



Port Operations Licence Exemption

Initial Notice

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1. Executive Summary

Following its consultation (CICRA 15/26) the Jersey Competition Regulatory Authority is issuing this Initial Notice as required by Article 23(2) of the Air and Sea Ports (Incorporation) (Jersey) Law 2015 to exempt certain facilities and services from the requirement to hold a Port Operations Licence.

2. Introduction

The States of Jersey approved 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 the JCRA. To that end, a consultation was carried out on a proposed licence for port operations. As it is the intention of the JCRA at this stage to licence only the activities of Ports of Jersey Limited (PoJL), the JCRA proposes to exempt those parties potentially engaged in Port Operations other than PoJ.

3. Structure of the document

This document constitutes an Initial Notice (“IN”). The document sets out the conclusions which the JCRA has reached, having taken full account of responses to the consultation and having carried out further research to ensure it has fully addressed respondents’ 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. It is structured as follows:

Section 4	Consultation Response – Article 7(7) Exemption
Section 5	Initial Notice

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

All comments should be clearly marked '*Comments on the Initial Notice – Ports Operation Licence Exemption*'.

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 – 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 in the circumstances. The consultation asked the following question:

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 response

'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 are 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 the 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.

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

Rather than starting with a limited definition for review in 24 months time, as proposed by PoJL, the Licensed Port Area will be that transferred to PoJL on incorporation. Should PoJL seek to remove an area from the licence requirement, application can be made to the JCRA at any time. This should be supported by more detailed economic analysis and 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.

5. Initial Notice

In line with Article 23 of the Air and Sea Ports (Incorporation) (Jersey) Law 2015, the JCRA gives Initial Notice that it exempts 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 as set out in the Initial Notice (CICRA 15/41) which sets out the details of the licence proposed for PoJL.

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