



Port Operations – Price Regulated Services

Consultation Document

Jersey Competition Regulatory Authority

Document No: CICRA 16/15

March 2016

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

Contents

1. Introduction	3
2. Structure of the Consultation	4
3. Legal framework and issues	5
4. Approach of the JCRA.....	6
5. Market definition and market power	7
6. Next Steps	12

1. Introduction

The States of Jersey adopted the Air and Sea Ports (Incorporation) (Jersey) Law 2015 (the **Law**) on 2 June 2015. The Law requires that any person carrying out port operations must have a licence issued by the Jersey Competition Regulatory Authority¹ (**JCRA**).

On 1 November 2015, the JCRA issued to Ports of Jersey Limited (**PoJ**) a licence to carry out Port Operations (as defined in the Law) in Jersey (the **Licence**). Under Condition 22.2 of the Licence, the JCRA may determine the maximum level of charges that PoJ may apply for Port Operations within a relevant market in which it has been found to be dominant.

In this consultation, the JCRA sets out the approach that it proposes to adopt in determining the market(s) on which PoJ holds a dominant position. All interested parties, particularly suppliers of services at ports in Jersey and end users of those services are invited to respond to this consultation, since they have a key role in informing the extent to which the JCRA should intervene on their behalf using the regulatory powers available.

¹ Exceptions are provided for under the Law

2. Structure of the Consultation

This paper is structured as follows:

Section 3	Sets out the legal framework particularly relevant to this consultation and the issues to be determined by the JCRA
Section 4	Sets out the approach that the JCRA provisionally proposes to adopt and invites comments
Section 5	Considers the possible market(s) on which PoJ may have a dominant position and invites comments
Section 6	Sets out how the JCRA will finalise its conclusions on dominance

Respondents are requested to comment on the proposed approach and provisional conclusions of the JCRA.

All comments should be submitted before 5.00pm on 22 April to:

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

Email: info@cjra.je

All comments should be clearly marked 'Port Operations - Comments on Price Regulated Services: Consultation Document'.

The JCRA's normal practise is to publish all responses to consultations on its website. If respondents do not want their responses to be published in part or in full, the relevant sections should be clearly marked as confidential, and the response should explain why those parts of the response should be treated as confidential.

3. Legal framework and issues

Definition of Port Operations

Under the terms of the Licence, PoJ is licensed to carry out Port Operations. Port Operations are defined as:

- (a) 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 by sea;
- (b) the provision of facilities and services for and in relation to non-commercial travel and private 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
- (c) the management, maintenance and operation of such facilities and services².

(PoJ is also required to carry out certain public service obligations (**PSOs**), which do not form part of the Port Operations covered by the Licence.)

As explained in its consultation on the port operations licence³, the JCRA interprets the scope of the activities covered by the Licence as: “ports facilities and services provided by a Port Operator within a designated Sea Port Area or Airport Area in Jersey”. Sea Port Area and Airport Area are defined as those areas transferred to PoJ on incorporation⁴.

Price Regulated Services

Condition 22.2 of the Licence provides 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**. 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;*
- (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.”* (emphasis added).

² Law, Article 2(1); Licence, Condition 1(1).

³ Document No: CICRA 15/26 ([http://cicra.gg/files/Consultation%20Final\[96822\].pdf](http://cicra.gg/files/Consultation%20Final[96822].pdf)).

⁴ Document No: CICRA 15/42 (<http://cicra.gg/files/Ports%20Licence%20Exemption%20-%20Initial%20Notice.pdf>)

It follows that, before it can regulate prices on any market under Condition 22 of the Licence, the JCRA must have made a finding that PoJ holds a dominant position on that market.

Fair Competition

Condition 23 of the Licence prohibits PoJ from abusing any significant market power and/or established position in any Port Operations. It must comply with any direction issued by the JCRA for the purpose of preventing any market abuse.

It follows that, before it can make an order for the purpose of preventing market abuse under Condition 23 of the Licence, the JCRA must have made a finding that PoJ holds a position of significant market power (dominance) in respect of Port Operations.

4. Approach of the JCRA

General comments on likely market position of PoJ

The JCRA notes that, on 1 October 2015, all air and sea port infrastructure assets relating to the air and sea ports of Jersey were transferred to the newly formed PoJ.

This means that ports users (of both the sea port and of the airport), at least in respect of some of the services provided by PoJ, have no choice but to purchase them from PoJ (or a company appointed by PoJ to provide the services on its behalf). The JCRA's provisional view is that PoJ is therefore likely to have a monopoly position on the market for the provision of at least some services in the Sea Port Area and the Airport Area.

Given that control of the assets of both the airport and the sea port confer, to some extent, a monopoly in Jersey, the JCRA is seeking views on the extent of any market power in respect of port operations that may inform its views in coming to a decision.

Individual services or service "bundle"?

In assessing potential market dominance, there are alternative approaches that might be adopted. The JCRA could define a number of narrow markets on which PoJ might hold a dominant position, e.g. the market for the provision of cargo handling services at Jersey airport. Another option is that it could consider the market power of PoJ as a whole within the Sea Port Area and within the Airport Area by reference to a bundle of sea port operating services and of airport operating services respectively.

The JCRA's provisional view is that the second approach, pursuant to which it would consider an overall "bundle" of airport operation services and of sea ports operation services, would be the most appropriate in the context of this market. This is primarily

because the JCRA considers that the key perspective in making this assessment should be that of users of the ports and the options available to them. As an example it could be argued that an (air)port user, e.g. an airline, would look at the services offered by PoJ (either directly or by a third party within the area for which PoJ has responsibility) as a single “bundle”, comprising the services necessary for it to be able to use the (air)port as a whole, rather than considering the availability and cost of each individual service in isolation.

1. Interested parties are invited to provide their views on whether the JCRA should assess the market position of PoJ by reference to a bundle of “airport operation services” and of “port operation services”, or whether it would be more appropriate to consider PoJ’s market position in respect of each service individually. Views are sought on the merits of either of these approaches.

5. Market definition and market power

Market definition and market power - the airport (excluding “private” users)

Airport operation services are likely to include some, or all, of the following⁵:

- (a) Services related to the landing and taking off of aircraft, e.g. the use of the runway and taxiways; the provision of aerodrome air traffic control services;
- (b) Services related to the manoeuvring, parking and servicing of aircraft (e.g. refuelling services);
- (c) Services facilitating the arrival and departure of passengers and their baggage, e.g. baggage handling;
- (d) Services facilitating the arrival and departure of cargo;
- (e) Services facilitating the processing of passengers, baggage or cargo between their arrival and departure, e.g. security screening; baggage checking in facilities;
- (f) The arrival and departure of airport staff;
- (g) Groundhandling services;
- (h) Car parking facilities;

⁵ The JCRA has adopted these preliminary working definitions on the basis of the approach used by the UK Civil Aviation Authority and the definition of Airport Operation Services contained in the Civil Aviation Act 2012, s.68.

- (i) The provision of facilities for shops, retail businesses and (possibly) offices.

Assuming that it adopts the “bundle” approach to market definition, the JCRA’s view is that the relevant market might be defined as the “provision of airport operation services within the Airport Area⁶” which would include the provision of access and infrastructure needed for the provision of those services.

The JCRA’s provisional view is that the services (a) – (g) listed above should be considered as forming part of the “bundle” of airport operation services that airport users must purchase from PoJ (or a company appointed by PoJ to provide the services on its behalf).

2. The JCRA invites interested parties to comment on that provisional view and further to provide comments on whether services such as the provision of car parking facilities and the provision of facilities for shops and retail businesses should be regarded as airport operation services.

In its market power determinations in relation to a number of UK airports⁷, the Civil Aviation Authority (CAA) considered that certain airports had a position of significant market power only in relation to particular groups of airport users. For example, in respect of Heathrow Airport, the CAA found that significant market power only existed in relation to the supply of airport operation services supplied to full service long-haul carriers, on the basis that other types of carriers, e.g. short haul; charter, had the ability to switch away from Heathrow and use other airports. However, the JCRA’s preliminary view is that the market position of Jersey Airport is unlikely to differ in respect of different users groups. This is primarily because, given that Jersey Airport is the only airport on the island of Jersey, airport customers’ ability to switch to other airports or to other modes of transport is likely to be limited. The JCRA would welcome views from stakeholders on this point.

3. If the price of airport operation services at Jersey airport were to rise significantly (by 5 - 10%), would users or particular groups of users switch away to other airports or other modes of transport? For example, would charter airlines choose an alternative destination? Would cargo carriers consider using alternative modes of transport, e.g. by sea?

⁶ Possibly excluding “private” users, as explained below.

⁷ Heathrow, Gatwick and Stansted.

Market definition and market power – “private” airport users

The JCRA considers that it may be appropriate to define a separate market for the provision of “airport operation services to “private” users within the Airport Area”. In this context, the JCRA defines private users as the operators of privately owned aircraft. Airport operation services to “private” users are likely to include some, or all, of the following:

- (a) Services related to the landing and taking off of aircraft, e.g. the use of the runway and taxiways; the provision of aerodrome air traffic control services;
- (b) Services related to the manoeuvring, parking and servicing of aircraft, e.g. refuelling services; provision of hangar space;
- (c) Services facilitating the arrival and departure of passengers, e.g. advance security screening; provision of private lounge facilities;
- (d) The arrival and departure of airport staff;
- (e) Groundhandling services;
- (f) Car parking facilities.

4. The JCRA’s provisional view, on which it would welcome comments from stakeholders, is that the services (a) – (e) listed above should be considered as forming the “bundle” of airport operation services that private airport users must purchase from PoJ (or a company appointed by PoJ to provide the services on its behalf).

An alternative airport or an alternative mode of transport would not appear to provide the fast and convenient access to Jersey that private airport users require. The JCRA’s preliminary view is that private airport users would therefore be highly unlikely to switch away to another airport or another mode of transport, were PoJ to raise the price of airport operation services significantly (say 5 – 10% increase).

5. Is the JCRA correct to assume that if the price of airport operation services at Jersey airport were to rise significantly, private airport users would not switch away to other airports or other modes of transport?

Market definition and market power - the commercial sea port

If the “bundle” approach to market definition is taken, the JCRA’s view is that the relevant market might be defined as the “provision of commercial port operation services within the Sea Port Area” which would include the provision of access and infrastructure needed for

the provision of those services. Commercial port operation services could include some, or all, of the following:

- (a) Services related to the arrival and departure of commercial and passenger vessels (e.g tug and pilotage services, provision of navigation aids)
- (b) Services related to the manoeuvring, docking and servicing of commercial and passenger vessels (e.g. the provision of access to piers and quays;
- (c) Services facilitating the arrival and departure of passengers (e.g. checking in services; passenger holding services within terminal buildings);
- (d) Services facilitating the arrival and departure of cargo (e.g. stevedoring services; freight storage);
- (e) Services facilitating the processing of passengers, baggage or cargo between their arrival and departure, e.g. security screening; baggage checking in facilities;
- (f) The arrival and departure of port staff;
- (g) Stevedoring services;
- (h) Car parking facilities;
- (i) (Possibly) the provision of facilities for shops and retail businesses.

6. The JCRA invites comments on this view and on whether the provision of car parking facilities and/or the provision of facilities for shops and retail businesses to this user group should be defined as commercial port operation services. The JCRA’s provisional view, is that the services (a) – (c) listed above should be considered as forming part of the “bundle” of commercial port operation services that port users must purchase from PoJ (or a company appointed by PoJ to provide the services on its behalf).

As the port of Jersey is the only commercial port on the island of Jersey, the JCRA considers that customers’ ability to switch to other sea ports or modes of transport is likely to be extremely limited. This may be particularly so in the case of port users transporting goods; the JCRA understands that over 98% of all goods enter Jersey via the sea port⁸. However, the JCRA would welcome stakeholders’ views on whether particular groups of port users

⁸ <http://www.ports.je/JerseyHarbours/Pages/default.aspx>

would be likely to switch to alternative service providers or modes of transport if the cost of port services increased.

7. If the price of port operation services within the Sea Port Area were to rise significantly, would users or particular groups of users switch away to other port facilities or other modes of transport? For example, would cargo carriers consider using alternative modes of transport (e.g. air)?

Market definition and market power – marine leisure port users

The JCRA considers that it may be appropriate to define a separate market for the provision of “port operation services to marine leisure port users within the Sea Port Area”. These services could include some, or all, of the following:

- (a) Services relating to the arrival and departure of private vessels (e.g. provision of navigation aids; port control services);
- (b) Services relating to the mooring of private vessels (e.g. marinas, moorings);
- (c) Services relating to the provision of facilities to marina users (e.g. showers; laundry services);
- (d) The arrival and departure of port staff and boat owners;
- (e) The provision of facilities for chandlers and other related marine services;
- (f) Car parking facilities.

8. The JCRA’s provisional view, is that services (a) and (b) listed above should be considered as forming part of the “bundle” of port operation services that marine leisure port users must purchase from PoJ (or a company appointed by PoJ to provide the services on its behalf). The JCRA invites comments on this view and on whether the provision of facilities for chandlers and other related marine services should be defined as port operation services provided to marine leisure port users.

9. If the price of port operation services within the Sea Port Area were to rise significantly (by 5 - 10%), would marine leisure port users or particular groups of marine leisure port users switch away to other marina facilities (e.g. Guernsey; France; south coast of the UK)?

6. Next Steps

Respondents are requested to comment on the matters set out in this paper. It would assist in the consideration of responses if the question numbers in the above sections were quoted in any replies.

The JCRA will consider all responses before coming to a position which may result in the issuing of a formal notice to conclude this process.