



Case P-008

Regulatory Review of Air and Sea Port Operations: Pricing Framework

Non-statutory Draft Decision

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1 Executive summary

- 1.1 This document is the Jersey Competition Regulatory Authority's (**the Authority**) non-statutory Draft Decision for the pricing framework which will apply to Ports of Jersey Limited (**Ports of Jersey**) from 1 January 2025 to 31 December 2029. In this Draft Decision the Authority is consulting on a range for a future price control on Ports of Jersey of Jersey Retail Price Index (**RPI**) + 0% to RPI + 3%. This Draft Decision seeks views on the following:
- Structure of the price control - For example, the use of a single till, the use of an RPI 'X' construct, as well as a five year duration for the price control. These matters are discussed in chapter 3.
 - Key price control parameters the Authority will use to determine the level of the price control - for example, capital expenditure, the cost of capital, inflation and efficiency. These matters are discussed in chapter 4.
 - The level of the price control (value of 'X') - the proposed price control, the scenarios used to calculate the value of 'X' and policy options in case of project delay. These matters are discussed in chapter 5.
- 1.2 The current price control allows Ports of Jersey to increase prices by a maximum of RPI + 1% annually. However, the current price control will expire on 31 December 2024. Therefore, the Authority is required to develop a new price control as part of the regulatory review of air and sea port operations (**the Review**).¹
- 1.3 The new price control is being developed in the context of heightened economic uncertainty, and Ports of Jersey is also planning to undertake significant capital expenditure; projected capital expenditure is greater than £250m. This capital expenditure is transformational in nature, involving major investment in both the airport and seaports. While the plans have been approved by Government, development and implementation remains subject to formal planning consent and the risks and uncertainties typical of large infrastructure projects.
- 1.4 At this stage, the Authority's proposals reflect this heightened level of uncertainty and the additional complexities arising from a material increase in the scale and value of Ports of Jersey's assets.
- 1.5 The Authority's Final Decision on the future price control is scheduled for publication in autumn 2024. This will take full account of stakeholder responses to this Draft Decision (see chapter 7 for how to respond), and any relevant market developments.
- 1.6 Note, in the event there are material changes to the Ports of Jersey Strategic Business Plan, e.g., significant changes to the schedule and level of the proposed investments or delays in respect of planning approvals, the Authority may consider a different approach. This may include consideration of a form of rollover price control for a given period, or a revised price control based on the latest available information and evidence.

¹ All case documents can be found at: P-008 [Regulatory Review of Air and Sea Port Operations | JCRA](#)

2 Background

- 2.1 The Air and Sea Ports (Incorporation) (Jersey) Law 2015 (**the Law**)² sets out the requirement for the Authority to regulate air and sea port operations, to ensure that current and future users' interest are effectively protected. Ports of Jersey is the only Licensed supplier of Ports operations and is subject to economic regulation, including a price control.³
- 2.2 Article 7 of the Law provides that, subject to certain exceptions, no person may carry out port operations in Jersey unless they hold a licence issued by the Authority. The primary duty of the Authority is to 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. Further detail on the Legal and Licensing Framework is included as Annex 1.
- 2.3 The rest of this background chapter covers the:
- Consultation process;
 - Ports of Jersey;
 - Ports of Jersey investment programme;
 - Current pricing framework;
 - Policy framework; and
 - Structure of this document.

Consultation process

- 2.4 The Authority's formal consultation processes are conducted in accordance with an Information Note released in July 2018.⁴ The note outlines the process to be undertaken before carrying out certain regulatory functions under the Law, in accordance with the required statutory process.
- 2.5 Initially, there is a non-statutory process. For this review, the first stage was the release of the call for information in February 2023, and this process was supported by structured engagement with key stakeholders in June/July 2023. A summary of the responses and engagement is provided in Annex 2.⁵
- 2.6 This was followed by an Information Note issued in August 2023 setting out the Authority's preliminary policy analysis. The August Information Note was followed by a second Information Note issued in December 2023 providing an update on the Review and next steps. This set out that the Authority had planned to release the Pricing Framework Draft Decision in October 2023, however at Ports of Jersey's request the Authority postponed publication of the Draft Decision. This was to allow the updated Ports of Jersey Strategic Business Plan to be taken into account.

² See: [Air and Sea Ports \(Incorporation\) \(Jersey\) Law 2015 \(jerseylaw.je\)](#)

³ See: [Ports of Jersey Licence](#)

⁴ See: [Regulatory Consultation Process Information Note](#)

⁵ The Authority notes that a separate consultation will be published on the quality of service regime (the second key area of the regulation of Ports of Jersey). This will follow a separate timetable to the pricing framework and further details on this will be set out in that document.

- 2.7 In developing this Draft Decision the Authority has been supported by a delivery partner, EY. Accompanying this Draft Decision is the EY report, '*Regulatory review of air and sea port operations: Analysis to inform price control considerations*' (**EY report**), which is cross referenced where appropriate.
- 2.8 This Draft Decision will be followed by a Final Decision. The Final Decision will outline the responses to the Consultation and how the Authority has taken them into account in its decision making. It is envisaged the Final Decision will be published in Autumn 2024.
- 2.9 Once the non-statutory process is completed, the Authority will issue an Initial Notice under the Law, and follow the statutory process to ensure the new framework will come into effect from 1 January 2025.

Ports of Jersey

- 2.10 Ports of Jersey is the company established by Article 3 of the Law which owns and operates the airport, harbours and marinas in Jersey. It is 100% owned by the States of Jersey and the only licensed port operator for Jersey.
- 2.11 The Law sets out the 'purpose' and objective of Ports of Jersey. It states that: '*the primary object of Ports of Jersey Limited 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.*'
- 2.12 In addition, the Law requires that: '*in carrying out commercial port operations Ports of Jersey Limited shall act in the manner best calculated to secure sustainable growth in the economy of Jersey in the medium to long term.*'
- 2.13 It was incorporated in 2014 and the case for incorporation set out that: '*The primary objective of incorporation is to enable the Ports of Jersey to continue to provide essential public services to the Island in a sustainable manner and avoid a significant capital shortfall that could incur additional taxation.*'⁶
- 2.14 Building on this, it was set out: '*A key objective of the incorporation programme is for the Ports to achieve self-sustainability over the long-term, thereby removing a reliance on the States Treasury to fund shortfalls. Furthermore, the principles underpinning the incorporation programme support the resource requirements outlined in the States Strategic Plan by offering the mechanism to provide sustainable services to the Island, and by supporting the ability to plan expenditure on capital and infrastructure with greater certainty.*'⁷
- 2.15 Its relationship with Government is summarised in a Memorandum of Understanding with the Minister for Treasury and Resources.
- 2.16 Ports of Jersey is also responsible for the discharge of certain public service obligations. These do not form part of port operations as covered by the Licence, and are separately specified and enforced by governmental stakeholders (and can only be amended by Order of the Minister). These obligations are set out in Article 6 of the Law and are summarised in Annex 1.

⁶ See: [Ports of Jersey Incorporation](#)

⁷ See section 3.2.2: [Ports of Jersey incorporation case document](#)

2.17 A high level overview of key operational statistics for Ports of Jersey over the last four years is included in the Table below, adapted from Ports of Jersey’s annual Reports (up to 2022).⁸ It is important to note the impact of the Covid-19 pandemic in 2020 and 2021.

Table 1: Key operational statistics for Ports of Jersey

Key metric	2019	2020	2021	2022
Operational				
Air passengers	1,716,000	416,000	671,000	1,321,000
Sea passengers	648,000	87,000	146,000	372,000
Freight/fuel imported (tonnes)	524,000	475,000	496,000	488,000
Financial				
Turnover (£)	48,667,000	30,155,000	36,179,000	45,506,000
EBITDA (£)	12,412,000	- 8,238,000	- 692,000	5,745,000

Ports of Jersey investment programme

2.18 Ports of Jersey is required to produce a periodic Strategic Business Plan for approval by the Shareholder, the Government. This is a significant process and the Plan includes an assessment of the environment Ports of Jersey is operating in, the key objectives, a review of risks, key performance indicators and planned investment and budgets.

2.19 The most recent plan, developed in 2023 has been reviewed and approved by Government.⁹ This approved Strategic Business Plan has been used as the basis for assessing the pricing framework set out in this Draft Decision and it includes two major transformational investment programmes over the coming price control:

- The Harbour Masterplan - This is a targeted plan of improvement, mainly focusing on key ports infrastructure at St Helier Harbour. A major element of the Plan is the redevelopment of Elizabeth Harbour, which is nearing capacity. This will focus on freight operations, creating further capacity in the island’s supply chain. Regeneration is also planned for the Old Harbours and support will be provided for commercial activities making use of the maritime environment and for the commercial customers using the Victoria Pier.¹⁰
- The Airport Masterplan - This is focused on enhancing air passengers’ experience. This sets out internal improvements and changes to the arrivals and departures terminals. Further improvements are planned for the passenger terminal and the wider airport, and these are scheduled to be completed in the next price control period.

2.20 Currently the Harbour Masterplan application is still subject to planning approval.¹¹ Certain elements of the Ports of Jersey Strategic Business Plan, such as the airport real estate strategy,

⁸ See: [Ports of Jersey Limited, Annual Report 2022](#)
⁹ The plan was approved at the March 2024 meeting of the Ports Policy Ministerial Group.
¹⁰ See: [Planning Application Documents \(gov.je\)](#)
¹¹ See: [Planning Application Detail \(gov.je\)](#)

and some elements of the Airport Masterplan also require planning approval.¹² In November 2023, Ports of Jersey's planning application was revised to cover changes to freight handling, pedestrian access and wider public areas, the Distribution Centre and technical project aspects such as dredging.¹³

- 2.21 To support the investment in the two Masterplans, in July 2023 the Minister for Treasury and Resources decided to approve Ports of Jersey entering into debt financing arrangements of up to £150 million.¹⁴

Current pricing framework

- 2.22 In October 2016, the Authority issued a Final Notice (CICRA 16/41)¹⁵, this determined that Ports of Jersey had significant market power in the provision of airport services (excluding private users), the provision of airport operation services to private users, commercial sea operations, and the provision of sea port operation services to marine leisure port users.

- 2.23 Subsequent to this, the current pricing framework was established in July 2019 (CICRA 19/30). A key underlying principle of the existing price control was: *'Ports of Jersey should generate revenues from investments and operations which cover the actual cost of those investments, and those revenues should be linked closely to costs.'*

- 2.24 Consistent with this, the following structural approach to the price control was adopted:

- A five year control, from 1 January 2020 to 31 December 2024;
- The use of an RPI+/- X control;
- A single till price control;
- The use of cumulative revenue management, with tramlines, between +5% and -5%; and
- Ongoing monitoring on an annual basis to ensure compliance with the control.

- 2.25 Within this construct, the current control was set on an RPI+1% basis. It covers all regulated and non-regulated activities, across all of the port operations, except for public service obligation activities. It allows Ports of Jersey to annually increase product prices for regulated services – throughout the five year price control period – by a maximum of Jersey RPI+1% (applied to each charge to customers). The reference for RPI is the September measure in each preceding calendar year, for example the price increases for 2024 were set with reference to the September 2023 measure for RPI.

- 2.26 The current price control has been in operation during a period of high inflation, which has seen high nominal price increases in line with the high levels of RPI experienced in Jersey, which for price control purposes peaked at 10.4% in September 2022; a similar rate was also experienced in September 2023 (10.1%).

¹² See: [Planning Application Detail P/2023/1114 \(gov.je\)](https://www.gov.je/PlanningApplicationDetailP/2023/1114)

¹³ [Elizabeth Harbour design improvements | Ports of Jersey](https://www.gov.je/ElizabethHarbourDesignImprovements)

¹⁴ See: [Ports of Jersey Limited: Request for borrowing consent](https://www.gov.je/PortsOfJerseyLimitedRequestForBorrowingConsent)

¹⁵ Note throughout this document references are used to identify the key documents. All documents are publicly available on the Authority's website at: www.jcra.je

Policy framework

- 2.27 Consistent with the Law, the Authority's Strategic Plan sets out its objective to ensure effective supervision of regulated sectors.¹⁶
- 2.28 The Authority's work is framed by the Government Ports Policy Framework which was issued in January 2024.¹⁷ This is a sectoral policy setting out the objectives of incorporation and Government's wider strategic goals and vision for the sector, with a focus on eight strategic priorities. The policy reiterates that economic regulation should strike a balance between consumers' interest and capital investment in critical infrastructure, considering international best practice. Infrastructure investment is a key theme of the policy.
- 2.29 With respect to the role of regulation, the framework notes: *'economic regulation of the Ports Sector should balance protecting the interests of consumers with the timely implementation of the significant capital investment in critical infrastructure required at the Airport and Harbour.'* And *'To achieve this, careful consideration must be given to the principles concerning the facilitation and recovery of capital investment requirement to support such investment.'*
- 2.30 Closely linked to port operations is Freight Logistics. This was the subject of an Authority market study, completed in July 2022.¹⁸ The study considered factors that may affect competition and supply resilience, and made several recommendations to improve competition. These are acknowledged in the Ports Policy framework, which sets out that Government supports the study's recommendations.

Structure of this document

- 2.31 The rest of this Draft Decision is structured as follows:
- Chapter 3 sets out the structural approach to the pricing framework;
 - Chapter 4 sets out the key pricing framework parameters;
 - Chapter 5 sets out the level of the price control;
 - Chapter 6 brings together the Authority's Draft Decision; and
 - Chapter 7 sets out next steps.
- 2.32 It also includes two annexes:
- Annex 1 sets out the Legal and Licensing Framework; and
 - Annex 2 sets out the responses to the call for information and structured engagement.

¹⁶ See: [Authority Strategic Plan](#)

¹⁷ See: [Policy Framework for the Ports Sector](#)

¹⁸ See: [Freight Logistics Market Study](#)

3 Structural approach to the pricing framework

- 3.1 This chapter provides an overview of the structural approach to the pricing framework. The aim of the pricing framework is to protect consumers and businesses, by providing a constraint on prices. Nevertheless, consistent with this, a price control should allow for efficient investment and operational expenditure, and this may of course result in general price increases for some or all services.
- 3.2 In light of Ports of Jersey's significant and transformative prospective investments, a future price control is required to balance efficient and necessary expenditure relative to current and future user prices. Ports of Jersey's proposals for capital expenditure during the next price control period include major investment and development in maritime ports and airports. However, while Ports of Jersey's proposals are set out in its Government approved Strategic Business Plan, they are yet to receive formal planning consent.
- 3.3 These are some of the additional complexities that have been considered in developing the pricing framework. The Authority has also considered each of the following structural components from the perspective of regulatory certainty. For example, a change in the form or duration of the price control could potentially increase uncertainty, and further complicate the balance between efficient investment and user prices.
- 3.4 The structural areas covered in this chapter are:
- Market definition and significant market power;
 - The form of the control;
 - The duration of the control;
 - Basis for regulated charges;
 - The modelling approach;
 - Cumulative revenue management; and
 - Compliance and monitoring.
- 3.5 The Authority seeks stakeholder comments and views on each of the areas discussed in this chapter, and would welcome views on the following consultation question:

Question 1. *Do you agree with the Authority's structural approach to the pricing framework set out in chapter 3 of this Draft Decision? For example, the basis of the price control (single till), the duration of the price control (five years) etc.? If you do not agree with any aspect of this you should provide all of your analysis and assessment.*

Market definition and significant market power

- 3.6 **The Authority's Draft Decision is to maintain the market definition and significant market power decision set in 2016 (CIRCA 16/41).**
- 3.7 On incorporation, the Authority undertook a detailed process to define the relevant markets and significant market power (see CIRCA 16/15 and CIRCA 16/26). On the conclusion of this process, the Authority defined the following set of markets:

- The provision of airport operation services (excluding private users);
- The provision of airport operation services to private users;
- The provision of commercial sea port operation services; and
- The provision of sea port operation services to marine leisure port users.

Within each of these areas Ports of Jersey was found to have significant market power.

- 3.8 In support of maintaining the previous Decision, the Authority notes that there have been no material changes in Ports of Jersey operations and services since the original Decision was made. Further, in its call for information response, Ports of Jersey stated that it is not seeking to reopen the findings from 2016. Therefore, in light of there being no material changes, and also for reasons of regulatory certainty, the Authority proposes to maintain the existing market definitions and market power determinations.

Further Information

EY Report, sub-section 2.2.1 Regulated markets and Appendix A

The form of the control

- 3.9 **The Authority's Draft Decision is to maintain the current approach to the price control, which limits price increases/decreases in any given year to a maximum of RPI +/- X%.**
- 3.10 Price cap regulation is commonly adopted by regulators when intervening to constrain market power and aims to incentivise efficiency and mimic prices consistent with a competitive outcome. By maintaining the same high level approach the Authority is facilitating policy continuity and regulatory certainty.
- 3.11 Under this approach, the revenue at the start of the regulatory control (2025) is compared to a forecast of efficiently incurred costs at the end of the period (2029), to derive the value of 'X'. The value of 'X', when applied to inflation, aims to bring regulated charges in line with total allowable forecast costs (including a reasonable return) by the end of the period.
- 3.12 This proposed approach will ensure Ports of Jersey has an incentive to efficiently manage costs and the level of future investments, while simultaneously ensuring users' interests are protected. The Authority will also formally monitor the price control on an annual basis with a view to assessing the actual level of investments undertaken during the price control period. This is discussed further in paragraphs 3.41 to 3.47.
- 3.13 The Authority's approach also means that ports users are not paying wholly in advance for forecast infrastructure and investments, and that Ports of Jersey do not 'over-recover' (on costs and return) during the period of the price control.
- 3.14 Moreover, following completion of Ports of Jersey's investments, this approach will put Ports of Jersey on a stable path for any price controls required beyond 2030 (also providing relative price stability for current and future ports users).
- 3.15 The Authority recognises that in the context of the Masterplans, Ports of Jersey's proposed investments are material and, if taken forward, will add a significant amount to Ports of Jersey's asset base. Within this context, the 'glide path' for any future price control is likely to be upward-sloping (prices may increase over the period)

- 3.16 The Authority's analysis must therefore consider the likely (cost) impact of investment on future prices, and the timing of any potential price changes. This is managed by means of scenarios with different assumptions around capital expenditure and other key variables, such as the cost of capital, which can significantly impact of the value of 'X'. This is discussed further in chapters 4 and 5.

Further Information

EY Report, section 1.3 Existing and upcoming price controls and section 5.3 Price control scenarios

The duration of the control

- 3.17 **The Authority's Draft Decision is to maintain a five year price control period (from 2025-2029).**
- 3.18 The length of the price control period represents a balance between stability and incentives for long term efficiency, and the need to be flexible to changing circumstances. The Authority's general practice has been for five year controls, which provides a balance between these two objectives.
- 3.19 This is also consistent with regulatory best practice. For example, while it does not apply in Jersey, the European Electronic Communications Code sets the period for undertaking market reviews and associated remedies (for telecoms) at five years. Further, in the United Kingdom five year controls are applied in both aviation and other infrastructure intensive sectors, such as water and sewage (in England and Wales).
- 3.20 Within this context, and given the significant upcoming capital investment by Ports of Jersey, five years represents an appropriate balance of incentives relative to the potential risk of prices and costs diverging (were a longer price control period to be adopted).
- 3.21 The Authority has also considered alternative price control options, including a price control that would take effect after the grant of planning approval (possibly with a continuation of the current price control in the interim). While this approach would align the price control with the planning process, it would generate additional regulatory uncertainty at a time when Ports of Jersey is expected to raise considerable debt funding, and risk putting regulatory policy at the centre of Ports of Jersey's investment and planning process.
- 3.22 The Authority considers that infrastructure, commercial and planning decisions are largely a matter for Ports of Jersey, and that these should be progressed in the context of a transparent and incentive based regulatory framework over a five year period.

Basis for regulated charges

- 3.23 **The Authority Draft Decision is to maintain a single till and current practice, whereby each regulated charge is subject to the same price control.**
- 3.24 The regulatory 'till' is a term used to describe which services of a regulated firm fall under the scope of economic regulation.
- 3.25 Ports of Jersey supply a variety of services across its operations at the airport and harbour. Under a single till, Ports of Jersey would not separate the sea port from airport operations or

make any other possible divisions (such as wholly separating public service obligations for the purposes of the pricing framework).

- 3.26 The Authority notes that a single till approach is consistent with the wider regulatory framework and represents a useful tool for the implementation of regulatory changes. A single till also provides Ports of Jersey with added regulatory certainty and policy consistency.
- 3.27 Further, while the Authority has conducted analysis of Ports of Jersey's different operations and businesses, it is incorporated as a single entity (encompassing both air and sea port operations and related activities), and operates as a single entity for the purposes of financing and investment. Moreover, disaggregation of its businesses and operations would require a detailed cost allocation review. It is not clear this would result in a more efficient allocation of costs, materially different price controls or whether it is necessarily proportionate.
- 3.28 However, the retention of the single till and current pricing practice, whereby each individual price is subject to the same price control, will continue to act as a constraint on cross-subsidisation. A single till approach will be further considered ahead of the Final Decision, and the Authority welcomes stakeholder views on this issue.

Further Information

EY Report, sub-section 2.2.2 Basis for regulated charges

The modelling approach

- 3.29 **The Authority's Draft Decision is to use a regulated asset based model constructed on a nominal basis to estimate the value of 'X'.**
- 3.30 The regulated asset base (or RAB) model is an approach widely used by other regulators and consistent with regulatory best practice. The approach spreads out the recovery of investments over the remaining economic life of the assets while contributing to price stability for users. This approach also ensures investors receive a fair return (in the form of the weighted average cost of capital), thereby further encouraging future investment.
- 3.31 The regulated asset based approach is a refinement on the 'cash flow' model used for the current control. This Authority notes that given the significant prospective investments by Ports of Jersey, and the related benefits of a regulated asset based approach, the change will help support efficient cost recovery.
- 3.32 Within the financial model, the asset base has been valued on a historical cost accounting basis, and is forecast forward, adjusting planned capital spend as set out in the Strategic Business Plan for inflation.
- 3.33 The financial model is constructed on a 'nominal' basis rather than a 'real' basis. The nominal approach considers revenues and costs including the effect of inflation, whereas a real approach removes the effect of inflation.
- 3.34 A nominal basis for modelling has been adopted to be consistent with Ports of Jersey's modelled cash flows in the Strategic Business Plan (which has been used as the basis of the Authority's assessment), and to provide consistency with debt servicing requirements. The Authority also notes that a nominal approach is a simpler approach than real, and that its use

is consistent with Authority precedent. For example, the Authority adopted a nominal approach to the cost modelling for the Wholesale Broadband Access Services Price Review.¹⁹

- 3.35 Detailed consideration has been given to the key inputs into the regulated asset base model, to allow the Authority to estimate an appropriate and reasonable level of return for Ports of Jersey, relative to an assessment of all expenditure, investment and other important factors. These considerations are set out in the next chapter.

Further Information

EY Report, sub-section 2.2.3 Regulatory Asset Base (RAB) model

Cumulative revenue management

- 3.36 **The Authority's Draft Decision is to consider some form of cumulative revenue management in the next price control period.**

3.37 The proposed form of the price control for the next price control period; an upward sloping glide-path, might suggest that the current policy approach using symmetric 'tramlines' may not be appropriate.

3.38 Under the current control, cumulative revenue management is managed by the use of 'tramlines', which allow for a 5% tolerance – above and below – the level of forecast revenue used to inform the price control. The 'tramlines' were introduced in the current price control framework, which was the first after incorporation, to help manage uncertainty.

3.39 The current 'tramlines' approach may also help to mitigate risk, in that, when the Authority sets the price control it necessarily makes certain revenue and other assumptions. However, given volume and other uncertainties, Ports of Jersey's actual revenue profile will likely be different from forecasts and assumptions used at the time to set the price control. Where necessary, these differences could then be managed by the use of 'tramlines' (or a similar mechanism).

3.40 Recognising the potential for ongoing uncertainty over the next price control period, not least in the context of Ports of Jersey's proposed infrastructure investments, the Authority is minded-to consider some form of mechanism for the management of cumulative revenues. The precise scope and nature of the 'tramlines', or a similar mechanism, will be given further consideration ahead of the Final Decision and the Authority welcomes stakeholder views on this area to inform these considerations.

Compliance and monitoring

- 3.41 **The Authority's Draft Decision is to formally monitor the price control on an annual basis.**

3.42 Under the current price control, charges are reviewed annually. Considering the scale and timing of the proposed investments and the potential for uncertainty surrounding them,

¹⁹ For example see the discussion in section A1.5: [Wholesale broadband access services in Jersey: Price Review – A report for the JCRA \(Frontier Economics\)](#)

formal monitoring of the price control (and the constituent components) will be of increased importance going forward.

- 3.43 Further, enhanced monitoring will be essential to the effective operation of the price control and the determination of appropriate regulated charges for ports users. It is clear that the schedule and level of proposed investments have a material bearing on the next price control. Changes in the proposed schedule and/or level of the proposed investments would impact a number of elements, not least, capital employed, the profile of depreciation and other key factors.
- 3.44 Therefore, the Authority is proposing to monitor actual capital expenditure relative to the forecast expenditure applied in the Strategic Business Plan (and price control). As is current practice, this would occur annually in line with the Authority's review of regulated price changes.
- 3.45 Similarly, to the extent potential changes in capital investment impact other variables in the price control, such as other resource requirements, financing and otherwise, these will also be considered and monitored. In short, the Authority is proposing to improve and enhance the current regime on monitoring and compliance, to include a requirement on Ports of Jersey to formally report against each of the key parameters in the price control.
- 3.46 A key component of an enhanced approach to compliance and monitoring will be the Authority's ability to review the price profile, relative to actual and immediate forecast expenditure (and any other material developments). In short, the proposed future pricing framework is conditional upon the schedule and level of investment proposed by Ports of Jersey. In the event expenditure is materially delayed or not incurred at all, this would be taken account of in the Authority's annual review of the price control.
- 3.47 The Authority will establish a comprehensive monitoring and compliance process with Ports of Jersey, and the final details on this framework and process will be set out in the Final Decision. This will allow for sufficient time for the appropriate compliance framework to be set up. To support development of this framework and process, the Authority welcomes views on how compliance should be monitored on an ongoing basis.

4 Key pricing framework parameters

- 4.1 There are a number of key parameters which have a material impact on determining the value of 'X' for the pricing framework. Namely:
- Capital expenditure;
 - Cost of capital;
 - Inflation; and
 - Operating expenditure and efficiency.
- 4.2 The Authority is seeking stakeholder comments and views on each of the areas discussed in this chapter, and would welcome views on the following consultation question:

Question 2. *Do you agree with the Authority's approach to key pricing framework parameters set out in chapter 4 of this Draft Decision? If you do not agree with any aspect of this you should provide all of your analysis and assessment.*

Capital expenditure

- 4.3 **The Authority's Draft Decision assumes the capital expenditure set out in the – Government approved – Ports of Jersey Strategic Business Plan with two adjustments. These adjustments take account of Assets in the Course of Construction and exclude a proportion of capital expenditure in 2029.**
- 4.4 Ports of Jersey's capital expenditure during the next price control period is scheduled to be significant (relative to the previous price control period and the current asset base). For example, Ports of Jersey expect to invest in the region of £275m in the period 2024 to 2029, of which, approximately £160m relates to the proposed Harbour and Airport master plans. This level of capital expenditure is material in absolute terms, and when considered relative to Ports of Jersey's current asset base (£160m in 2022).
- 4.5 The nature and level of any potential investment is essentially a matter for Ports of Jersey, and the Authority would not seek to intervene in Ports of Jersey's investment and commercial decision making. Moreover, effective approval and financing of the proposed investments is largely a matter for the Government through the Strategic Business Plan approval process. The Authority also notes that Ports of Jersey is undertaking a competitive procurement exercise in respect of the actual construction project(s).
- 4.6 Ports of Jersey's competitive procurement process should help drive cost efficiency, while ongoing Government scrutiny, linked to the formal approval processes, will further discipline Ports of Jersey's approach to any proposed infrastructure investment. This is complemented by the use of an incentive based RPI +/- X% control. This frames the Authority's use of Ports of Jersey's projected capital expenditure profile within the analysis of the price control.
- 4.7 However, a substantial increase in capital expenditure will have a material influence on total forecast costs, and therefore, the potential level of any future price control. Moreover, the Authority is required to effectively balance different interests. For example, the Authority has

sought to ensure that its regulatory assessment of Ports of Jersey's projected capital expenditure meets the Government's Ports Policy Framework with respect to:

- The facilitation and recovery of capital investment; and,
- The need to protect and further the interests of users of port operations.

4.8 To that end, the Authority has adopted an approach designed to maintain the incentive on Ports of Jersey to invest, while also managing the scale and profile of the next price control. This approach effectively reduces the level of capital employed over the price control period, mitigating the effect of significant proposed capital expenditure on prices over the same period.

4.9 The Authority's approach to capital expenditure for the future price control scenarios includes the following assumptions:

- **Assets in the Course of Construction (AICC):** A proportion of Ports of Jersey's asset base (total fixed assets) could be considered as AICC. That is, they are neither complete, nor generating any form of consumer - or other - benefit. A reasonable proportion of AICC might be estimated to be 11.5% of the total fixed assets (thereby also reducing the required returns over the period). This value has been set by reference to the level of AICC in Ports of Jersey 2022 Annual Report and the Authority notes the use of AICC is consistent with regulatory practice in other jurisdictions.²⁰
- 'Exclusion' of certain investments/assets: Following the same principle, investment and assets subject to formal planning (and other consents), which are scheduled to occur considerably later in the price control period are subject to a greater degree of uncertainty and could be excluded from the cost-base (for 2025-2029). The capital expenditure associated with the Harbour Landside development is scheduled toward the end of the second phase of the Masterplan, i.e. not due to start until 2029.²¹

4.10 The Authority considers the refined approach to capital expenditure in the price control scenarios maintains and enhances the incentive for efficient capital expenditure. The scenarios and conditions relating to the proposed price control are further discussed in chapter 5.

Further Information

EY Report, sections 1.2 Ports of Jersey Ltd business overview, 4.2 Capital cost efficiency and 5.3 Price control scenarios

Cost of capital

4.11 The Authority's Draft Decision is that the cost of capital will be within a range of 7.5% to 8.5%.

²⁰ For example, the Civil Aviation Authority has historically adopted a regulatory approach to AICC for Heathrow Airport Limited, it has also been a feature of European regulatory thinking, for example in the energy sector, see summary in section 5.14 of: [Report on Regulatory Frameworks for European Energy Networks 2022](#)

²¹ The Authority notes that planning consent and approval for the Harbour Masterplan and other elements of the Airport Masterplan are, as of publication of this document, still pending. The Authority will take in account the latest information available to it, including the status of this application, in the Final Decision.

- 4.12 The cost of capital (or weighted average cost of capital, (**WACC**)) is a key variable in the determination of returns (and the level of any prices and charges). The Authority has given careful consideration to the cost of capital. Broadly, the cost of capital is the cost – to Ports of Jersey – of financing its operations and future investments, and generally equates to the return expected by shareholders in the business.
- 4.13 Ports of Jersey submitted an initial proposal for the cost of capital. EY’s analysis of this showed that it was considerably higher than any relevant benchmark. Indeed, all the recent regulatory determinations by UK regulators are at least 4% lower, and on average, considerably lower than Ports of Jersey’s estimates for airport and sea port operations (in pre-tax nominal terms). As a comparative figure the Authority considers that the pre-tax nominal cost of capital previously determined for JT (8.7%), in the context of a more dynamic and competitive market, is above a high estimate of the cost of capital for Ports of Jersey.
- 4.14 Ports of Jersey’s initial proposals contained a series of additional risk premia, which materially add to the estimated cost of capital. The combination of these assumed risk premia ‘add’ c.6.8% to the estimated cost of capital. EY’s analysis of these premia suggest their inclusion would be unusual and that, while a firm size premium may be considered, this should be consistent with the approach taken by the Authority in previous decisions.
- 4.15 Further, when the Ports of Jersey’s estimate of the cost capital is adjusted for additional risk premia, and considered relative to recent regulatory precedent, it is still high. For example, the average pre-tax nominal cost of capital from recent regulatory decisions in the UK produces a value of 6.4%. While weighting the Ports of Jersey adjusted estimate for the harbour and the airport on an asset value and revenue basis, results in values of 8.9% and 9.0% respectively. The Authority is therefore proposing a range for the cost of capital, within these lower (6.4%) and upper (9%) thresholds, of between 7.5% and 8.5%.
- 4.16 Additionally, consistent with the Authority’s previous determinations in respect of the cost of capital, this range is pre-tax nominal. A pre-tax nominal estimated range is also consistent with the approach taken for each of the key variables in the model and Ports of Jersey’s Strategic Business Plan, which has been prepared in nominal terms.
- 4.17 Further analysis, and where required an update, will be undertaken on the cost of capital prior to a Final Decision in Autumn 2024. However, the Authority would not expect additional analysis or an update to result in an estimate for the cost of capital above the current proposed range.

Further Information

[EY Report, chapter 3 - Consideration of an appropriate WACC](#)

Inflation

- 4.18 **The Authority’s Draft Decision is to retain the use of the Jersey Retail Price Index (RPI) for the price control.**

- 4.19 RPI is used both in the modelling²² and as the reference point for the future price increases in the RPI +/- X control, whereby annual prices will change by reference to the value of the RPI in the previous September issue (as per the approach for the current control).
- 4.20 The Retail Price Index is the headline measure of inflation in Jersey. It measures the average change in prices of goods and services purchased by households and is produced on a quarterly basis by Statistics Jersey.²³ Since 2019 there has been a period of high inflation, with inflation increasing from 2.7% in September 2019 to 10.1% in September 2023. Although the long-term trend is downward, the increases have had a significant cumulative impact on the wider Jersey economy and price levels.
- 4.21 With respect to forecast inflation, the Authority proposes to use the latest available forecast from the Fiscal Policy Panel, at each stage of the review. The Panel provides Jersey's Treasury and Resources Minister and States members with independent advice on the economy, including long-term forecasts.²⁴ Reflecting this, the Draft Decision is based on the November 2023 forecasts. It is expected the Final Decision will use the July 2024 forecasts produced by the Fiscal Policy Panel.
- 4.22 The Authority has also considered whether RPI is the correct measure to use in the future price control. The Authority notes that RPI is Jersey's national inflation statistic,²⁵ and its continuation would be consistent with the existing regulatory framework and the Authority's wider practice. It is also the measure used by Ports of Jersey in constructing its Strategic Business Plan, which is the basis of the Authority's assessment.
- 4.23 The Authority also notes that it is important that price caps have the effect of indexing price levels against a fixed measure, which is outside the control of the firm subject to the price cap. RPI, and other variants of RPI, all have this characteristic.
- 4.24 A possible alternative measure of inflation is RPI(X).²⁶ RPI(X) excludes house purchase costs (mortgage interest payments) which are not relevant to Ports of Jersey costs. As this measure excludes mortgage related expenditures, it tends to lag behind or ahead of RPI (which is more sensitive to changes in interest rates). Consistent with this, over the period of the current control, RPI(X) has also been high, albeit lower than RPI – for example in September 2022, RPI stood at 10.4% and RPI(X) at 8%. In September 2023, RPI was 10.1% and RPI(X) 5.4%.
- 4.25 Looking forward, as shown in Figure 1, in both 2025 and 2026, RPI(X) is forecast to be higher than RPI before stabilising at the same rate.

²² Note, for staff costs, the index of average earnings measure is used instead of RPI.

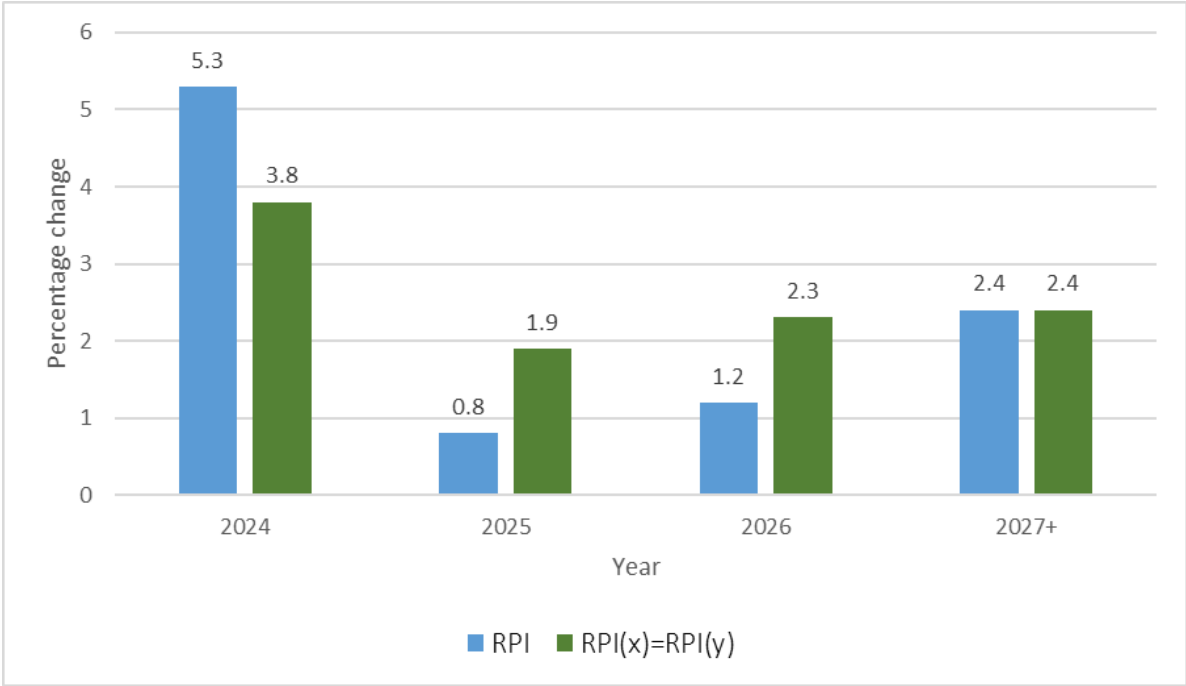
²³ The full set of Statistics Jersey reports, including RPI reports, is available here: [Statistics Jersey reports and documents \(gov.je\)](https://www.gov.je/statistics-jersey/reports-and-documents)

²⁴ See: [Fiscal Policy Panel](#)

²⁵ In the United Kingdom RPI is no longer a national statistic. This is because of a calculation issue which over-estimated inflation and therefore it was replaced with the Consumer Prices Index. In Jersey the RPI formula does not have the same issue and meets international standards for inflation measures. See page 8 in the regular inflation report: [R Latest RPI 20180518 SJ.pdf \(gov.je\)](#)

²⁶ The Authority notes that another alternative measure is RPI(Y), RPI(Y) excludes house purchase costs and indirect taxes. The indirect taxes excluded are Parish rates and all taxes and duties that directly affect retail prices: impôts (on tobacco, alcohol, and motor fuels); the Goods and Services Tax (GST); Air Passenger Duty; and Vehicle Emissions Duty. Note in the Fiscal Policy Panel forecasts, RPI(Y) is assumed to be equal to RPI(X).

Figure 1: Inflation forecast – percentage change in RPI and RPI(X) – Fiscal Policy Panel (November 2023)²⁷



4.26 During the consultation the Authority expects to receive further input on this issue from Ports of Jersey and welcomes wider stakeholder views.

Further Information
 EY Report, sub-section 2.2.5 Inflation

Operating expenditure and efficiency

4.27 **The Authority’s Draft Decision assumes the forecast operating expenditure set out in the Ports of Jersey Strategic Business Plan. This is adjusted for cost volume elasticities and an annual efficiency factor is also applied to operating costs (between 0.5% and 1.5%).**

4.28 Ports of Jersey’s operating expenditure represents a significant proportion of the total cost base. The Strategic Business Plan forecasts an increase in operating costs over the period of the price control, although operating costs as a proportion of total costs decrease over the same period. This is relative to increases in depreciation and other cost categories, which is consistent with the proposed material increase in capital investment.

4.29 Consistent with the continued application of a single till approach, the Authority has not sought to re-allocate these costs (within or between business activities), nor ‘ring-fence’ or separately assess the operating costs associated with Ports of Jersey’s public service obligations. Government’s approval of Ports of Jersey’s Strategic Business Plan also provides a form of assurance in respect of the operating cost categories and the proposed forecasts of costs.

²⁷ Figure based on data from [R Fiscal Policy Panel 2023 Annual Report.pdf \(gov.je\) - November 2023](#)

- 4.30 The Authority, supported by EY, has undertaken a high-level analysis of some of the key operating cost categories. This is to enable a full understanding of the rationale for certain cost categories, and also the general level and profile of operating costs over the price control period. In addition, the analysis was necessary to facilitate consistency in approach, as between Ports of Jersey's Strategic Business Plan and EY's financial model.
- 4.31 Operating expenditure is consistent with the forecast volumes, which have been adopted from the Ports of Jersey's Strategic Business Plan. Operating costs are forecast in the financial model using volume drivers and cost volume elasticities. Cost volume elasticities provide a mechanism to account for the existence of economies of scale and/or scope and the resulting relationship between costs and volumes, and have been established through engagement with Ports of Jersey.
- 4.32 In addition to a high-level review of Ports of Jersey's operating expenditure, on the advice of EY, the Authority also considered different levels of efficiency that Ports of Jersey might be reasonably expected to achieve over the course of the next price control. At this stage, the Authority's proposals assume a 1% level of (annual) efficiency; this is consistent with the analysis presented in EY's Report, which considered a range of between 0.5% to 1.5% (with the range informed by an analysis of Ports of Jersey's Strategic Business Plan and regulatory precedent).

Further Information

EY Report, sub-section 2.3.4 Volume drivers and Cost Volume Elasticities (CVEs) and section 4.1 Operating cost efficiency.

5 Level of the price control (the 'X' value)

- 5.1 The aim of the pricing framework is to protect individuals and businesses, by providing a constraint on prices. Nevertheless, a price control should allow for efficient investment and operational expenditure, and this may of course result in price increases for some or all services. In light of Ports of Jersey's significant prospective investments, a future price control is required to balance efficient and necessary expenditure relative to current and future user prices and charges.
- 5.2 This chapter provides an overview of the value of 'X' for Ports of Jersey and the scenarios that underpin it and discusses policy options in case of project delay. The Authority is seeking stakeholder comments and views on each of the areas discussed in this chapter, and would welcome views on the following consultation questions:

Question 3. *What are your views on the scenarios used to generate the value of 'X' set out in chapter 5 of this Draft Decision?*

Question 4. *Do you have any other comments on any other matter relating to the Draft Decision? If yes, please provide all of your analysis and assessment.*

The range of 'X' values

- 5.3 The Authority's assessment of the possible range of 'X' values for the price control is based on the critical assumption that: Ports of Jersey's proposed capital expenditure is taken forward in accordance with the schedule, and at the level, set out in Ports of Jersey's approved Strategic Business Plan. Therefore the range of 'X' values for the price control are therefore conditional upon the schedule and level of investment proposed by Ports of Jersey; and, receipt of all necessary planning approvals, permissions and otherwise, relating to the proposed investments.
- 5.4 The proposed range for the value of the 'X' is derived from the financial model developed by EY and built up using the assumptions set out in chapters 4 and 5. Given the use of ranges for some key parameters, such as the cost of capital and as further consideration of certain variables may be required, the Authority is proposing a range for the X-value in the price control.
- 5.5 **The range for the future price control (for the period 1 January 2025 to 31 December 2029) is RPI + 0% to RPI + 3%.** This is based on an approach that allows for recovery of all efficient forecast costs (including a reasonable return) towards the end of the price control period. The range is also based on the glide-path approach to cost recovery. This approach encourages efficiency, protects against over-recovery (of costs) during the price control period, and importantly, helps to establish long-term pricing stability.
- 5.6 The range also encompasses a series of different scenarios and regulatory options. Firstly, if no adjustments were to be made to Ports of Jersey's proposed approach to capital expenditure and a high estimate of cost of capital is used, the price control would be **RPI + 3%**. Conversely, the Authority's approach to capital expenditure (see capital expenditure section in chapter 4)

coupled with a low estimate of the cost of capital, results in a price control estimate of **RPI + 0%**.

5.7 The Authority's view is that the proposed range for the price control and the underlying assumptions are both reasonable and robust. The range provides flexibility to meet a number of potential challenges and developments as the Review progresses. Importantly, it presents a balanced view of the future proposed price control; maintaining incentives to invest while ensuring recovery of capital investment is consistent with the interests of both current and future ports users.

5.8 It is important to note that, if Ports of Jersey were not to proceed with any of the Masterplan capital expenditure, the value of X in the price control would likely be negative (-), resulting in real terms price decreases over the price control period.

Policy options in case of project delay

5.9 In the event there are material changes to the Ports of Jersey Strategic Business Plan, e.g., significant changes to the schedule and level of the proposed investments or delays in respect of planning approvals, the Authority will consider a different approach. This may include consideration of a form of rollover price control, albeit for a given period, or a revised price control based on the latest available information and evidence.

5.10 The Authority's Final Decision on the Review is currently scheduled for Autumn 2024. This will provide sufficient time to further consider all the material aspects of the price control, and to assess Ports of Jersey's progress with respect to the planning process and its proposed investments. The Authority's Final Decision will take full account of any relevant and material developments.

Further Information

[EY Report, chapter 5.3 Price control scenarios](#)

6 The Draft Decision

6.1 This chapter sets out the Authority's Draft Decision for each element of the pricing framework set out in the preceding chapters.

Structural approach to the price control

6.2 The Authority's Draft Decision on the structural approach to the price control is to:

- maintain the market definition and significant market power decision set in 2016 (CIRCA 16/41);
- maintain the current approach to the price control, which limits price increases/decreases in any given year to a maximum of RPI +/- X%;
- maintain a five year price control period (from 2025-2029);
- maintain a single till and current practice, whereby each regulated charge is subject to the same price control;
- use a regulated asset based model constructed on a nominal basis to estimate the value of 'X';
- consider some form of cumulative revenue management in the next price control period; and
- formally monitor the price control on an annual basis.

Key pricing framework parameters

6.3 The Authority's Draft Decision on the key pricing framework parameters is to:

- assume the capital expenditure set out in the – Government approved – Ports of Jersey Strategic Business Plan with two adjustments. These adjustments take account of Assets in the Course of Construction and exclude a proportion of capital expenditure in 2029;
- set the cost of capital within a range of 7.5% to 8.5%;
- retain the use of the Jersey Retail Price Index (RPI) for the price control; and
- assume the forecast operating expenditure set out in the Ports of Jersey Strategic Business Plan. This is adjusted for cost volume elasticities and an annual efficiency factor is also applied to operating costs (between 0.5% and 1.5%).

Level of the price control (the 'X' value)

6.4 The Authority's Draft Decision with respect to the level of the price control is:

- a range of RPI+0% to RPI+3% based on the critical assumption that Ports of Jersey's proposed capital expenditure is taken forward in accordance with the schedule, and at the level, set out in its approved Business Plan. A final value for the price control will be determined in the Authority's Final Decision.

7 Next steps

- 7.1 The Authority invites written views and comments on the questions raised throughout this document and presented together in Box 1 below, to be made by 5pm on 2 August 2024. The Authority encourages respondents to provide comments that are supported by evidence. Less weight may be given to submissions that cannot be supported by evidence.

Box 1: Consultation questions

Question 1. Do you agree with the Authority’s structural approach to the pricing framework set out in chapter 3 of this Draft Decision? For example, the basis of the price control (single till), the duration of the price control (five years) etc.? If you do not agree with any aspect of this you should provide all of your analysis and assessment.

Question 2. Do you agree with the Authority’s approach to key pricing framework parameters set out in chapter 4 of this Draft Decision? If you do not agree with any aspect of this you should provide all of your analysis and assessment.

Question 3. What are your views on the scenarios used to generate the value of ‘X’ set out in chapter 5 of this Draft Decision?

Question 4. Do you have any other comments on any other matter relating to the Draft Decision? If yes, please provide all of your analysis and assessment.

- 7.2 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

- 7.3 All responses should be clearly marked: ‘Ports Regulatory Review - Pricing Framework Draft Decision’. 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.
- 7.4 Consistent with the Authority’s non-statutory process (see chapter 2), this Draft Decision will be followed a Final Decision. The Final Decision will provide an outline of the responses to the Consultation and how the Authority has taken them into account in its decision making. Subject to the responses received, and there being no material changes or delays in respect of planning approvals (see discussion in paragraph 5.9), it is envisaged this will be published in autumn 2024.
- 7.5 The non-statutory process will be followed by a statutory process, which is required when carrying out certain specified regulatory functions. A decision to give direction to Ports of Jersey with respect to pricing is the exercise of a specified regulatory function pursuant to the Law. Therefore the statutory process, in the form of an Initial Notice, will be commenced and this will be issued alongside the Final Decision. The Direction is expected to come into force from 1 January 2025.

Annex 1: Legal and licensing framework

The Air and Sea Ports (Incorporation) (Jersey) Law 2015 governs the regulation of port operations. Article 2 of the Law defines port operations as:

- 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;
- 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
- The management, maintenance and operation of such facilities and services.

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/transport by sea.

Article 6 of the Law also sets out public service obligations. These include outlying harbour and other marine activities, the 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.

Article 26 of the Law records the duties of both the Minister and the Authority. The Authority's primary duty under this law is to protect and further the interests of users of port operations, where appropriate, by promoting competition. 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.

Article 7 of the Law provides that a licence issued by the Authority is required to carry out port operations. There is only currently one Licensee, Ports of Jersey Limited. The Licence covers ports facilities and services provided within the designated sea port area or airport area in Jersey, defined as those areas transferred to Ports of Jersey on incorporation. The Licence contains a number of other conditions as required by Article 7. These relate to issues such as the management and conduct of port operations and standards of performance. Further conditions include competition in relation to port operations, co-location, sharing of services/facilities, complaints procedures and pricing.

With respect to pricing, Condition 22.2 (Price Regulated Services) of the Licence provides that:

'The [Authority] 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.'

Annex 2: The call for information and structured engagement

The Authority launched the call for information for the Review in February 2023. It set out the Authority's initial views and areas on which feedback was sought. Two responses were received, from Ports of Jersey (non-confidential) and Ferryspeed (confidential).

In addition to the call for information, further stakeholder meetings were held in June and July 2023. This included meetings with Condor Ferries, Blue Islands, Jersey Business, Ferryspeed and Government of Jersey officials. These sessions were important in developing the Authority's understanding of the sector, and provided a necessary – and wider – view of all the issues likely to be a relevant feature of the review.

The Authority notes that the call for information and stakeholder meetings were held in 2023 and reflects the information available at time. Nevertheless, a summary of the responses to the call for information and related stakeholder engagement is set out below. This is structured according to the themes set out in the call for information, covering the:

- Interests of ports users;
- Price control; and
- Future regulation of port operations.

Each of the sub-sections contains a summary of stakeholder views, with a focus on the points most relevant to the Review and an overview of how the Authority has taken stakeholder views into account in its proposals.

The interests of ports users

Stakeholder views

In its response to the call for information, Ports of Jersey highlighted its key role in ensuring ports users' needs are met in the future, with its vision set out in its Strategic Business Plan to grow connectivity and improve the customer experience. To support this, it set out that it has a five-year capital investment plan (2024-2028), which aims to provide resilience and regeneration, and support economic growth. The Strategic Business Plan outlines proposed improvements, to be implemented via the two Masterplans.

A number of aspects of Ports of Jersey's Harbour Masterplan are framed as a response to the Authority's Freight Logistics Market study. It is expected to provide capacity and flexibility in the sea port infrastructure, allowing future growth. This is expected to foster competition in the freight market, due to its ability to accommodate additional firms or distribution centres. On the air transport side, the Airport Masterplan is expected to improve the customer experience.

The response also highlighted Ports of Jersey's role in supporting the island throughout the pandemic, by maintaining freight and passenger connectivity and, beyond those key functions, providing help to airlines and running the ports without additional government funds.

With respect to wider stakeholders, one called for a more commercial approach in running the ports. In line with that, they also suggest improved efficiency is desirable, and would improve outcomes for ports users. The premises were described as ageing and presenting leisure and business travellers with an image which 'does not bring out the best of Jersey'.

Another stakeholder did not raise any major concerns with regards to the current operations and user interests, though raised concerns around scheduling and the impact of storage of cargo at the quays. It suggested this could be addressed with improved manifests, general data management and improved digitisation.

Similarly, another stakeholder noted the physical infrastructure of Ports of Jersey as being key to the delivery of lifeline goods, island connectivity and tourism. It called for infrastructure to be prioritised and for closer collaboration between entities contracted by Ports of Jersey or Government, which could materialise as improved working arrangements, investment or space allocation.

Another stakeholder raised issues about the operational management of the ports. Key elements of the Harbour Masterplan were questioned, with issues raised over their implications for capacity. Lack of resilience was flagged as a current issue and it was considered that the Harbour Masterplan (as available at the time of the engagement) would aggravate this issue, with further loss of resilience.

With respect to the airport, one stakeholder had no major concerns with the operations, noting the airport is working well for passengers, albeit that congestion is an issue in the summer. The stakeholder also noted longer-term issues, such as the fluctuation of air demand and the need to balance operational needs with demand peaks.

Authority analysis

The Authority notes Ports of Jersey's Strategic Business Plan, and the significant investment contained within it, represent an opportunity to further the interests of port users. This is also aligned with the recommendations of the Authority's Freight Logistics market study, which highlighted the potential benefits that could be achieved from increasing choice and resilience in Freight Logistics services. Moreover, the Ports Policy Framework, identifies the respective Masterplans as being key to furthering the interests of ports users.

From the stakeholder discussions, it is clear there is a general consensus that investment in port operations and services is required (towards furthering user interests). That said, views diverged with regards to the governance and wider operational arrangements, and whether the investment is appropriately targeted and effectively addresses key resilience issues.

It is clear the Review and the work on the pricing framework offers an opportunity for the Authority to help embed the interests of ports users, and chapters 3-4 set out the Authority's proposals to meet this objective.

The price control

Stakeholder views

In its call for information response, Ports of Jersey noted that it is often not the ultimate determining party in setting prices to the end user. Therefore, while acknowledging the importance of price regulation, it should be appropriately targeted and in some circumstances the focus should instead be on service quality. Further, in the aviation sector, there are a number of different contracts in place with different airline operators, so it is difficult to disentangle how price changes impact end users.

Ports of Jersey noted that financial risks sit within the company and all profits are reinvested rather than distributed to private shareholders. In addition to that, Ports of Jersey suggested that pricing

should be differentiated by the air/sea market. Ports of Jersey suggested that any increase in charges to airlines implemented by Ports of Jersey would be rejected by airlines, which may choose not to fly to and from Jersey, whereas any decrease in charges could simply be absorbed by airlines and not passed onto consumers. A pricing framework is also seen as running the risk of restricting price rebalancing in the aviation sector. Ports of Jersey indicated that this is due to prices being based on benchmarks set some time ago, and which have been uplifted by inflation.

Looking forward, Ports of Jersey supported a 'proportionate' approach to regulation, based on a regulated asset base, which should allow it to deliver the capital investment plans and provide high-quality customer services. Consistent with this, Ports of Jersey suggested that there is an interaction between the pricing regime and its ability to raise debt to deliver its capital investment plans, which directly relate to its incorporation objectives.

Further, with respect to the current control, Ports of Jersey noted in its call for information response, that it previously under-recovered revenue relative to the 'tramline' boundaries and were keen to understand how this might be addressed within the future pricing framework.

With respect to other stakeholders, one stakeholder expressed concern that pricing regulation was a blunt tool which may be mis-used instead of adopting alternative solutions. Another stakeholder noted it had some ability to pass on price increases to end users, while another noted that any substantial changes would require a reworking of its tariff structure. One stakeholder also noted the distinction between the harbour and airport pricing arrangements, and that there may be some rationale for a different approach.

Authority analysis

The Authority notes agreement among stakeholders on the importance of the pricing framework as a regulatory tool. In particular, Ports of Jersey support a number of the key building blocks of the pricing framework, such as the use of a regulated asset base approach.

With respect to other stakeholders, the Authority acknowledges the different impact that price increases can have on stakeholders. Overall, in the context of affordability and/or value for money, the current price control acts to protect individuals and businesses, and prevents Ports of Jersey from exercising its market power. This principle has been maintained for the proposed control.

To support the work on the pricing framework, the Authority has commissioned EY to assist with the analysis. EY is a consultancy with extensive experience in supporting price reviews across regulated industries, such as port operations. The advice provided by EY has been published alongside this Draft Decision and is incorporated into the Authority's proposals set out in chapters 3-4.

The future regulation of port operations

Stakeholder views

Overall, in its call for information response, Ports of Jersey agree that regulation is part of the necessary toolkit to achieve good consumer outcomes. Its view is that a 'good' regulatory system is one which enables implementation of its business plan, and allows for the completion of its capital investment and debt plans, whilst ensuring interests of users are appropriately supported.

With respect to some elements of the regulatory framework, Ports of Jersey stated that it did not fully agree with the Authority's Final Decision on significant market power in 2016, but that it was not seeking to reopen the findings or contest the Final Decision.

In the context of aviation operations and services, Ports of Jersey's response also discussed a potential alternative to the current regulatory regime, namely the approach adopted in Australian airport regulation. Under this approach, airport users, e.g., airlines, facilities suppliers, ground handlers, cargo operators negotiate directly with airport operators on charges and terms of access. Regulators intervene by exception only, where they suspect there may be issues, based on regular receipt of financial, quality of service and other reports from airports. This approach is based on ad-hoc investigations and a higher volume of information exchanged between regulators and airports.

With respect to other stakeholders, one expressed a view that it would like to see future regulation taking into account how operations look on the ground rather than just financial value.

Authority analysis

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 – Ports of Jersey would continue to be subject to economic regulation (as the only Licensed operator of ports services and operations) and chapters 3-4 sets out the proposed approach to the pricing framework.

With regards to the ad-hoc regulatory approach suggested as a possible alternative, the Authority does not consider this to be a proportionate approach to regulation in Jersey. The high information requirements and monitoring that would be needed for effective implementation may cause issues and constitute low value for money. The approach also does not offer regulatory certainty, in particular in the context of a significant investment programme as set out in the Ports of Jersey Strategic Business Plan.