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Jersey Competition Regulatory Authority
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Delivered by email

Dear JCRA,

Freight Logistics Market Study

Introduction

For Jersey Post the freight market to and off the Island has a direct impact on the cost of its Universal Service Obligation to the people and businesses of Jersey so it is in our interest to see an efficient freight market. With our recent acquisition of Woodside Logistics, we are also a direct player in the freight market itself. Hence our interest in the market study, its conclusions, the measures recommended and the timetable to address any issues found.

Jersey imports over 95% of goods and materials consumed (and the recent sale of Woodside Farms will remove the growing of over 3,000 tonnes of locally grown produce and will make the situation worse). Therefore, the efficiency and effectiveness of the freight market in ensuring robust and sustainable supply chains and keeping the price of goods low is critical to the island's economy and wellbeing of Islanders. A freight market that is open to fair competition, as the market study confirms, provides the best way for consumers and direct customers to see innovation, high quality and lower prices.

On page three of the consultation paper the table at 2.9 details the published terms of reference for the study. The first question is:

> "*1. Whether the current structure of the freight logistics market reflects economic fundamentals (such as the cost of transport) or other barriers and market failures*".

The independent market study conducted by Fisher Associates carried out on behalf of the JCRA, concludes clearly that the freight market in and for Jersey does not reflect "economic fundamentals" but reflects "other barriers and market failures". It identifies that in the supply chain there are three dominant players that control the efficiency of the market: Condor as the single monopoly provider of RoRo capability; Ferryspeed with over 80% of the ambient market and nearly 100% of the chilled market; and Ports of Jersey who own the land at the harbour. The actions, intended or otherwise, of these three dominant players has led to a situation where there is little effective competition and considerable barriers to entry and expansion for potential entrants and small players in the market.

We consider that there is an abuse of dominance that is played out through a combination of:

- Limited availability of warehousing and Ferryspeed's access to the majority of existing warehousing;
- A rate card that favours the dominant player and makes it much more difficult for smaller players to compete on a level playing field;

The measures proposed in the market study do not go far enough or quickly enough to address any potential anticompetitive behaviour or encourage competition which is leading to a lack of innovation, low quality of service and higher prices for the consumer at a time when the cost of the goods themselves are rising at a level unseen for over 30 years.

The market study

The report focuses almost entirely on warehouse space at the harbour as the critical factor in preventing an efficient and competitive market.

In as far as the report goes it identifies Condor Ferries and Ferryspeed as having market dominance, although the report fails to provide any quantitative impact assessment on consumers, freight customers and competitors of this market failure. It does conclude that competition is the best way to create innovation, improve quality and drive down prices. In which case creating a more level playing field to not just allow but encourage competition is the key to addressing market failures.

The study considers the freight market as a single market, and whilst this may be correct, there is no analysis of potential separate relevant markets sectors for time sensitive, RoRo v LoLo and ambient and chilled. Although in terms of the latter it does draw out that Ferryspeed has a near 100% in the chilled market sector. This is important as different solutions may be needed for each separate market sector.

The study also does not consider how the operation of the market leads to customers having to bundle their services with one provider, rather than being able to gain the benefits of competitive choice. The report states that purchasers "are unlikely to want to split them [ambient and temperature controlled] between different freight logistics providers". This is not our experience. Indeed, most customers would welcome the opportunity to diversify suppliers to ensure a more robust, resilient and sustainable supply chain.

Failure to address these issues could result in new entrants being forced to invest across the market, limiting competition and effectively preventing customers being able to manage risk across multiple carriers.

The report only considers road and sea freight and does not assess the air freight market. Whilst air freight is limited currently, there is no consideration if it could play a part in the future. Whilst capacity maybe limited is there a role it could play at the margin for time sensitive goods, as it did when Covid-19 test samples were flown to the UK for analysis?

Unfortunately, the report fails to consider a number of other issues fully that impact on the freight market, namely the role played by:

- Condor rate card: the report concludes that this could be an issue but that warehouse space is a more significant factor. The report fails to consider how the rate card in combination with the lack of warehousing creates a strategic barrier to entry and expansion. For example whether there is sufficient warehousing space available for a competitor to Ferryspeed to ever achieve the higher levels of discount and therefore be able to compete on a level playing field. Not addressing the combined impact of the rate card and lack of warehousing means that the report is significantly deficient and too one dimensional to give a proper assessment of the impacts on the market;
- stevedores in Portsmouth who are responsible for the loading of south bound ferries: the placing of trailers on the ferry is important in terms of speed of unloading and therefore the competitiveness of freight companies for inbound goods to Jersey (and is more important than stevedores on the outbound journey). Favouring the loading of a dominant player's lorries and freight at Portsmouth would provide an unfair competitive advantage when it is unloaded in Jersey that would favour that dominant player and would make it more difficult for smaller players to provide a competitive offering. The review has not reviewed this area to understand if there is a valid concern;
- the rules and regulations of the Government's DVS department: DVS impose restrictions on vehicle sizes, timings of freight movement etc that both drive up the cost of freight and reinforce the importance of space at the harbour and the creation of a dominant market player:
    - we understand that in Guernsey there is a "freight corridor" from the harbour at St Peter Port that effectively widens the available space for warehousing, taking it away from the harbour. If this was introduced in Jersey, then spaces further from the harbour could become feasible which would 'unlock' this barrier to competition;
    - the requirement to have non-standard width vehicles results in significant additional costs to have purpose-built vehicles. The size of the vehicle market in Jersey means these are bespoke rather than off the shelf and further benefits the incumbent player;

  There is an opportunity to work closely with DVS to understand what changes could be possible to help provide a more competitive freight market;

- Government and its wider policy: Government policy on such things as housing and office development could result in less space available at the harbour for freight, and the policy towards La Collette may also have an impact on the availability of adjacent land to the harbour for warehousing and trailer parking. Whilst it is absolutely for Government and States members to make these decisions, the impact, if any, of these need to be recognised and understood.

The recommendations

Neither the market report nor the consultation document considers an appropriate timetable to address market failures. They do not provide any certainty that the regulator would act decisively in the case of anti-competitive behaviour and do not provide a sound basis on which anyone would invest for the longer term in the market.

- **Barriers to competition**:

  It identifies two, space and the rate card, but focuses on warehouse space.

  In terms of space it is relying on a mixture of the Port Masterplan to create new space and a review of leases. No timescale is set for the implementation of the Masterplan, but the report states “This is going to take a few years to finalise and implement”. Competitors and new entrants do not have a few years.

The review of leases is only of value if Ports has the legal ability to cancel or reassign them. We are unaware if during the market study the existing leases were reviewed by JCRA consultants or lawyers to see if this was a realistic and timely option before it was recommended. Where Ports do have the ability to give notice in respect of the New North Quay, it has failed to do so despite requests for additional space from competitors to the dominant player.

The report also fails to consider the realisation of space for the dominant player as business is lost from the Island or to competitors. The report refers to development space but does not consider reassigning development space if it remains undeveloped.

The second recommendation in respect of a lack of space is to introduce an intermediary which freight companies would pay to handle their goods for them. Given the few players in the market are 3PL providers themselves, this would in effect ask existing players to give their business to another third party. There is also no analysis of where margins are made or assessment of if there is sufficient room in the margin to bring in an additional player. It is highly probable that this would introduce added complexity and cost that would be passed on to freight customers and consumers. The only example of this cited in the market study was Liverpool (rather than any of the comparator island markets which have much more in common with Jersey); Liverpool is clearly a significantly larger port with significantly more freight going through it and a larger market to share.

No consideration is given to JCRA instructing Ports of Jersey to review and reassign leases, and therefore giving Ports the power to do so, or forcing the existing dominant player to release sites as happened when Ferryspeed purchased Channel Express in 2005.

The report refers to non-freight businesses that have space at the harbour but does not go as far as recommending measures to ensure that scarce land in the harbour area is reserved for businesses that have no alternative but to use that land, for example by a restriction of the type of tenants that are allowed to rent space.

By dismissing the importance of the Condor rate card, no recommendations are made about ensuring that discounts are cost reflective or adjusting the steps between discount bands to encourage new entrants rather than being a barrier to competition. Given the low margin nature of the market, giving smaller players access to discounts at lower volumes would encourage investment and benefit competition.

- **Lack of diversification:**

  We support the recommendations in terms of encouraging alternative LoLo capability and adding direct to France routes. We are pleased to see that Condor has introduced south bound freight services and there is a new entrant to the market providing limited services. However, it will take time to wean Jersey businesses from trading with the UK and the JCRA and Government should look at providing a level of financial support to ensure we have greater robustness in the ferry freight operation.

- **Understanding and driving improvement**

  We consider that these measures are unnecessary and divert attention from JCRA taking tougher decisions. Most freight businesses will be providing performance data to their customers and because the market is so small it is relatively easy to see where the supply chain is failing. We are also unsure how realistic these measures will be. It would have been useful if the consultants provided examples of the type of data that the comparator markets provide, what forums they have and the benefits those comparator markets have found from these.

  Having said that, there is a strong case for a Freight Trade Association to consider government policy and environmental issues and a be a public voice for the industry.

Summary

The report concludes that there is clear market failure, that there are dominant providers and therefore there is potential for market abuse. We consider that the evidence presented merits a proper competition investigation. The measures put forward and the timescales envisaged will mean the failures will not be addressed, the status quo will continue, competition will be limited and the market will continue to have the threat of low quality, no innovation and higher prices.

Given the statistic that over 95% of goods and materials consumed are imported it seems to Jersey Post somewhat complacent to continue with a failing market and not take significant measures to address the report’s concerns. Coming out of Covid now is the time to create a sustainable, robust and competitive freight market for the Island. It would also be one concrete action to address the threats of higher prices for consumers.

Yours sincerely

Tim Brown

Tim Brown
Chief Executive