



Case P-008

Regulatory Review of Air and Sea Port Operations

Non-Statutory Call for Information

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1. Executive summary

- 1.1 This document is the Jersey Competition Regulatory Authority's (**the Authority**) Non-Statutory Call for Information (**CFI**) for the regulatory review of port operations and services (**Regulatory Review**).
- 1.2 Port operations and services play a critical role in our society and almost everyone in Jersey is reliant upon these services in some way. To that end, the Air and Sea Ports (Incorporation) (Jersey) Law 2015 (**the 2015 Law**) enables the Authority to license port operations in Jersey. The Authority's primary duty under this law is to best protect and further the interests of users of port operations, where appropriate, by promoting competition in the provision of port operations. In addition, the Authority is required to ensure provision is made to satisfy all reasonable demands, both current and prospective, for port operations and services, and that they are provided efficiently and effectively.
- 1.3 Ports of Jersey Limited (**PoJL**) is the company established by the 2015 Law that owns and operates the airport, harbours and marinas in Jersey. It is 100% owned by the States of Jersey and currently the only licensed port operator in Jersey. The primary object of PoJL is defined in the 2015 Law as to provide, or ensure the provision of, safe, secure and efficient port operations for Jersey. PoJL is also responsible for the discharge of certain Public Service Obligations (**PSO**) under the 2015 Law.¹
- 1.4 It is the fourth year of operation of the current regulatory regime governing air and sea ports, and the Authority is now undertaking a review to give effect to a revised regulatory framework. Prospective infrastructure and commercial developments in the Ports sector will be included in consideration of the revised regulatory framework. In this period of potential significant change in these markets, the Authority's aim is to ensure the regulatory framework remains fit for purpose and is operating effectively (in the interests of all users). This document is the first step in the next review.
- 1.5 The Authority is not making any policy proposals at this stage. Instead, the Authority invites views on the main themes to be considered as part of the regulatory review:
 - **Theme 1: The interests of users;**
 - **Theme 2: The price control and quality of service; and**
 - **Theme 3: The future regulation of port services.**
- 1.6 The Authority is seeking responses to the questions set out at the end of this document by 28 April 2023. The Authority intends to publish a full consultation on the future regulation of port services in the Summer of 2023 before concluding the regulatory review in 2024.
- 1.7 This document is organised as follows:
 - Section 2: Background
 - Section 3: Themes to consider in the review
 - Section 4: Call for information questions and next steps

¹ PSO do not form part of Port Operations as covered by the PoJL Licence. For information, these obligations relate to different functions, for example: management of the Channel Islands Control Area, and coordinating, or providing resources for coordinating, maritime search and rescue within the Jersey Search and Rescue Region. There are also other functions relating to the PSO.

2. Background

What are Port Operations?

2.1 Article 2 of the 2015 Law defines Port Operations 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 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,*
- c. *the management, maintenance and operation of such facilities and services.*

2.2 Airport Operations means any operation falling within the definition above and carried out in relation to an aerodrome or to travel and transport by air. Harbour Operations means any operations falling within the description above relating to a harbour or travel and transport by sea.

The Authority's role in Port Operations

2.3 Article 7 of the 2015 Law provides that a licence issued by the Authority is required to carry out port operations. Licence conditions may relate to issues such as the management and conduct of port operations, standards of performance, competition in relation to port operations, co-location and sharing of services and facilities, complaints procedures, and prices which may be charged where a licensee holds a dominant position.

2.4 As set out in the Authority's Strategic Plan², the Authority's goal is to continue to deliver effective supervision of port operations and services:

"The airport and sea port are critical to Jersey's national infrastructure. Our objective is to protect and further the interests of users of port operations, where appropriate by promoting competition. This objective will be met in light of the impact of the pandemic on demand for services and the long-term investment requirements."

2.5 The Authority is charged with regulating air and sea port operations to ensure that current and future users' interest are effectively protected. The existing regulatory policy, designed to meet that objective, will remain in place until January 2025. This current review is therefore intended to enable any adjustment to be made, primarily to the price control, such that a second five year price control can then take effect from January 2025.

2.6 The Authority will also progress work on the current Quality of Service (**QoS**) regime, with a view to developing proposals for a revised regulatory approach on QoS. The Authority intends to progress this work on QoS in tandem with work on the price control, though depending on price control design final proposals may be developed after completion of the price control work.

² See: <https://www.jcra.je/strategic-plans/strategic-plan/strategic-plan/>

Ports of Jersey Limited

- 2.7 PoJL established by Article 3 of the 2015 Law, and is the company that owns and operates the airport and harbours in Jersey. It is currently the only licensed Port Operator in Jersey.
- 2.8 The 2015 Law set out the ‘purpose’ and objective of PoJL. It states that *“the primary object of POJL shall be 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.”* In addition, the 2015 Law requires that, *“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.”*
- 2.9 As noted in the Executive Summary, PoJL is also required to meet a series of public service-type obligations. These PSOs are not “commercial port operations” and are not therefore licensed, and not subject to direct economic regulation by the Authority. Nonetheless, these PSO functions include key harbour and other activities, which do form a significant part of POJL’s overall operations.
- 2.10 In view of PoJL’s primary object and other matters, the role of PoJL is clearly vital to the economic well-being of the Island providing facilities for commercial air and sea port operators as well as leisure users and the general public. Moreover, as the business of the PoJL supports vital transport links (and related facilities and services), helping to develop the right balance of supply and demand (and relatedly, costs and prices) will be critical to an effective and sustainable regulatory outcome.

The 2018/19 Review and recent market developments

- 2.11 The Authority last reviewed the regulatory framework in 2018/19 (**2018/19 review**).³ This review followed the incorporation of PoJL in 2015, and an initial framing consultation - conducted by CICRA - in 2016, which initiated work on the general regulatory and licensing framework. The Authority then undertook a thorough review, and consultation process on separate Draft Decisions issued in both 2018 and 2019.
- 2.12 A Final Decision was then issued in July 2019 setting out the precise Licence conditions applying to PoJL in respect of the price control and related matters. For example, the current Licence contains conditions give effect to:
- a. a five-year price control allowing Ports of Jersey Limited (PoJL) to increase product prices for regulated services (that is, where PoJL has been found dominant) annually throughout the five year price control period by a maximum of Jersey RPI +1% (applied to each charge to customers); and,
 - b. to facilitate reporting on the performance of the business as whole, PoJL must also manage cumulative regulated and non-regulated revenue on a ‘single till’ basis within 5% ‘tramlines’ (both positive and negative).

³ Public versions of all documents referenced in this section can be found on the Authority website at: <https://www.jcra.je/>

The price control is monitored on an annual basis to ensure PoJL's compliance with the Licence conditions.

- 2.13 Similarly, throughout the same period there has been ongoing monitoring of PoJL's Quality of Service performance, with results issued on an annual basis. In May 2018, the Authority issued a final notice (CICRA 18/22) directing Ports of Jersey Limited (PoJL) to monitor and report certain quality of service information on a regular basis. The first reporting period was 1 July to 30 September 2018. PoJL has since provided its quality-of-service report on a quarterly basis to the Authority, and this information is on both the PoJL and the Authority website.
- 2.14 To date, the current regulatory framework has proved stable and workable, and it has not been necessary for the Authority to intervene on any aspect of the price control, or the quality-of-service measures. However, while the existing framework has proved to be largely operationally stable, both market and regulatory developments indicate that current policy arrangements require further review.
- 2.15 From a structural and general infrastructure-supply perspective, PoJL operations and services have not significantly changed over the course of the first years of the current regulatory framework. However, this has of course been in the context of the Coronavirus Pandemic, and more recently, relatively difficult economic conditions.
- 2.16 While the Pandemic impacted demand for PoJL services, consistent with the wider economic impacts of the pandemic, the Authority understands that demand generally for port services is returning to pre-pandemic levels and may be forecast to increase over the course of the next regulatory cycle. The current and future forecast demand will be a key factor in the development of any revised price control (from 2025).
- 2.17 Looking ahead, the Authority understands that PoJL have an ambitious programme of work. For example, a significant level of capex - on the harbour development - is to be taken forward, while a proposed airport redevelopment plan (to 2027), will also require additional capex and associated activities. These programmes are intended to start within the current regulatory cycle, albeit with investment projected across the current and next regulatory cycle (post-2025).
- 2.18 From the perspective of regulatory policy and the current framework, the Authority must continue to ensure the framework and any associated Licence Conditions are both appropriate and proportionate. Therefore, this review will also consider whether the current regulatory framework might be refined and/or amended to enable more proportionate, targeted and effective regulation.

3. Themes to consider in the review

- 3.1 In this period of potentially significant infrastructure development, the Authority's aim is to ensure the regulatory framework is fit for purpose and effective. This review offers an opportunity to examine the wider issues of investment, innovation and accessibility of port operations and services over both the short and longer term.
- 3.2 The Authority has not, at this stage, set out any thoughts on how the review might change the current approach to regulation. The aim of the review is, on a forward-looking basis, to set out the high-level framework on how best the Authority can continue to meet its statutory objectives, and deliver effective regulation of port operations and services.
- 3.3 The Authority has identified three themes where it is seeking views, as follows:
 - **Theme 1: The interests of ports users**
 - **Theme 2: The price control and quality of service; and**
 - **Theme 3: The future regulation of port operations.**

Theme 1: The interests of ports users

- 3.4 How well are the general interests of ports users being met, whether as consumers of the airport or sea port operations? While overall demand for such services will fluctuate and change, there is no question Islanders and businesses will continue require these critical services – a question for consideration is therefore what steps, if any, should be taken to ensure PoJL continues to serve the interests of users?
- 3.5 In the absence of competition in the market, and the ability for consumers to choose between different suppliers, it is important that regulation acts as an effective consumer proxy. That is, ensuring the regulated company supplies services efficiently and at an appropriate level of quality. In this context, do PoJL's current obligations on quality of service require further consideration, or refinement toward more consumer-oriented metrics? Or, should there be fewer but more stringent quality of service obligations and measures?
- 3.6 More generally, and in the context of availability and accessibility, the Authority is required also to ensure that PoJL meet all reasonable demand. Therefore, is there a minimum required level of service (or number of services), that the Authority should consider as part of the regulatory framework? Relatedly, should the Authority's regulatory approach be designed to promote further investment in enhanced facilities and services?
- 3.7 The Authority is keen to hear views on how the interests of port users can continue to be best met, and if any changes are required to ensure they are met going forward.

Theme 2: The price control and quality of service

- 3.8 Beyond ensuring that these important services remain available and accessible in the future, there is the question of affordability and/or value for money. The current price control effectively protects individuals and businesses, and simultaneously prevents PoJL from exercising its market power. However, price controls also generally allow for efficient investment and efficient operational expenditure, this may of course result in general price increases (for certain or all services).

- 3.9 To note, consistent with the Authority's duties (and indeed, PoJL's primary object), the Authority will be required to consider and 'test' the efficiency of any assumed expenditure. To the extent expenditure impacts the cost of operations and the ensuing price of services, all expenditure must be considered in the context of efficient and effective delivery.
- 3.10 Further, where efficient investment and future expenditure is set to be incurred, and this is above recent trend, should the Authority consider adopting a different approach to the next price control? For example, protecting users from higher price increases on so-called 'core' products and services, while allowing PoJL some pricing flexibility on other 'non-core' services?
- 3.11 As work will be progressed on both the price control and the QoS regime simultaneously, and given the likely interaction between different levels of quality, cost and price, should the Authority give consideration to a link between the price control and QoS? For example, penalties for a failure to meet certain QoS measures, and/or rebates where QoS measures have not been achieved?
- 3.12 Again, the Authority is keen to hear views from respondents on the proposed future price control arrangements, and whether alternative approaches to PoJ's pricing should also be considered.

Theme 3: The future regulation of port operations

- 3.13 The Authority has a duty to promote competition where appropriate such that it is in the best interests of ports users (and the economy of the Island). Competition can strengthen the incentives on PoJL to improve efficiency and reduce its costs, it may also benefit customers through increased innovation and value-added services. However, institutional, economic and other factors effectively preclude the development of competition in port operations and services
- 3.14 Nevertheless, subject to analysis and consideration, there may be some port operations and services that do not require continued direct economic regulation, or which could be subjected to a different form of regulation. This is also the case where services are manifestly different in nature, or which might lend themselves to a more commercial approach. For example, further consideration may be given to the current regulation of airport operations relative to sea port operations, or the regulation of marine leisure activities relative to commercial freight.
- 3.15 Lastly, it is now seven years since the incorporation of PoJL, and nearly four years since the current regulatory framework was given full effect; the Authority therefore anticipates there being some changes to the current regulatory framework. Indeed, policy change is consistent with best regulatory practice in other jurisdictions. Where the evidence and information indicate changes may be required to regulation, whether to keep pace with the market or for other reasons, these changes will likely result in a more targeted and effective regulatory regime.
- 3.16 The Authority is keen to hear views on what regulation is needed for port operations and services going forwards and whether is any scope for reduced regulation on some services.

4. Call for information questions and next steps

- 4.1 The Authority invites written views and comments on the questions raised below, to be made by 5pm on 28 April 2023. Responses can be submitted by email to info@jcra.je or alternatively in writing to:

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

- 4.2 All responses should be clearly marked: “Regulatory review of air and sea ports operations”. The Authority’s normal practice is to publish responses to consultations on its website. It should be clearly marked if any part of a response is held to be commercially confidential and a redacted version also supplied for publication.

Box 1: Call for information questions

Question 1. Do you think the interests of Ports users are currently being met? If not, please explain what changes you think should be made, with supporting evidence.

Question 2. Do you think the current price control arrangements meet the interests of Ports users? Should the Authority consider alternative approaches to PoJL’s pricing and the price control?

Question 3. What regulation do you consider is needed for port operations and services going forwards? Please explain any changes you think should be made to the existing approach, with supporting evidence.

Question 4. Do you have any other comments in response to this Call for Information? If so, please provide your views with supporting evidence?

- 4.3 The Authority’s approach to consultations was set out in an Information Note in July 2018.⁴ The first stage is a non-statutory process. This call for information is the first step in this process and the Authority intends to publish a full consultation (Draft Decision) on the regulation of air and sea port operations in Summer of 2023, this will be followed by a Final Decision in late 2023/early 2024.
- 4.4 The second stage of the process is the statutory process, which is required when carrying out certain specified regulatory functions, such as implementing changes in licence conditions for PoJ. The Authority intends to implement the required statutory processes in 2024.

⁴ See: <https://www.jcra.je/media/597858/g1369gj-regulatory-consultation-process-information-note.pdf>