



Case P-008

Regulatory Review of Air and Sea Port Operations

Preliminary Policy Analysis: Information Note

Document No: JCRA 23/48

Date: 09 August 2023

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1. Overview

- 1.1 This document is an Information Note on the Jersey Competition Regulatory Authority's (**the Authority**) regulatory review of port operations and services (**regulatory review**). The Information Note is intended to summarise progress to date, the outcome of the call for information (**CFI**) and stakeholder engagement, and provide some initial insights into the Authority's preliminary policy analysis.
- 1.2 This Information Notes is organised as follows:
 - Section 2 provides the background to the regulatory review;
 - Section 3 describes the Authority's Process & Approach;
 - Section 4 is a high-level summary of the CFI and initial stakeholder engagement;
 - Section 5 sets out preliminary policy analysis;
 - Section 6 sets out next steps.

2. Background

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 The primary object of PoJL, defined in the 2015 Law, is 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
- 2.5 It is now in the fourth year of operation of the current regulatory regime governing air and sea-ports, and the Authority is undertaking a review to give effect to a revised regulatory framework (from January 2025). The regulatory review was formally launched in February 2023 with the publication of a Call for Information², and the Authority has since engaged closely with PoJL and other stakeholders in developing a revised regulatory framework.
- 2.6 In this period of significant and ongoing change, including PoJL's prospective infrastructure investments and development, 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 Information

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 CFI can be accessed here: [Regulatory Review of Air and Sea Port Operations - Call for Information | JCRA](#)

Note represents a further milestone in the regulatory review. The Authority intends to publish a full consultation - Draft Decision - on the future regulation of port services later in the year, before concluding the regulatory review in 2024.

3. The Authority's Process and Approach

- 3.1 Following launch of the regulatory review in February 2023 the Authority has made good progress against each of the initial project milestones. The CFI process was successfully completed in April, and this followed initial Board and Executive level meetings with PoJL in March. In addition, following a competitive tender, in April 2023 the Authority commissioned a delivery partner (EY) to assist with key workstreams underpinning the regulatory review.
- 3.2 Throughout May and June, the Authority worked alongside EY, and closely with PoJL, to develop a comprehensive and accurate set of data and information to help inform the necessary financial analysis and the wider policy framework. The Authority's engagement with PoJL has been both constructive and helpful. Moreover, bilateral sessions held with PoJL during July enabled thorough and transparent discussion on the general approach, key financial aspects, and potential high-level regulatory outcomes.
- 3.3 In early July, the Authority also met with other key stakeholders in the sector. These sessions were important in developing our understanding of the sector, and provided a necessary - and wider - view of all the issues likely to be required to be considered as part of the review. The outputs from the various stakeholder sessions are discussed further in Section 3 below.
- 3.4 The Authority has effectively used this initial period of the review to assimilate and review a significant amount of data and information, formulate a broad financial template in which to review the financial data, and to develop an initial regulatory framework (to be tested through the review process).

4. The CFI and Stakeholder Engagement

- 4.1 The CFI and subsequent engagement with stakeholders have been instrumental in helping to inform the Authority's initial views. We received two written responses to the CFI, from PoJL and Ferryspeed CI Limited (**Ferryspeed**). While respondents to the CFI raised different issues and approached the CFI from a different perspective, both were generally supportive of the requirement for a regulatory review and the broad approach.
- 4.2 Many of the comments and themes arising in the PoJL response to the CFI largely fell within the broader framework of thinking, to date. PoJL's response also presented points on the importance of Ports services, and the objectives established through incorporation in 2015. In the context of PoJL's prospective infrastructure investments, it raised key issues around the future regulatory pricing framework, and the different characteristics of maritime and aviation markets.
- 4.3 Ferryspeed's response to the CFI focussed on PoJL's proposed infrastructure investments and the associated planning process. Ferryspeed's response indicated that while they were in constructive discussion with PoJL, they also had concerns as to the suitability of the proposed plans from the perspective of Ports users and customers. This issue was further discussed with Ferryspeed during stakeholder engagement in July (see below).

- 4.4 In addition to the consultation on the CFI, further direct engagement has been undertaken with PoJL and other key stakeholders. In late June and early July, we met with Condor Ferries, Blue Islands, Jersey Business, Ferryspeed and key representatives from the Government of Jersey.
- 4.5 These sessions were helpful in further understanding shareholder considerations, and importantly, Ports user's perspectives on the current regulatory framework. More generally, the sessions provided additional insights into the actual and potential commercial and operational issues arising in the sector, viewed also from the 'demand side' of the market.
- 4.6 As work progresses toward publication of a Draft Decision later this year, all stakeholders will have further opportunity to input to the review and comment on any policy proposals. Indeed, stakeholder engagement and input are critical to the regulatory review.

5. Preliminary Policy Analysis

- 5.1 The aim of the review is, on a forward-looking basis, to set out the high-level framework on how the Authority can best continue to meet our statutory objectives and deliver effective regulation of port operations and services. To help meet these objectives, and in light of the significance of the sector to Jersey, the Authority believes it is in the interests of both PoJL and other stakeholders that an early view of the potential future regulatory framework from January 2025 is provided at this stage.
- 5.2 However, the Authority is not setting out definitive views on how the review might change the current approach to regulation. The following preliminary policy analysis represents initial thinking only and may be subject to material change. Detailed and comprehensive analysis of each policy and financial aspect of the review has not yet been undertaken and therefore the preliminary analysis set out below should therefore be considered illustrative.
- 5.3 In the absence of competition in the market, and the ability for users and consumers to choose between different suppliers, it is important that regulation acts as an effective consumer proxy. Therefore, the Authority is not minded to propose any structural changes to the existing regulatory approach - PoJL would continue to be subject to economic regulation (as the only Licensed operator of Ports services and operations).
- 5.4 In the context of affordability and/or value for money, the current price control acts to protect individuals and businesses, and simultaneously prevents PoJL from exercising its market power. The Authority is progressing work with a view to developing a revised and refined price control (to take effect from January 2025). At this stage, the Authority would be minded-to propose a similar construct and format, i.e., an RPI +/- X price control, which takes account of PoJL's proposed infrastructure investments.³
- 5.5 Relatedly, the Authority is also minded to adhere to a single-till approach to any future price control; this would be a continuation of the existing policy, whereby all of PoJL's relevant business activities are considered within the context of the price control. However, an alternative methodological approach is also being developed and this may see proposed

³ The proposed investment expenditure impacts the cost of operations and the price of services; material investment and expansion of PoJL assets, would suggest a future price control at the prevailing rate, or potentially marginally above.

refinements to the price control itself, e.g., protecting users from higher prices on so-called ‘core’ products and services, while allowing some pricing flexibility on other ‘non-core’ services.⁴

- 5.6 In respect of quality of service regulation, to which PoJL is also currently subject, the Authority is again minded to revise and refine the current framework. Given the importance of quality of service to users, the Authority plans to consult separately on the refinements to the framework in early 2024 and then incorporate the conclusions of this process into the final statutory stages of the regulatory review. This will ensure the regulatory review fully reflect the expectations for quality of service on a forward-looking basis.
- 5.7 As discussed above, the Authority anticipates there being some changes to the current regulatory framework. However, any changes will be determined by the evidence and information, and where changes are required, these will likely result in a more targeted and effective regulatory regime. An important consideration will be the changes arising from PoJL’s proposed investments and developments (and the related planning processes). Subject to these and other considerations, the Authority plans to issue a Draft Decision later in 2023 setting out specific views on the regulatory framework and regulatory policy.

6. Next steps

- 6.1 The next stage in the review will be the issuing of a Draft Decision, which will include a comprehensive discussion of the regulatory framework and financial issues. This will be issued later in 2023 for Consultation. As set out above, a separate Draft Decision will be issued in early 2024 on the proposed refinements to the quality of service regime. These two strands will then be brought together in a Final Decision. This will also provide an outline of the responses to the Consultations and how the Authority has taken them into account in its decision making. It is envisaged this will be published in summer 2024.
- 6.2 The Final Decision will be accompanied by an Initial Notice. This represents the statutory process, which is required when carrying out certain specified regulatory functions. A decision to give direction to PoJL, with respect to the prices it can charge and the quality of service regime it must follow, is the exercise of a specified regulatory function pursuant to the Law. It is envisaged that the statutory process will be completed in autumn 2024, and the new framework, both pricing and quality of service, will come into effect from 1 January 2025.

⁴ Consistent with regulatory precedent and best practice we are developing a Regulatory Asset Base (RAB) model; a RAB-based model enables efficient cost-recovery, it determines the value of the assets of the regulated entity and is used to determine the allowed returns over a given period. For the avoidance of doubt, all regulated and relevant services would remain subject to a form of price control.