

Ports of Jersey's response to the JCRA's Regulatory Review of Air and Sea Port Operations – Non-Statutory Call for Information

1. Executive summary

Jersey Airport and Harbour generates, supports and enables a diverse range of economic and social activity. In doing so, it makes a significant contribution to Jersey's economy, indirectly supporting employment for thousands of people while ensuring that it is a place that people want to live, visit and work.

The connectivity provided by Jersey Airport plays a critical role for business travel, trade and tourism and also provides a range of vital social benefits (such as, access to health care and education in the UK and connectivity for both key workers and to our emergency services and judiciary based in the UK). St. Helier Harbour, part of our historic harbour estate, is integral to Jersey's lifeline maritime supply chain.

Jersey Airport and Harbour are arguably Jersey's most important strategic infrastructure assets. Following significant under-investment pre-incorporation, these critical strategic infrastructure assets require generational investment and re-development to ensure their resilience and that they best meet Islanders' needs in the future.

The incorporation of Ports of Jersey was the mechanism to provide sustainable transport infrastructure services for the Island. It created Ports of Jersey as a separately incorporated entity to plan investment in and secure appropriate funding for critical infrastructure over the long term.

To ensure the long-term sustainability of the business, Ports of Jersey's operations need to generate adequate income to support continued investment. Ports of Jersey has a mandate to act commercially, to innovate and drive efficiencies in order to deliver customer-centric growth. It is critical that the regulatory pricing framework supports the required financing structure.

Ports of Jersey is seeking a regulatory structure that:

- Enables it to successfully implement the Strategic Business Plan that it has agreed with Government of Jersey
- Ensures the interests of users are appropriately supported whilst encouraging innovation and the timely delivery of significant investment in critical Airport and Harbour infrastructure
- Supports enhanced service delivery
- Enables Ports of Jersey to secure financing to complete its capital investment plan, and service the associated debt in the future
- Recognises the significant impact of the Covid-19 pandemic on the financial position of Ports of Jersey
- Incorporates the resource requirements associated with delivering the Public Service Obligations entrusted to Ports of Jersey

Regulatory clarity is essential considering the capital intensity of transport infrastructure, the long timespans for investments, and the myriad of associated risks. Therefore, it is important to develop a framework that is easily understandable, efficient and easy to administer. Given the scale of investment required in critical infrastructure, regulatory certainty, stability and predictability is important to enable debt finance to be procured and subsequently serviced.

Ports of Jersey looks forward to engaging with the Jersey Competition Regulatory Authority to ensure that the next regulatory framework meets the interest of Islanders.

2. Background

The purpose of this section is to summarise the objectives of the incorporation of Ports of Jersey and the progress the company has made since the commencement of the current regulatory pricing framework in January 2020.

2.1 Objectives of Incorporation

The primary objective for the incorporation of Ports of Jersey was for it to be *“the provider of essential, lifeline public services to the Island, but to do so in a commercial and sustainable manner that will improve services for customers and generate a return to the States”*.

In addition, the following supporting objectives were also confirmed by Government of Jersey:

- Responsibility for the direction, strategy and management of the air and seaport business.
- Managing the risks to public finances – seek appropriate sources of funding to bridge a projected funding shortfall in excess of £300million at the time of incorporation.
- Ensuring the ports can adequately address future demands, changing needs and regulatory requirements.
- Negotiating more favourable terms than available to the Government of Jersey, to provide more comprehensive packages and achieve economies of scale to benefit the Island.
- Generating new revenue streams through the development of Ports of Jersey’s asset base.
- To be an accountable body, responsible for oversight and management of Ports of Jersey’s asset base, ensuring transparency of regulation and governance. Ensure delivery of certain public service obligations.
- Create wider community and economic benefits.

Guided by these “objectives of incorporation”, the Board and Executive of Ports of Jersey produce 5-year Strategic Business Plans (the most recent version agreed in December 2022), to operate and develop the Airport and Harbour, as well as deliver certain public service obligations.

2.2 2020-21 impact of the pandemic

The current regulatory pricing framework period, which commenced in January 2020, coincided with an unprecedented period of disruption for the global travel sector caused by the Covid-19 pandemic.

While many European Airports and Harbours, in particular those under private ownership, wound down their operations, Ports of Jersey is very proud of the role it played to deliver significant benefits to the Island and its community, including:

- Ensuring the continued resilience of our air and sea connectivity for the lifeline movement of people and freight, including adapting processes to enable PCR testing of all arriving passengers at the Airport and Harbour.
- Supporting our community during the initial "emergency" response to the pandemic, including:
 - Airport Fire Service employees redeployed to supplement the ambulance service
 - Engineering team project managing the development of the Nightingale Wing
 - Security staff redeployed to supplement resource at the General Hospital and the Nightingale Wing
 - Customer Service employees redeployed to staff the Island's Covid-19 help line
 - Accommodating testing centres at the Airport and Harbour for islanders to aid Government's pandemic response
 - Employees were given paid leave to support on-Island charities (including Meals on Wheels, Beresford Street Kitchen etc.) helping the most vulnerable members of the community
- Supporting our business partners, including:
 - Ensuring the resilience of our ferry services, providing more than £5million of cash-flow support to Condor
 - Providing flexibility of credit terms, in excess of £5million, to support key stakeholders whose solvency had been threatened by the pandemic
 - Supporting tenants, often critical to the aviation and maritime supply chains, to reorganise their operations and ensure their viability throughout the pandemic
 - Working closely with our freight logistic partners, to ensure the Island remained supplied with everything from food and clothes, to our critical medical supplies
 - Securing new airline agreements with BA and easyJet ensuring their continued operations to Jersey and a five-year agreement with Jet2 to boost our visitor economy
- Supporting our Island community, including:
 - Ensuring provision of Blue Islands' life-line flights during lockdown, to enable repatriation of Islanders, access for essential workers and to medical services in UK
 - Led support for Blue Islands, developing the business case and negotiating terms of a commercial loan from Government to Blue Islands. This secured the Island's regional connectivity into the UK following the demise of FlyBe, with an independent forecast projecting a £620million positive impact on the Island's economy over 10 years
 - Used our expertise and specialist knowledge to negotiate a new contract for air ambulance services on behalf of the Health Department, as the incumbent operator had terminated their contract early in the pandemic

Ports of Jersey is proud to have worked closely with Government of Jersey to serve our island community, with no taxpayer funding either sought or received during the pandemic.

The pandemic has however had a significant impact both on the industry and on the company's financial performance. Ports of Jersey took difficult steps within its control to mitigate the financial impact of the pandemic, such as a voluntary redundancy programme at the end of 2020, which resulted in a reduction in our headcount of approximately 20%. The significant improvement in the

efficiency of our cost base played a critical role in securing connectivity for Jersey. Nevertheless, there is a lasting financial impact from the pandemic on Ports of Jersey:

- It is widely projected within the industry, that whilst demand for air travel will continue to grow in the future, passenger volumes will remain below long-term projected volumes pre-pandemic.
- From a purely Ports of Jersey perspective, we forecast that the financial impact of the Covid-19 pandemic will be £55m of lost revenue, exacerbating the projected cash shortfall identified at incorporation.

2.3 2022-23 post-pandemic recovery and future

2022 was a year of transition for the European travel sector and Ports of Jersey, as passenger connectivity was rebuilt, and operations restarted. Jersey Airport was one of the fastest recovering airports in the UK and Crown Dependencies, recording passenger volumes in 2022 that were 77% of those in 2019 (the last full year before the pandemic), and the resumption of operations took place without the significant disruption seen at many airports across Europe.

Guided by Government's proposed Common Strategic Policy 2023-26, Ports of Jersey's five-year Strategic Business Plan provides a clear roadmap for growth and investment which will positively impact every islander.

Ports of Jersey is seeking to harness the opportunities to expand services, enhancing the customer experience and choices, investing significantly in critical infrastructure, while supporting our community and providing value to both users and our shareholder.

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

Ports of Jersey strives to meet the needs and interests of its many and varied users, at the airport and harbour, confirmed in our annual five-year Strategic Business Plan, approved by the Government as shareholder (most recently in December 2022 for the period 2023-27).

We are aligned with Government in our commitment to invest in and manage the Airport and Harbour, as well as to deliver certain public sector obligations, for the benefit of Islanders.

3.1 Ports of Jersey's Strategic Business Plan 2023-2027

Our 'Ports for everyone' vision is to create industry-leading gateways, that act as a key economic hub, bringing people together, creating value to make Islanders proud. Our strategy to 2027 is a roadmap for growth and investment that will positively impact every Islander by:

- **Growing connectivity**

Jersey's connectivity to the rest of the world by air and sea is a key enabler of economic growth. Our priorities are to grow Jersey Airport as a Channel Islands hub, to increase year-round capacity to UK and Irish routes, to build a sustainable European network by both air and sea, to build on our strong airline partnerships, to work with Government on future ferry services, and to grow awareness of Jersey as a visitor destination.

- **Investing in critical infrastructure and optimising our property portfolio**

Ports of Jersey has continued to invest in the airport and the harbour to maintain operations through the pandemic. We are now embarking on a period of significant investment to ensure the resilience of the critical infrastructure at Jersey Airport and St. Helier Harbour for the future. This important phase of renewal, to meet both current and future challenges, represents a major opportunity for Jersey.

The Harbour Master Plan will transform St. Helier Harbour by providing critical resilience, capacity for growth in freight and passenger numbers, a smarter port with more productive and integrated port operations, greater flexibility for future ferry operations, a much-enhanced passenger experience, facilities to support Jersey's maritime (blue) economy, as well as leisure, cultural, and tourism opportunities.

An Airport Master Plan is approaching completion to meet the needs of passengers and business partners. The Airport Master Plan seeks to safeguard our lifeline connectivity, provide a much-improved passenger experience, and futureproof airport operations.

- **Ensuring maritime supply chain resilience**

The plans for investment and redevelopment of Elizabeth Harbour delivers all of the strategic objectives agreed with Government as well as a number of the recommendations of the JCRA's Freight Logistics Market Study (27th July 2022) to increase competition in the freight sector.

The plans ensure the long-term resilience of the port infrastructure whilst providing capacity to handle predicted increased lifeline freight volumes. The plans also take into account the capacity requirements for sand noted in the Bridging Island Plan 2022-2025 (and the referenced Minerals, Waste and Water Study 2020).

- **A placemaking led regeneration of the Harbour Estate**

The Harbour Master Plan will better connect St. Helier and the harbour through investment in the public realm (supporting the Island identity project), providing opportunities for cultural destinations, contributing towards resolving the Island's housing and visitor accommodation shortage, and regenerating the harbour estate.

- **Making our ports increasingly sustainable**

Ports of Jersey has an ambitious strategy for environmental, social and financial sustainability, supporting Government policy. Jersey is ideally positioned to support the innovation and development of sustainable technologies.

Our sustainability strategy is aligned with Government's Carbon Neutral Roadmap, creating value for future generations by balancing our focus on community, the environment, and the prosperity of Jersey.

- **Delivering our public service obligations**

Ports of Jersey is responsible for the delivery of six public sector obligations:

- (a) co-ordinating, or providing resources for co-ordinating, maritime search and rescue within the Jersey Search and Rescue Region.

- (b) Maintenance of aids to navigation in territorial waters.
- (c) acting as custodian of Jersey harbours.
- (d) enforcement of shipping legislation in territorial waters.
- (e) carrying out certain port State control functions.
- (f) management of the Channel Islands Control Area.

The Strategic Business Plan is aligned to Government's Outline Economic Framework (May 2022), whose approach to economic development is focused on

“the three supply-side inputs into, or determinants of, long-term economic potential: people and skills; capital investment; and, business environment”. The Strategic Business Plan will support Government's economic aims including helping deliver: *“an international economy which is outward facing, globally connected and that attracts diverse talent and investment”*; a *“Resilient economy”* that is *“internationally competitive, resilient to economic shocks and agile to change”*; and, an *“Innovative economy...driven by investment in new opportunities and market making processes, products and services”*.

Ports of Jersey's five-year capital investment plan (2023-2027) of £143 million provides resilience, regeneration, and enables sustainable economic growth.

The diversified nature of our business has enabled Ports of Jersey to withstand the full impact of the pandemic and it will be crucial to delivering our investment plans. Importantly, the Strategic Business Plan delivers significant growth in our financial performance, built on: increasing connectivity and passenger volumes, innovation-led growth in ancillary revenues and significant productivity gains as a result of a digital transformation of the business.

The development of a regulatory framework with the JCRA that supports the requirement to complete the significant capital investment in critical infrastructure at the Airport and the Harbour is an essential component of the implementation of the Strategic Business Plan.

3.2 Required infrastructure investment to deliver the Strategic Business Plan and secure the interests of Islanders.

The need for Ports of Jersey to undertake significant investment in the critical Airport and Harbour infrastructure is a key theme of our Strategic Business Plan. As the impact on operations of the Covid-19 pandemic is passing, the company's focus is on growth and the execution of its major capital investment plan.

The need for investment in critical Airport and Harbour infrastructure is referenced in the “Objectives of Incorporation” (outlined in section 2.1 above):

- Ensuring the ports can adequately address future demands, changing needs and regulatory requirements.
- Managing the risks to public finances – seek appropriate sources of funding to bridge a projected funding shortfall in excess of £300 million at the time of incorporation.

The projected funding shortfall relates primarily to the significant capital investment requirement in critical Airport and Harbour infrastructure, following under-investment over a prolonged period pre-incorporation.

This point was recognised in the Bridging Island Plan which included the following passage:

“...both facilities [*the Airport and Harbour*] are now ageing and are having to accommodate increased volumes of freight, larger vessels and aircraft and the more demanding aspirations of passengers for an improved customer experience when waiting at, or travelling through, the ports.

Significant capital investment is required in order to renew or upgrade port-related infrastructure and to support the resilience of the island’s lifeline services and supply chain, as well as ensuring the future sustainability of port-related industries and services.

It is important that the Island Plan supports proposals that allow the ports to change and adapt, to provide as efficient an operation as possible; and also to protect their safe operation, to enable the safe and convenient movement of people and freight to and from the island.”

[P276 Bridging Island Plan, March 2022]

a) Harbour Master Plan

The Harbour Master Plan is a once in a generation investment programme to transform St Helier Harbour that will:

- Modernise and replace ageing infrastructure to ensure long term critical resilience.
- Provide flexible infrastructure and capacity to help ensure competition in the freight market and to accommodate structural growth, including additional distribution centres.
- Provide infrastructure to support future ferry operations and growth in passengers.
- Embed future sustainability and the environment into proposals.
- Deliver a coherent sense of place for Jersey’s harbour and a much improved first impression of our Island.
- Provide the facilities required to support our maritime economy.

The importance of these proposals has already been recognised by the JCRA. In the JCRA’s Freight Logistics Market Study (27th July 2022), Fisher Associates noted the importance of the Harbour Master Plan proceeding, referencing its critical role in supporting effective future competition in the freight logistics sector.

b) Airport Master Plan

A detailed airport master-planning process is close to completion, to meet the future needs of passengers and business partners. The Airport Masterplan will safeguard our lifeline connectivity ensuring the requirements of the future in terms of customer service, local economy and sustainability.

The outputs of the masterplan process include proposed investments to: meet future passenger demand, enhance the customer experience and satisfaction; improve the quality of facilities and ensuring they are modern, compliant and fit for purpose and provide flexibility for future technologies and advancements; increase operational capacity and deliver improvements which provide greater customer choice; and, embed sustainability and the environment in the future design and operation of the airport.

In terms of specific conclusions, the masterplan outputs include:

- Introduction of next generation security equipment and body scanners, to meet regulatory requirements across Europe, which will remove the need to separate out liquids at security screening.
- Enhancements to the passenger terminal to improve the customer experience, including introduction of self-service bag drop, enhancements to the departure lounge, optimisation of baggage reclaim and improved use of space in the arrival's terminal.
- Fit-for-purpose passenger pier and gates that meets the needs of our passengers and assists in running an efficient operation.
- Integrating the current apron with future fleet requirements and runway options
- Investment into the runway in order to accommodate the anticipated increase in size of aircraft.

4. Question 2: Do you think the current price control arrangements meet the interests of ports users? Should the Authority consider alternative approaches to Ports of Jersey's pricing and the price control?

4.1 Overview

Though pricing is of the utmost interest to ports users, regulation based purely on price does not necessarily meet the interests of ports users, as it does not consider if Ports of Jersey is the ultimate determining party in setting prices to the end user. As a result, where Ports of Jersey has reduced ability to affect end-consumer pricing, undue resources can be spent trying to ensure appropriate revenues are generated, where effort would be better spent ensuring service quality, which conversely could be compromised by focusing purely on revenue returns.

4.2 Basis on which Ports of Jersey is regulated

Ports of Jersey was established under the Air and Sea Ports (Incorporation) (Jersey) Law 2015. The 2015 Law provides that an operator of port operations requires a licence issued by the JCRA as the economic regulator of the sector. Ports of Jersey is the only licensed port operator in Jersey, operating the airport, harbours and marinas in Jersey.

The JCRA places particular emphasis on the oversight of those services provided by Ports of Jersey in which it considers the company to be the dominant supplier or has a monopoly position. Currently this includes the majority of services and activities conducted at Jersey Airport and Jersey Harbours and Marinas. Customers seeking to travel to or from Jersey or to transport freight to or from Jersey have no alternative but to use services provided by Ports of Jersey.

The JCRA has implemented the following regulatory oversight and control mechanisms:

- Quality of service monitoring regime, under which Ports of Jersey is required to publish quarterly and annual updates on a number of service quality metrics
- A pricing framework, running from January 2020 until December 2024, with a price cap of Jersey RPI +1% and 5% revenue tramlines (on a single till basis)

4.3 Recognition of need for oversight and importance of the regulatory decisions to enable investment in critical infrastructure

Ports of Jersey acknowledges the JCRA's findings on its dominant market position in the provision of regulated services and recognises the appropriateness of regulatory oversight and controls.

Ports of Jersey is committed to ensuring all areas of our business live up to the expectations of our diverse range of stakeholders. To ensure the interests of port users are met in the future, and the "Objectives of Incorporation" are achieved, Ports of Jersey must invest significantly in both the Airport and Harbour infrastructure, ensuring facilities are fit for purpose, are able to accommodate anticipated changes in requirements over the coming decades and remain adaptable throughout that period.

Regulation plays a critical role in facilitating Ports of Jersey's investment. It will be essential for Ports of Jersey to raise debt funding to deliver its capital investment plans. The ability to raise debt will be predicated on the cash flows that the business reasonably forecasts. The regulatory framework, specifically the pricing framework, will be a critical input to those cash flow forecasts, directly influencing the level of debt that Ports of Jersey will be able to secure as well as its ability to service that debt in the future.

This was recognised in the Fisher Associates report, commissioned by the JCRA, that noted (in respect to the Harbour Master Plan):

'the Authority, through its role as the ports' regulator, can also help influence the implementation of these options. For example, by considering steps to support their implementation within the context of the upcoming Regulatory Framework Review'.

Both the efficient management of ports operations and appropriate regulatory balance will be critical in facilitating the delivery of the Harbour and Airport Master Plans and the significant long-term benefits they will bring to Jersey.

4.4 Future regulation

The current regulatory pricing and quality of service framework for Ports of Jersey has been in place since 1 January 2020, and has been complied with fully by Ports of Jersey.

Regulation of specific areas of Ports of Jersey's business is dependent on the JCRA's finding that Ports of Jersey has significant market power in those regulated services. While Ports of Jersey does not necessarily agree with this decision in all areas (because of the countervailing buying power of the airlines in choosing whether or not to operate to and from Jersey), it is not looking to reopen this finding.

As noted, Ports of Jersey's primary concern with any model or framework of regulation is that it enables the company to undertake the investment that is required in critical Airport and Harbour infrastructure. Ports of Jersey is seeking a framework that enables it to generate sufficient revenues and profit to also support the delivery of high-quality customer service while allowing it to raise and service sufficient debt to finance its investment programme.

Ports of Jersey considers that the current regulatory framework model, whilst not optimal, is both workable and acceptable. However, if this regulatory framework model were to be continued Ports of Jersey would seek an update of the price cap and tramlines.

4.5 Recovery of revenue from the current price framework – 5% tramlines

As noted above, due to the impact of the global Covid-19 pandemic, Ports of Jersey has significantly under-recovered revenue compared to the assumptions in the current price framework. This means that it is in a significantly weaker financial position, through no fault of its own, than was envisaged when the current price framework commenced.

Regarding the 5% (positive and negative) tramlines around the cumulative revenue forecast, the CICRA Final Decision on the current price cap states:

“Should Ports of Jersey revenue fall outside these tramlines (either positively or negatively), Ports of Jersey will agree a corrective course of action with the Authority. Where additional revenue, above the tramlines, has been generated, the expectation would be that future price increases would be lowered, subject to understanding the drivers for the disparity were caused by a structural or one-off shift. A similar principle would apply in the event of a less favourable outturn.”

Given that a “less favourable outcome” has occurred, and it is not going to be possible, nor would it be appropriate, to recover this revenue within the current price control, we are looking to work with the JCRA to agree how to recover this revenue through adjustments to the future pricing framework.

5. 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.

5.1 Ownership structure is important when comparing Ports of Jersey to regulated ports that are privately owned.

Ports of Jersey is a States-Owned Entity, rather than a privately owned, profit-driven business, that could seek to exploit its market position if it was given the power to do so. The fact that it is 100% owned by the Government of Jersey (the taxpayer) rather than private shareholders, means:

- All profits are reinvested into Airport and Harbour infrastructure (or paid back to Government as a dividend, although Ports of Jersey has not issued any dividends since incorporation), rather than distributed to private shareholders.
- The long-term financial risks associated with the ports sit with the Government of Jersey rather than private shareholders.

Ports of Jersey’s strategic objectives, which are set out in its Strategic Business Plan, are formally agreed with Government on an annual basis. As noted earlier, the focus of the Board and Executive of Ports of Jersey is to deliver the “Objectives of Incorporation” rather than solely profit maximisation. Ports of Jersey’s Strategic Business Plan is underpinned by a focus on becoming more

productive and efficient, and innovating to generate new revenues. Importantly, this focus is to ensure it is self-financing and will not require any taxpayer funding.

5.2 Quality of Service measures

Ports of Jersey currently reports and publishes a set of quarterly quality of service (QoS) metrics, which are monitored by the JCRA. The metrics fall into several broad categories:

- Measures that are important to customers and which Ports of Jersey has some or significant control over (e.g. queueing time at security)
- Measures that are important to customers and which Ports of Jersey has only a limited control over (e.g. time to receive luggage)
- Measures that are important to customers, but which Ports of Jersey has little or no control over and are the result of decisions by other parties (e.g. punctuality of flights and flight cancellations) and
- Measures which are not an issue for customers and which Ports of Jersey has always achieved a 100% record on (e.g. availability of stands and availability of berths).

Ports of Jersey consistently meets or exceeds all QoS benchmarks. Ports of Jersey strives to improve the quality and efficiency of the services it delivers to its customers. We suggest that consideration should be given to whether the current QoS metrics could be refined, to better demonstrate that user interests are being met.

Ports of Jersey welcomes the JCRA's proposed review of QoS measures and will work constructively to help develop a series of improved metrics.

Additionally, Ports of Jersey believes that appropriately designed QoS measures could, for certain services, provide a meaningful alternative to price control measures, driving improved outcomes for users and justifying investment.

We kindly ask however, that any changes to the QoS measures are proportionate and can be administered efficiently.

5.3 Future approach to regulation, including core vs non-core services

In the "Non-Statutory Call for Information" document, the JCRA has suggested that it might be appropriate to consider a differentiated regulatory approach between core and non-core services, potentially coupled with an improved and focused use of QoS obligations.

Ports of Jersey supports this thinking and whilst further work is required, we have provided brief consideration in the sections that follow as to how such differentiation could work.

a) Jersey Airport

Ports of Jersey does not consider that it is able to exercise significant market power in the provision of airport services in Jersey, either currently or in the future. Prices with airlines are set by negotiation, where Ports of Jersey is seeking to encourage the carriers to serve Jersey, cognisant that they have a range of airports to choose between across Europe and further afield.

Lower charges to airlines, as a result of regulation, will not necessarily result in lower prices for passengers. In fact, they are likely to be wholly or partially absorbed by airlines / carriers many of whom have market power in the travel segments in which they operate, to and from Jersey (often where they are the sole supplier).

Consequently, 'heavy touch regulation' such as a detailed price cap on each individual airport service may not be appropriate. While a price cap may not constrain most negotiations with airlines (because of Ports of Jersey's relatively weak bargaining position), it potentially prevents any rebalancing of the prices for aviation service, that in many cases were set 20 or 30 years ago and have only been updated for inflation since, without any recognition of the changes in relative costs of the different services (upwards or downwards).

Ports of Jersey is seeking a proportionate approach to regulation that reflects the limitations on its ability to exercise market power and its lack of motivation to do so (in line with its strategic objectives), and instead provide it with greater commercial flexibility to deliver its strategic objectives.

It may also be appropriate to consider differentiated approaches to regulation in respect to private aviation potentially further split between light aircraft and larger private jet / aviation services where the consideration of user protection may be different compared to the protection of user interests for commercial airlines.

In respect to services provided to commercial airlines and air-freight services, Ports of Jersey requests that successful examples of airport regulation from other jurisdictions should be considered and could successfully be applied. We believe that the framework applied to major Australian airports is worthy of consideration:

- Airport users, including airlines and operators of landside services, negotiate directly with airport operators on charges and other terms of access to a range of infrastructure services. Except for some regional services at Sydney Airport, governments and regulators do not intervene in the setting of charges or other terms of access.
- Airports provide detailed regular reports to the regulator about their prices, profits, investment, quality of service, customer complaints etc to enable an assessment of whether it is likely to be exercising its market power.
- If there are concerns about any airport's behaviour the regulator will open an investigation into that airport.
- If an airport is found to be exercising market power, then there is the credible threat of regulatory enforcement action (e.g. fines) and the introduction of stricter regulation (e.g. price caps).

This has worked effectively for over 20 years to ensure a light-touch regulatory regime that offers considerable commercial freedom to Australian airports (all with market power) but still protects customers from the risk of the airports exercising their market power. The Australian Government Productivity Commission, in their 2019 inquiry into economic regulation of airports, concluded:

"Sydney, Melbourne, Brisbane and Perth airports (the monitored airports) have significant market power in aeronautical services, but they have not systematically exercised their market power to the detriment of the community. There is no justification for significant change to the current form of regulation of aeronautical services at any of these airports."

This regulatory approach is similar to the approach that the JCRA applies to the regulation of Jersey Post where Jersey Post is not subject to a price cap, but instead regulation is based on:

“ongoing monitoring and surveillance, in line with our strategic objectives which are to provide oversight of Jersey Post’s behaviour and charges based on reliance on competition law by default and economic regulation by exception, as well as ensure quality of service provision and USO obligations are met.”

This is also consistent with the approach that the JCRA has taken to regulating Ports of Jersey’s QoS where the JCRA:

“intends to use the information to monitor and provide oversight of the quality of service provided by Ports of Jersey ... JCRA does not intend to set specific targets for performance”.

Such an approach would require a review and amendment to the QoS and periodic reporting of information by Ports of Jersey to the regulator (and the public), to ensure the JCRA could continue to monitor and have assurance that Ports of Jersey was not exercising its market power to the detriment of users.

Ports of Jersey is keen to work with the JCRA to develop a price monitoring regulatory regime for the airport that would be light touch, proportionate, flexible and efficient, and maintains regulatory oversight of an important part of Jersey’s transport infrastructure.

b) Jersey Harbour and Marinas

The market for maritime services is different from that for airports. There are no alternatives for ferry companies to unload their freight and passengers other than using Ports of Jersey’s harbour infrastructure. Also, due to key characteristics of the Channel Island ferry services (size and type of vessels) there is limited transferability of the ferry or freight operators’ services.

Ports of Jersey agrees that it has market power in these markets and that, in the absence of regulation, it would have the ability to raise prices without facing a market-based constraint which would effectively, either wholly or partially, be passed on to final customers by the operators (albeit, as noted earlier, such an approach would not be consistent with the “Objectives of Incorporation” or Ports of Jersey’s Strategic Business Plan).

Conversely, the market for marine leisure services is very different to sea-port operations and we see benefits in providing greater commercial flexibility in these markets to allow market-based commercial decisions to be taken.

The JCRA has noted the importance of progressing the Harbour Master Plan and the importance of the pricing framework in enabling Ports of Jersey to undertake the major infrastructure projected referenced earlier. Any pricing framework needs to incorporate maintenance and operating costs as well as the cost of new capital investment at Elizabeth Harbour (depreciated over its useful economic life).

A proportionate RAB-based approach, with a pricing framework that would enable an appropriate level of price increases, would support Ports of Jersey to:

- Meet the future operational and capacity demands for the Ports of Jersey
- Comply with future user and regulatory requirements
- Deliver its Public Sector Obligations, and
- Secure financing (and service the associated debt) required to undertake much needed investment in the critical port infrastructure.

We would recommend grouping services into baskets of similar products, so as to allow some rebalancing of individual prices that were in some cases set 20 or 30 years ago. Importantly, this would be within an overall framework that ensures that “regulated” harbour prices in total, do not rise by more than is required to meet Ports of Jersey's operating costs and fund the required investment in critical infrastructure.

Ports of Jersey is keen to work with the JCRA to develop a proportionate RAB-based pricing framework that ensures the long-term future and development of our maritime services.

As with the Airport, Ports of Jersey supports a differentiated approach to marine-leisure-based charges, providing Ports of Jersey greater flexibility to adjust charges to reflect the demand for marina berths.

5.4 Public Service Obligations

As summarised in above in section 3.1, Ports of Jersey is responsible for delivering certain Public Service Obligations (PSO's) on behalf of Government of Jersey. The operating and capital costs associated with undertaking the PSO's, for example the operation of Jersey Coastguard and the maintenance and operation of Jersey's historic harbours, can vary significantly between years. Ports of Jersey is keen to engage with the JCRA regarding an appropriate mechanism for incorporating the PSO's into the pricing framework.

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

The contents and suggestions presented here by Ports of Jersey are an initial consideration of the matters and key questions raised by the JCRA in its “Non-Statutory Call for Information document” of 14th February 2023.

Ports of Jersey looks forward to working with the JCRA and other relevant stakeholders to develop an appropriate pricing framework. A framework that protects the interests of users whilst ensuring Ports of Jersey can deliver its strategic business plan, providing the critical Island gateway infrastructure needs for future generations.