



# Ports of Jersey Limited (POJL) Determination of Prices for 2018

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## Consultation & Initial Notice

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## 1. Introduction

The purpose of this document is to provide Initial Notice of CICRA's decision to determine the maximum level of charges for port operations carried out by or on behalf of Ports of Jersey Limited (POJL).

CICRA is the Channels Islands Competition and Regulatory Authorities, comprising the Jersey Competition Regulatory Authority (JCRA) and its Guernsey equivalent.

Condition 22 of the Principal Port Operator's Licence<sup>1</sup> issued to POJL permits that the JCRA may determine the maximum level of charges which Ports of Jersey Limited may apply for port operations in Jersey.

Having considered POJL's application and the urgency which it attaches to the investment under consideration, CICRA agrees to POJL's request for a Price Increase from 1 April 2018.

In considering the financial position and resources available to POJL, CICRA concludes that POJL does not require the 5.2% increase requested but that it can finance all of the intended investment for 2018 and the cost of for a more modest increase of 1.3% from 1 April 2018.

Interested parties have a period of 28 days from publication of this notice to provide comments and responses to CICRA. After considering responses, CICRA may proceed to a Final Notice of its decision or amend its proposals and issue a revised Initial Notice.

## 2. Background

The States of Jersey enacted the *Air and Sea Ports (Incorporation) (Jersey) Law 2015* (the Law) on 2 June 2015. This requires that any person carrying out port operations must have a licence issued by the Jersey Competition Regulatory Authority (JCRA), also referred to in this document as CICRA (Channel Islands Competition and Regulatory Authorities).

Ports of Jersey Limited was incorporated in September 2015, and port operations commercialised from 1 October 2015. The JCRA issued POJL with a Principal Port Operator's Licence on 1 November 2015, to carry out Port Operations in Jersey (the Licence). POJL is the only port licensee in Jersey and is responsible for the operation of Jersey airport, Jersey harbour and various marinas and outlying harbours.

Shortly after incorporation POJL requested a 1.4% price increase and CICRA permitted an increase of 0.9%, in line with the change in RPI, for 2016. Subsequently, POJL applied in January 2017 for a further price increase from 1 April 2017, but withdrew that request in July 2017.

It has now applied for a 5.2% increase to take effect from 1 April 2018 and this paper provides CICRA's analysis and decision in response to that request.

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<sup>1</sup> <https://www.cicra.gg/licences-in-issue/ports-of-jersey-ltd/>

### 3. Legal Consideration

The Ports of Jersey – including Jersey Airport and Harbour – are regulated in accordance with the *Air and Sea Ports (Incorporation) (Jersey) Law 2015*. Under the Law the primary object of POJL is “to provide, or 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 sub-contractor”.

Both CICRA (as the JCRA) and the Minister for Economic Development, Tourism, Sport and Culture have a number of duties defined under the Law, in Article 26:

- (1) *In relation to port operations, the Minister and the JCRA shall each have a primary duty to perform their respective functions under this Law –*
  - (a) *so as best to protect and further the interests of users of port operations, in the short and long term, and to do so where appropriate by promoting competition in the provision of port operations; and,*
  - (b) *so as best to ensure –*
    - (i) *that provision is made to satisfy all reasonable demands, both current and prospective, for port operations,*
    - (ii) *that port operations are provided efficiently and effectively, and,*
    - (iii) *that a company (in particular including POJL), to the extent that it is or is to be licensed under this Law, has sufficient financial resources to discharge its liabilities under securities issued by the company to the States.*
- (2) *In relation to lifeline services, the Minister and the JCRA shall each have a primary duty to perform their respective functions under this Law so as best to ensure that such services are provided –*
  - (a) *efficiently, effectively and without interruption; and,*
  - (b) *so far as consistent with sub-paragraph (a), with due regard to –*
    - (i) *any relevant policies of the States,*
    - (ii) *the interests of persons using or likely to use such services, and,*
    - (iii) *the special needs of persons who are disabled.*
- (3) *So far as consistent with paragraphs (1) and (2), the Minister and the JCRA shall each have duties to perform their respective functions under this Law –*
  - (a) *so as best to encourage sustainable growth in the economy of Jersey in the medium to long term;*
  - (b) *so as to impose a minimum of restriction on persons engaging in commercial activities;*
  - (c) *with due regard to any relevant policies of the States;*

- (d) *with due regard to preserving and maximizing the benefits of Jersey's resources; and,*
- (e) *with due regard to the special needs of persons who are disabled.*

POJL is the only port operator and licensee in Jersey and has been found to be dominant in the market for the provision of port operations in Jersey<sup>2</sup>.

Under condition 22 of its Licence, 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. This price determination does not apply to either POJL's Public Service Obligations (PSOs) which are separately defined under the Law or to services which are not port operations.

In accordance with the licence condition 22 where the Licensee intends to introduce new prices for any Port Operations, or any discounts or premiums to published prices or special offers for any or all of its customers, it must do so at least 21 days in advance of those prices coming into effect and provide full details to the JCRA.

#### **4. POJL Request for a price increase**

On 23 November 2017 POJL submitted a request to increase its prices for port operations by 5.2% from 1 April 2018. The increase is intended to deliver additional revenue in order to finance expenditure of approximately £1.3m in 2018 on a number of capital projects.

POJL provided a revised submission on 1 December 2017 and advised that the 5.2% would be the average increase across a range of services, with the specific increases for individual tariff items ranging from zero on some services up to a 15% (maximum) on others. The proposed increases for individual tariff items are set out in Appendix 1 to the working draft of POJL's pricing submission.

The application was made on the basis that POJL requires the increase in order to support critical investment in 2017 and 2018 for IT infrastructure and new investment in the Elizabeth terminal.

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<sup>2</sup> <https://www.cicra.gg/cases/2016/poj1204j-significant-market-power-smpdominance-designation/poj1204j-final-notice-ports-of-jersey-assessment-of-market-power/>

## 5. Consideration of Price Increase

POJL has previously indicated its preference to move to a longer term price control in order to provide a greater degree of certainty for the business and shareholder going forwards. CICRA has also indicated that it would prefer this approach to repeated short term requests for increases. The basis for this control remains open to discussion and will require broader consultation on the underlying principles and inputs to that process and therefore would not be something that could be put in place in order to determine a potential increase for April 2018.

The CICRA board considered the request at its meeting on 13 December and agreed to POJL's request to consider the increase as a one off proposal.

Given the necessity of the request and the expenditure identified by POJL, CICRA has not sought to scrutinise the amount or value for money of the proposals and CICRA has accepted the figures provided by POJL as the cost of the proposals. In the available time and with the information provided by POJL, CICRA has not been able to examine the potential for offsetting efficiency savings which might reduce the potential overall cost of the proposals. However, these issues could be given future consideration as part of a longer term price control – this would allow any issues over costs or timing delays to be addressed without adversely affecting consumers or POJL's ability to finance its activities.

In considering the request from POJL, and its ability to fund the proposed expenditure in the short term, CICRA was mindful of the financial position of the business as a whole. CICRA notes that in its annual report published in June 2017 for the 15 month period since incorporation to 31 Dec 2016, POJL identified:

- Profits of £ 10.9m
- Cash reserves of £28m

This was substantially better than had been previously indicated in POJL's own December 2016 Strategic Business Plan which had indicated the likelihood of post tax losses being accrued by the business in 2016 and 2017. In light of the financial strength of the business, CICRA has sought to balance the request for a price increase and the stated urgency of its requirements with the interests of customers and port users in avoiding unnecessary or excessive price increases.

CICRA concluded that it would not be necessary to finance the additional capital expenditure on a cash basis in order for POJL to carry out the work it has indicated. Instead it would appear to be more appropriate to temper price increases and fund the investment by considering the amount of expenditure, the potential cost of capital (rate of return) and the potential depreciation of the investments.

On this basis, CICRA concluded that the amount of cash required in 2018 to finance the investment would be considerably less than the figure indicated by POJL, and that an allowance of an additional £0.3m revenue would be sufficient, which would equate to a price increase of 1.3%.

This is based on the assumption of:

- (i) A cost of capital of 5%
- (ii) Assumption of a short (5 year assets life) for all assets involved
- (iii) Commencement of depreciation in 2018

Considering these assumptions in more detail:

- (i) The assumption of the cost of capital is in line with POJL's reported cost of capital for its commercial projects. While this is based on a cost of debt, rather than a WACC, it is the only source that refers specifically to acceptable rates of return for POJL. Commercial investments, by their nature, will carry more risk than the essential operation of airport facilities, and are not backstopped by a regulator which is able to intervene in the event of an adverse outcome or the need for additional revenue, but at this stage it does not appear unreasonable to err on the side of caution and permit a rate of return in line with that for riskier commercial projects.
- (ii) The assumption of a short asset life for all assets is generous, but appropriate given that much of the capex is related to IT investments which generally have short asset lives. Again, while this may permit recovery of depreciation costs over a shorter period than is actually case, it would seem reasonable to err on the side of caution.
- (iii) The assumption that depreciation will commence in 2018 is also generous, given that assets would not normally be depreciated until they are completed, but it avoids the need for a further increase at that time and will ensure that POJL's cash position is improved against the actual profile of depreciation as it arises.

CICRA notes that without a detailed assessment in each case there is scope for uncertainty in the outcome of the decision but in the timescale available and given the urgency of POJL's request, seeking an increase which can be applied from 1 April 2018, a simple and pragmatic approach is appropriate at this stage.

CICRA also notes that if it is in a position to make better assumptions in a future price determination it can, in determining future prices, take into account any substantial changes to the assumptions outlined above and make appropriate allowance to either increase POJL's rate of return or return value to customers and port users through reduced prices to mitigate the effect of previous assumptions.

## 6. Consultation with customers

CICRA notes that POJL has not consulted customers to the extent proposed by CICRA. POJL has stated that it does not consider it appropriate to consult customers before it has certainty over the level of price increases which should be permitted.

CICRA does not consider that this represents best practice with respect to customer consultation. There is a need to engage with the wider audience of stakeholders and price setting, and stakeholders should be given an input to the process in a meaningful way in which their preferences can influence the outcome of the discussions. It is important that price setting should not simply become a bilateral discussion between CICRA as economic regulator and POJL as Jersey's principal licensed port operator.

CICRA considers that POJL must in future engage with customers and port users in a meaningful way in order to offer them the opportunity to have their say on the future investment and funding of Ports of Jersey Limited and to help it to strike the balance between service improvements and investments in Jersey Airport and Harbours and to help determine the priorities between parts of the business competing for limited resources.

Nevertheless, in the context of the specific projects put forward by POJL at this time, CICRA does have some sympathy with POJL's position in this case. It would appear to be difficult to engage meaningfully with consumers on the detail of IT projects which ultimately may not be discretionary investment. Given the urgency which POJL attaches to the requested increase and the issues under consideration, CICRA is in this case content to waive the requirement that POJL first consult its customers.

## 7. Determination of Price increase

CICRA has determined that POJL should be permitted to increase its overall prices for port operation services by the following amounts:

<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
1.3%	0	0	0	0

POJL should be permitted to increase the average price for its airport operations by 1.3% compared to the average prices charged for the same regulated services as 2017.

This is intended to enable POJL to carry out the urgent capital investment it has indicated it requires in 2018.

CICRA does not regulate prices for other services which do not comprise port operations.



## 8. Initial Notice and Next steps

The text of this Initial Notice is available for inspection at CICRA's Jersey office at:

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

Interested parties may make written comments on the content of this Initial Notice by writing to CICRA at the above address or by e-mail to [info@cicra.je](mailto:info@cicra.je). All representations should be clearly marked "Ports of Jersey – 2018 Price increase".

CICRA intends to make responses to the Initial Notice available for inspection. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential.

In the event that no substantive responses are received by close of business on Friday 26 January 2018, this Initial Notice will come into force on Monday 29 January 2018. If comments are received, CICRA will consider these before deciding whether to proceed with a Final Notice or to issue a revised Initial Notice.

**Annex 1: Ports of Jersey Limited: Request for a Price Increase April 2018**

[Please see attached pdf file provided by POJL]

## **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;
- (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.