - 30.
  - (b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or
  - (c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.



- 22.3 All published prices, discount schemes and special offers of, or introduced by, the Licensee for Port Operations shall be transparent and non-discriminatory; all prices and discount schemes shall be cost-justified and all special offers shall be objectively justifiable.
- 22.4 If the JCRA, after consulting the Licensee and such other persons as it may determine, is satisfied that any published price, discount scheme or special offer is in breach of the Law or this Licence, the JCRA may, by issuing a Direction, require the Licensee to bring the relevant prices, discount schemes or special offers into conformity with the Law and/or requirements of this Licence.

## **23. FAIR COMPETITION**

23.1 The Licensee shall:

- (a) not abuse any position of significant market power and/or established position in any Port Operations;
- 31.
- (b) not engage in any practice or enter into any agreement that has the object or the likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Port Operations;
- (c) comply with any Direction issued by the JCRA for the purpose of preventing any market abuse or any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Port Operations.

## **ANNEX ONE: LICENSED PORT AREAS**

This Licence covers the Port Areas as that property transferred to Ports of Jersey Limited by Part 2 of the Schedule to the Air and Sea Ports Incorporation (Transfer) (Jersey) Regulations 2015 on 1 October 2015.

These can be found in

<http://www.statesassembly.gov.je/AssemblyPropositions/2015/P.80-2015.pdf>