



Case P-008

# Regulatory Review of Air and Sea Port Operations: Pricing Framework

## Non-statutory Final Decision

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## 1 Executive summary

- 1.1 This document is the Jersey Competition Regulatory Authority's (**the Authority**) non-statutory Final Decision for the pricing framework, which will apply to Ports of Jersey Limited (**Ports of Jersey**) from 1 January 2025 to 31 December 2029.<sup>1</sup> In this Final Decision, the Authority is setting the future price control on Ports of Jersey, which will limit annual price increases to a maximum of 1.8% above Jersey RPI.
- 1.2 The Air and Sea Ports (Incorporation) (Jersey) Law 2015 (**the Law**)<sup>2</sup> sets out the requirement for the Authority to regulate air and seaport operations, to ensure that current and future users' interests are protected. Ports of Jersey is the only Licensed supplier of Ports operations and is subject to economic regulation, including a price control.
- 1.3 The price control has been determined in the context of Ports of Jersey's plans to undertake transformational capital expenditure in the airport and seaports. These projected investments have been approved by Government, and while subject to the risks and uncertainties typical of large infrastructure projects, they will be important to the Island's economy. The Authority has confidence that through the price control, Ports of Jersey can achieve its plans.
- 1.4 This document takes full account of stakeholder responses to the Authority's Draft Decision (published in June 2024). The Authority's approach balances different views and interests and is framed by the Government Ports Policy Framework, issued in January 2024.<sup>3</sup> The new price control enables Ports of Jersey to progress with its planned investments, while ensuring ports users' interests continue to be protected (consistent with the Authority's statutory duty).
- 1.5 The Authority's approach to the new price control builds on existing policy and precedent, establishing a five-year, single till, price control. The key elements in determining the final level of X relate to the Authority's decisions on capital expenditure, the cost of capital and operating expenditure and efficiency. The combined effect of the Authority's decisions in each of these areas reduces the upper level of the X (3%), set out in the Draft Decision, to 1.8%.
- 1.6 The new price control is underpinned by a comprehensive compliance and monitoring regime, and a licence-based safeguarding approach. This enables the Authority to vary the price control in response to material changes in forecast revenues or costs.<sup>4</sup>
- 1.7 The new price control will be given effect through the required statutory process and an Initial Notice has been published alongside this document. Representations to this Initial Notice can only be made by Ports of Jersey. If no representation is made, the Final Notice of Directions will be made on or about 13 November 2024.

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

<sup>2</sup> See: [Air and Sea Ports \(Incorporation\) \(Jersey\) Law 2015](#)

<sup>3</sup> See: [Policy Framework for the Ports Sector](#)

<sup>4</sup> See Box 1 in Chapter 5 for an overview of the Authority's approach to safeguarding the control

## 2 Introduction

2.1 This chapter is split into three subsections:

- Background;
- The Review process; and
- Structure of this document.

### Background

2.2 In February 2023, the Authority initiated the Regulatory Review of Air and Sea Port Operations (**the Review**) with a Call for Information. This was followed by structured engagement with key stakeholders in June and July 2023; an Information Note was then issued in August 2023 setting out the Authority's preliminary policy analysis. This was followed by a further Information Note in December 2023, providing an update on the Review and next steps.

2.3 In June 2024, the Authority published a Draft Decision for the Pricing Framework. In the Draft Decision and accompanying EY report, *'Regulatory review of air and sea port operations: Analysis to inform price control considerations'* (**EY report**), the Authority set out its preliminary views on:

- The structural approach to the pricing framework;
- The key pricing framework parameters; and
- The level of the price control.

2.4 Six responses were received to the Draft Decision: Condor Ferries (**Condor**), Gorey Boat Owners Association (**GBOA**), an individual response (Perry Garrod), Ports of Jersey, Rozel Boat Owners Association (**RBOA**) and St Helier Boat Owners Association (**SHBOA**). To note, the responses from GBOA and SHBOA are substantially the same and are referred to as the **BOA response**. Non-confidential versions of all the responses are available on the Authority's website and the Authority would like to thank all stakeholders for their input.

2.5 As part of the Review process, follow-up discussions were also held with Ports of Jersey, to discuss its response and the future compliance and monitoring framework.

### The Review process

2.6 The Authority's approach to consultations was set out in an Information Note in July 2018.<sup>5</sup> The Information Note outlined the process to be undertaken before carrying out certain regulatory functions in accordance with the relevant statutory process.

2.7 Under the process there is first a non-statutory process. The non-statutory process consists of a Call for Information, a Draft Decision and a Final Decision. As set out in the Background section, the Authority has carried out the non-statutory process. This document is the conclusion of this process, the non-statutory Final Decision.

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<sup>5</sup> See: [Regulatory Consultation Process Information Note](#)

- 2.8 Before carrying out certain regulatory functions, following the non-statutory process, the appropriate statutory process is followed. A decision to give directions to Ports of Jersey with respect to pricing is the exercise of a specified regulatory function pursuant to the Law. Therefore, the statutory process must be followed, and an Initial Notice has been issued alongside this Final Decision.
- 2.9 As set out in the Initial Notice, written representations to the exercise of this specified regulatory function may only be made by Ports of Jersey. If representations are received regarding the proposed exercise of such a function, the Authority will consider them and will decide:
- Not to exercise such a function;
  - To issue a new Initial Notice; or
  - To issue a Final Notice confirming the direction.

### Structure of this document

- 2.10 This Final 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, including the level of the control;
  - Chapter 5 sets out the approach to safeguarding the price control, including monitoring and compliance; and
  - Chapter 6 summarises the Authority's Final Decision.
- 2.11 Within chapters 3 to 5 a consistent approach is adopted to the different subsections, where each subsection refers to an element of the Draft Decision, for example the approach to the duration of the control. The structure is as follows:
- Draft Decision proposals;
  - Draft Decision responses;
  - Authority analysis; and
  - Authority conclusion.
- 2.12 Note that this document does not repeat all the background and reasoning for proposals set out in the Draft Decision and the EY report. A high level summary is provided within each section and cross-reference is made to additional analysis and information where relevant.

## 3 Structural approach to the pricing framework

3.1 Consistent with Chapter 3 of the Draft Decision, this chapter contains the following subsections:

- Market definition and significant market power;
- The form of the control;
- The duration of the control;
- Basis for regulated charges; and
- The modelling approach.<sup>6</sup>

3.2 Question 1 of the Draft Decision sought respondents' views on the structural approach to the price control.

### Market definition and significant market power

#### Draft Decision proposals

3.3 The Authority's Draft Decision was to maintain the market definition and significant market power decision set out in 2016 (CICRA 16/41).<sup>7</sup> It was noted that there have been no material changes in Ports of Jersey's operations and services, since the previous Decision and that Ports of Jersey, as set out in its call for information response, was not seeking to reopen this area.

#### Draft Decision responses

3.4 Ports of Jersey noted its overall agreement with the Authority's structural approach and did not comment on this area. However, its response stated that charges contained within the pricing framework should be reviewed, to determine whether any specific areas should be deregulated.

3.5 RBOA broadly supported the Draft Decision, while stating that certain marinas and activities should be considered Public Service Obligations. In particular, the response requested a statement from the Authority to clarify the treatment of mooring fees.

3.6 The BOA response noted that, while it broadly agrees with the structural approach, it would like to see parking (at the airport and the harbour) set out as a separate market subject to economic regulation.

3.7 Condor's response drew attention to potential changes in operations, such as reduced Lift-on, Lift-off activity (and corresponding increases in Roll-on, Roll-off activity), the capacity of on-Island warehousing, the impact of Brexit and the reduction in 'bed stock' (related to Hotel and visitor capacity).

#### Authority analysis

3.8 The Authority notes a review of charges contained within the pricing framework is inextricably linked to market definition and significant market power. The Draft Decision noted that there have been no material changes in operations and services. Further, throughout the Review there has been extensive engagement with Ports of Jersey on the scope of regulated and unregulated

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<sup>6</sup> Note, cumulative revenue management and compliance and monitoring were included in this chapter in the Draft Decision. These areas are both now discussed in Chapter 5.

<sup>7</sup> See: [Final Notice - Ports of Jersey - assessment of market power](#)

services. This is reflected in the annex to the Initial Notice which, for clarity, lists the Regulated Services.

- 3.9 The Authority notes the BOA response and its concerns around parking. However, as set out in the previous Decision, which underpins the Authority's structural approach, parking is excluded from the price control at the airport and harbour. These services do not form part of the market definition, nor are they included in the bundle of airport or port operation services subject to price control. Similarly, with respect to the Condor response, while the operating environment may be subject to change, this has not fundamentally affected the services provided by Ports of Jersey.
- 3.10 With respect to the policy on outlying harbours raised by RBOA, the pricing framework continues to ring-fence Public Service Obligations (including outlying harbours) and excludes certain charges from the price control. These services are identified in the annex to the Initial Notice, and for the avoidance of doubt, charges for mooring fees at outlying and historic harbours are excluded.<sup>8</sup>
- 3.11 Related to this point, the Authority notes it was envisaged that Ports of Jersey management plans would be developed for the outlying harbours after incorporation, which would be agreed with respective parishes and be subject to consultation with interested parties, such as boat owners. Consistent with the Government's Ports Policy Framework (Priority 8: Public Service Obligation), the Authority recommends that further steps are taken to ensure existing agreements with respect to historic harbours are periodically reviewed and updated, reflecting learnings from current service provision and best practice.

#### Authority conclusion

- 3.12 In light of the analysis in the Draft Decision and stakeholder responses, the Authority's conclusion is to maintain the market definition and significant market power decision established in 2016 (CICRA 16/41).

#### The form of the control

##### Draft Decision proposals

- 3.13 The Authority's Draft Decision was to limit price increases/decreases in any given year to a maximum of inflation *plus* or *minus* a fixed amount, i.e., + / - X%. 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 price control brings regulated charges in line with total allowable forecast costs by the end of the period. It was noted that this approach is consistent with both existing practice and is used extensively by regulators internationally.

##### Draft Decision responses

- 3.14 While setting out its support, Ports of Jersey noted that financial flexibility may be needed for it to be able to meet obligations referenced in the Government Ports Policy Framework. This

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<sup>8</sup> The full list of Regulated Services with respect to Marinas is included on page 13 of the Initial Notice.

included the overarching objective to ‘enable it to continue the provision of essential public services to the Island in a sustainable manner’.

- 3.15 The BOA response raised a number of points with respect to the mechanism of the price control and these are dealt with in the relevant subsection. On this area, it was noted that there should be a cap on the maximum increase that can be passed through the pricing framework (e.g. over and above the ‘X’ value).
- 3.16 The individual respondent suggested benchmarking the profitability of Ports of Jersey against comparable businesses would be a superior approach to the proposed control. It was noted this could be done at a business or market level (e.g. marinas).

#### Authority analysis

- 3.17 Consistent with the Government Ports Policy Framework, the Authority recognises the importance of Ports of Jersey and its essential public services. While Public Service Obligations are outside the Licence, the costs and revenues flowing from them must be taken account of in the price control. It is also important that there are documented agreements between Government and Ports of Jersey on Public Service Obligations, which may then include appropriate mechanisms for any additional or incremental requirements. Given this, it would not be appropriate to introduce further funding mechanisms for this, over and above the core pricing framework.
- 3.18 With respect to the BOA response, the Authority notes it would not be appropriate to impose an additional cap over and above the ‘X’ in the price control. The price control already imposes a firm pricing constraint. It also cannot be used to control inflation, or to arbitrarily constrain Ports of Jersey’s costs (which may be subject to inflation). Implementation of such an approach would result in an entirely different form and nature of price control.
- 3.19 On benchmarking, while the Authority agrees this can be a useful tool, there is no clear comparator for Ports of Jersey, which operates across multiple different areas. Nevertheless, where appropriate, benchmarks have been incorporated into the Authority’s analysis, for example with respect to the cost of capital and efficiency (discussed in Chapter 4).

#### Authority conclusion

- 3.20 The Authority’s Final Decision is to limit price increases/decreases in any given year to a maximum of inflation *plus* or *minus* a fixed amount, i.e., +/- X%.

#### The duration of the control

##### Draft Decision proposals

- 3.21 The Authority’s Draft Decision was for a five-year price control period (from 2025-2029). This is consistent with Authority practice and provides a balance between stability and incentives for long-term efficiency with the need to be flexible to changing circumstances. It is also consistent with regulatory best practice.

##### Draft Decision responses



3.22 As noted above, a number of respondents supported the overall structural approach to the price control and only the BOA response commented directly on duration, noting that five years is a reasonable timeframe.

#### Authority analysis

3.23 The Authority notes stakeholder consensus on the duration of the price control.

#### Authority conclusion

3.24 In light of the analysis in the Draft Decision and stakeholder responses, the Authority's conclusion is that a five-year price control, from 2025 to 2029, is appropriate.

#### Basis for regulated charges

#### Draft Decision proposals

3.25 The Authority's Draft Decision was to maintain a single till and current practice, whereby each regulated charge is subject to the same price control. 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). It was noted this approach is consistent with the wider regulatory framework (acting as a constraint on cross subsidisation) and provides regulatory certainty and policy consistency. It also reflects Ports of Jersey's status as a single entity.

#### Draft Decision responses

3.26 Ports of Jersey noted it wanted to ensure the framework enables Ports of Jersey to 'rebalance' certain regulated charges. For example, it was noted that many charges were set prior to incorporation and have since been subject to the current control (i.e. with increases capped at RPI +1%).

3.27 The BOA response noted support for a single till. However, the response argued that marina services should have a lower value of X in any future price control (the BOA response suggested an X value of -1). It was noted this would be appropriate as, in BOA's view, the planned capital expenditure programmes would not benefit marina and outlying harbour users, and marinas are not, in any event, a large revenue source for Ports of Jersey.

3.28 The individual respondent noted that it was unclear how Ports of Jersey can demonstrate value for money for each of their business areas.

#### Authority analysis

3.29 The Authority considers that the price control will give effect to some rebalancing of pricing and that the price control effectively enables real terms price increases. Further, the Authority's view is that the price control does not preclude innovation or adjustments within the single till. For example, subject to the Conditions of Ports of Jersey's Licence and related processes, charges for new services may be introduced, and charges for existing services may be adjusted.

3.30 With respect to marinas, the Authority notes a separate 'X' would not be consistent with a single till. All ports users should benefit from ongoing capital expenditure and marina services have benefitted from direct investment since 2019, also through the single till. Moreover, all relevant

costs have been thoroughly reviewed and will be recovered appropriately in accordance with a single till price control.

- 3.31 With respect to concerns around value for money, the Authority is introducing a comprehensive compliance and monitoring approach. This is set out in Chapter 5. Further, drivers of efficiency are built in through the Strategic Business Plan process and also in the price control itself, which includes an annual efficiency challenge on Ports of Jersey.

#### Authority conclusion

- 3.32 In light of the analysis in the Draft Decision and stakeholder responses, the Authority's Final Decision maintains a single till and current practice, whereby each regulated charge is subject to the same price control.

#### The modelling approach

##### Draft Decision proposals

- 3.33 The Authority's Draft Decision was to use a regulated asset-based model, constructed on a nominal basis (allowing for the effects of inflation), to determine the value of 'X'. The Draft Decision noted that:

- A regulated asset-based approach is widely used by other regulators and consistent with regulatory best practice. It manages the recovery of investments and contributes to price stability for users. It also ensures investors receive an appropriate level of return.
- The nominal approach was adopted to be consistent with Ports of Jersey's modelled cash flows, and to provide consistency with debt servicing requirements. It was also noted this approach is simpler and aligned with Authority precedent.

##### Draft Decision responses

- 3.34 As noted above, a number of respondents supported the overall structural approach to the price control. No comments were received on the modelling approach.

##### Authority analysis

- 3.35 The Authority notes stakeholders' general support for the Authority's overall structural approach to the price control.

##### Authority conclusion

- 3.36 In light of the analysis in the Draft Decision and stakeholder responses, the Authority's Final Decision uses a regulated asset-based model, constructed on a nominal basis, to determine the value of 'X'.

## 4 Key pricing framework parameters

4.1 This chapter refers to chapters 4 and 5 of the Draft Decision and consistent with this, contains the following subsections:

- Capital expenditure;
- Cost of capital;
- Inflation;
- Operating expenditure and efficiency; and
- The level of the price control.

4.2 Question 2 of the Draft Decision sought respondents' views on key pricing framework parameters, while Question 3 sought views on the level of the price control.

### Capital expenditure

#### Draft Decision proposals

4.3 The Authority's Draft Decision was to adopt the capital expenditure set out in the Government of Jersey approved Strategic Business Plan with two possible adjustments:

- **Assets in the Course of Construction (AICC):** AICC are neither complete, nor generating any form of consumer - or other - benefit. The value for AICC was set at 11.5% of the total fixed assets (and this reduced the required level of return over the period). This value was set by reference to the level of AICC in Ports of Jersey's 2022 Annual Report, and it was noted the approach was consistent with regulatory practice in other jurisdictions.
- **'Exclusion' of certain investments/assets:** Following the same principle, investment subject to formal planning consent and 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, exclusion of this investment would also reduce the required level of return over the period.

4.4 The Draft Decision also noted the significance of Ports of Jersey's capital expenditure during the next price control period, relative to expenditure under the current price control and Ports of Jersey's existing asset base. Further, approval and financing of the proposed investments is effectively a matter for the Government through the Strategic Business Plan approval process. This is supported by Ports of Jersey's competitive procurements and the use of an incentive-based price control.

#### Draft Decision responses

4.5 Ports of Jersey's response supported the proposed structural approach to the pricing framework, which includes capital expenditure as a key variable and pricing parameter in the regulated asset-based model. Ports of Jersey's response also noted that the duration of the proposed investment programme extends beyond the period of the next five-year price control; and, that the X value should be directly linked to capital expenditure. The response also

discussed how the delivery of the Strategic Business Plan and associated capital expenditure is subject to revenue assumptions, which may be influenced by external factors outside the control of Ports of Jersey.

- 4.6 In its response to the Draft Decision, the RBOA indicated broad agreement with the Authority's approach to the key parameters of the price control framework. However, the BOA response argued that a proportion of capital expenditure relates to commercial property development plans on land vested by States of Jersey during incorporation. The response suggested that such expenditure should not be funded by 'other' customers.
- 4.7 Condor Ferries' response to the Draft Decision stated that, absent full knowledge of Ports of Jersey's masterplans and Strategic Business Plan, it could not provide analysis contrary to the Authority's proposed approach (in the Draft Decision). Condor's response noted that, while it could not provide analysis to contrary to the Authority's proposed approach, there is uncertainty as to the level of capital expenditure, and that the investment is not well targeted, in that it did not address what it described as fundamental infrastructure needs.

#### Authority analysis

- 4.8 In terms of Ports of Jersey's investment 'horizon' and related issues, the long-term nature of the investments and asset lives is recognised and captured in the use of the regulated asset-based approach. This takes full account of capital expenditure within the price control period, while establishing a firm basis for future economic regulation, particularly where further investment is scheduled, and asset lives are typically of a longer duration. This is also consistent with an incentive-based approach and the Government Ports Policy Framework.
- 4.9 With respect to specific categories or assets of investment, the pricing framework is not a vehicle for re-determining the process and terms of Ports of Jersey's historic incorporation. Moreover, all commercial, property and development costs (and any associated income) have been modelled consistent with the operation of a single till; if investment results in additional income streams, this would tend to reduce the level of the price control (and charges to all ports users).
- 4.10 On the issue of information and visibility of Ports of Jersey's masterplan(s), we note that Ports of Jersey's Strategic Business Plan has been formally approved by Government, and that both the Harbour Masterplan and Airport developments have been subject to significant stakeholder engagement.
- 4.11 Further, as set out above, the Authority's Draft Decision considered two adjustments (to Ports of Jersey's capital expenditure). The second possible adjustment concerning the deferment (exclusion) of certain investments, has not been adopted in the Final Decision. The first adjustment for AICC has broadly the same effect on the level of the price control, and is also evidenced by reference to Ports of Jersey's Annual Report and Accounts.
- 4.12 Consistent with the Draft Decision, the value of AICC is set at 11.5% of the total fixed assets and determined also by reference to the level of AICC in Ports of Jersey's 2022 Annual Report.

#### Authority conclusion

- 4.13 In light of further analysis and stakeholder responses to the Draft Decision, the Authority's Final Decision adopts the capital expenditure set out in Ports of Jersey's Strategic Business Plan, with an adjustment for AICC.

## Cost of capital

### Draft Decision proposals

- 4.14 The Authority's Draft Decision established a range for the cost of capital of 7.5% to 8.5% (pre-tax nominal). 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. The Authority gave careful consideration to the cost of capital, drawing also on the independent expert advice of EY.
- 4.15 The Draft Decision referenced Ports of Jersey's submissions on the cost of capital, noting that it proposed a range considerably higher than any relevant benchmark (including that recently set by the Authority in the telecoms market). Ports of Jersey's proposed range contained a series of additional risk premia materially adding to its estimate, and which in the opinion of EY, would be unusual to include and inconsistent with the approach taken by the Authority in previous decisions.

### Draft Decision responses

- 4.16 Ports of Jersey's response suggested the cost of capital should be raised above 8.5%. It argued for a higher cost of capital on the basis of the risks and costs it faces, such as Public Service Obligations (unlike other privately owned regulated UK infrastructure companies), the higher cost of construction in Jersey, and issues outside of its control (e.g. the impact of French ID card travel scheme on passenger flows).
- 4.17 The BOA response questioned the risk premia applied to Ports of Jersey, arguing that the range for the cost of capital had been set too high. In support of this, it noted that Ports of Jersey are wholly owned by a Crown Dependency government and should carry a lower risk than regulated utilities owned by private equity funds in the UK. This is also because the risk of default, and expectations on shareholder return, would be lower for Ports of Jersey compared to those entities.

### Authority analysis

- 4.18 The cost of capital is central to the determination of an appropriate price control. The risk premia and all other components of the cost of capital were independently analysed and reviewed in absolute and relative terms – to comparable benchmarks. The proposed range is consistent with that analysis, and effectively captures the range of risks faced by Ports of Jersey, as well as sources of finance and institutional factors (like ownership).
- 4.19 In order to set the level of the price control, the cost of capital must also be determined (i.e., as a single figure within the range). The Authority has given detailed consideration to stakeholder responses and other key factors, not least, Jersey's relatively unique dependence - and Ports of Jersey's role in providing - on resilient and frequent connectivity for lifeline products and services.
- 4.20 Ports of Jersey also fulfils important functions in respect of Public Service Obligations, necessary for the safe and efficient operation of all Ports facilities, and the proposed investments are transformational and aligned with the original objectives of incorporation. Indeed, Ports of Jersey's proposed investments are described in the Government Ports Policy Framework as

*“Generational investment in the Harbour and Airport are essential to Jersey’s future economic prosperity.”<sup>9</sup>*

- 4.21 While respondents to the Draft Decision argued for a measure above the range (Ports of Jersey), or below the range (BOA response), the Authority is not persuaded that either response merited a revised or wider range. The Authority’s Final Decision on the cost of capital is 8.25%, neither above nor below the range set out in the Draft Decision.
- 4.22 The Authority’s Final Decision sets the cost of capital at a level that properly reflects Ports of Jersey’s risks, and which provides for regulatory incentives in consideration of the likely significance of the investments to Jersey. The Authority’s Final Decision of 8.25% is toward the upper end of the range, reflecting the wider economic and social context, in particular:
- The Jersey economy is relatively unique in its dependence on resilient and frequent connectivity, not least for lifeline products and services.
  - Ports of Jersey’s operations and facilities are central to Island connectivity and play a key role in supporting the wider Jersey economy.
  - Ports of Jersey fulfils important functions in respect of Public Service Obligations, necessary for the safe and efficient operation of all ports facilities.
  - Ports of Jersey’s investment programme is transformational and consistent with the original objectives of incorporation (setting cost of capital at the lower end of the range may negatively impact investment incentives).
- 4.23 The Authority’s decision also ensures Ports of Jersey do not benefit from windfall gains, and only undertake capital expenditure consistent with the approved Strategic Business Plan. Setting the cost of capital above 8.25% would increase the risk of windfall gains and may result in excess investment.

#### Authority conclusion

- 4.24 In light of stakeholder responses and further detailed analysis, the Authority’s Final Decision establishes a cost of capital of 8.25%.

#### Inflation

##### Draft Decision proposals

- 4.25 The Authority’s Draft Decision was to retain the use of the Jersey Retail Price Index (RPI) for the price control. RPI is used in the modelling and as the reference point for the future price increases in the RPI +/- X control.
- 4.26 It was noted that RPI is the headline measure of inflation in Jersey, prepared by Statistics Jersey on a quarterly basis. Over the course of the current control there had been a period of high inflation, although the long-term trend is downward. With respect to forecast inflation, the Authority proposes using the latest available forecast from the Fiscal Policy Panel.

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<sup>9</sup> See Strategic Priority 5

4.27 The Draft Decision also set out the Authority’s considerations as to whether RPI is the correct measure to use in the future price control. In particular, a possible alternative measure of inflation was noted, RPI(X). This measure excludes certain housing related costs (mortgage interest payments), and as it excludes mortgage related expenditures, it tends to lag behind or ahead of RPI (which is more sensitive to changes in interest rates). Looking forward, it was shown that in 2025 and 2026, RPI(X) is forecast to be higher than RPI before stabilising at the same rate.

Draft Decision responses

4.28 The BOA response commented in detail on which inflation index should be used in the price control. It set out a view that property, and generally housing prices, are not relevant to Ports of Jersey’s cost base. Further, it noted that measures of inflation, inclusive and exclusive of housing, have diverged recently, with Jersey out of line with international practice in using RPI as its national inflation statistic. Therefore, BOA argued that the metric should be switched to RPI(X), and that the Authority should take a public lead in this area.

Authority analysis

4.29 The Authority has given detailed consideration to the appropriate inflation measure, taking into account stakeholder responses and other factors. To support this, the Authority has also reviewed RPI and RPI(X) against qualitative criteria, with this analysis is presented in Table 1 below.

Table 1 - Assessment of inflation indices

Assessment criteria	RPI	RPI(X)	Comments
Availability	✓	✓	Both measures are regularly produced by Statistics Jersey.
Consistency with Government of Jersey	✓	-	RPI is the official metric used by Government of Jersey, as well as other key stakeholders (e.g. Ports of Jersey in developing its Strategic Business Plan).
Statistical robustness	✓	✓	Both measures are statistically robust. RPI does not suffer from the same methodological issues that impact the use of RPI in the UK. <sup>10</sup>
Predictability	✓	✓	A range of independent forecasts of different timescales are available from Statistics Jersey and the Fiscal Policy Panel.
Volatility	-	✓	Over recent years, RPI(X) has been the least volatile measure, followed by RPI. RPI may be affected going forward by the Bank of England changing the base rate.
Likely future use	✓	-	The Government of Jersey has not notified its intention to move to a different metric.

4.30 At present, based on the above criteria, RPI ‘outperforms’ RPI(X) (though not on every measure). However, if the Government were to adopt RPI(X) as its primary measure of inflation, using the same assessment criteria, RPI(X) would emerge as the preferred inflation statistic.

<sup>10</sup> See point 4 in the notes: [Jersey Retail Prices Index – June 2024](#)

4.31 RPI remains the most suitable metric for the price control at the present time. The Authority acknowledges that a future review may be required, particularly if Government of Jersey were to replace RPI as the national inflation statistic of Jersey. To note, a change from RPI to RPI(X) would also require the Authority to reconsider the use of RPI across other regulated markets, such as telecommunications. The Authority will monitor the use of RPI by other public bodies and key stakeholders, with a view of reviewing the use of RPI ahead of the next Review.

#### Authority conclusion

4.32 In light of stakeholder responses and further detailed analysis, the Authority's Final Decision uses RPI as an input to the price control.

#### Operating expenditure and efficiency

##### Draft Decision proposals

4.33 The Authority's Draft Decision was to use the forecast operating expenditure set out in the Ports of Jersey Strategic Business Plan, adjusted for cost volume elasticities and an annual efficiency factor between 0.5% and 1.5%.

4.34 Operating expenditure represents a significant proportion of the total cost base and is due to increase during the price control period. In line with the single till approach, and supported by EY, a high-level analysis of some of the key operating cost categories was undertaken; additional assurance is also provided by the Government's approval of the Strategic Business Plan. With respect to efficiency, the range was set by an analysis of the Strategic Business Plan and regulatory precedent.

##### Draft Decision responses

4.35 No responses were received on this area.

##### Authority analysis

4.36 The Authority considers that it is both reasonable and proportionate for the Ports of Jersey to be subject to an annual efficiency challenge within the price control. Further, economic regulation should encourage – and demonstrate – efficient practices and allow only for the recovery of efficiently incurred costs. Consistent with this, the Authority has set an efficiency factor of 1%. This is the midpoint of the range set out in the Draft Decision and represents a proportionate approach to future efficiency gains.

##### Authority conclusion

4.37 The Authority's Final Decision uses the forecast operating expenditure set out in Ports of Jersey's Strategic Business Plan, adjusted for cost volume elasticities and an annual efficiency factor of 1%.

#### The level of the price control

##### Draft Decision proposals

4.38 The Draft Decision set out a range for the future price control of between RPI + 0% to RPI + 3%. This was based on an approach that allows for the recovery of all efficient forecast costs (including a reasonable return) towards the end of the price control period. The range also



encompassed a series of different scenarios and regulatory options on some of the key pricing parameters. A key assumption was that Ports of Jersey's proposed capital expenditure would be taken forward in accordance with the schedule, and at the level, set out in the approved Strategic Business Plan.<sup>11</sup>

- 4.39 This assumption meant the range presented in the Draft Decision was conditional, for example on the receipt of all necessary planning approvals, permissions and otherwise, relating to the proposed investments.

#### Draft Decision responses

- 4.40 As set out in the Chapter 3 above, the BOA response argued that marina services should have a lower value of X in any future price control (the BOA response suggested an X value on marina services of -1). No other respondent directly commented on the level of the control.

#### Authority analysis

- 4.41 The Authority's response to the BOA comment is set out in paragraph 3.30.
- 4.42 In order to determine the appropriate level of 'X', the final positions on the structural approach to the pricing framework and pricing parameters have been further considered. This has been completed and the Authority's conclusions for each of the relevant areas is set out in this Final Decision document.
- 4.43 The key elements in determining the final level of X relate to the Authority's decisions on capital expenditure, the cost of capital and operating expenditure and efficiency. The combined effect of the Authority's decisions in each of these areas reduces the upper level of the X (3%) - set out in the Draft Decision - to 1.8%. Consistent with this analysis and these decisions, the level of 'X' is therefore +1.8%.<sup>12</sup>

#### Authority conclusion

- 4.44 Taking into account the Authority's conclusions on the structural approach to the price control and the pricing parameters, the level of 'X' in the price control is +1.8% (RPI + 1.8%).

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<sup>11</sup> It was further noted, that if, Ports of Jersey were not to proceed with any of the Masterplan capital expenditure, the value of X would likely be negative (-).

<sup>12</sup> The price control (RPI + 1.8%) applies to all regulated services. Consistent with the Draft Decision, the single till price assumption for unregulated and other services is RPI.

## 5 Safeguarding the price control

5.1 This chapter refers to elements of chapters 3 and 5 of the Draft Decision and contains the following subsections:

- Compliance and monitoring; and
- Safeguarding the price control

### Compliance and monitoring

#### Draft Decision proposals

5.2 The Draft Decision noted that given the scale and uncertainty of Ports of Jersey's proposed investments, formal annual monitoring of the price control (and the constituent components) would be of increased importance going forward.

5.3 The Authority proposed to monitor actual capital expenditure relative to the forecast expenditure applied in the Strategic Business Plan (and price control). To the extent potential changes in capital investment impact other variables in the price control, such as other resource requirements, financing and otherwise, these would also be monitored. It was further noted that an enhanced approach to compliance and monitoring would better inform the annual review of the price control.

#### Draft Decision responses

5.4 While respondents did not comment directly on compliance and monitoring, the BOA response was generally supportive. The response stated that price increases should be subject to Authority verification, and to ensure that Ports of Jersey's plans are proceeding on time and to budget. Further engagement has taken place with Ports of Jersey ahead of issuing this Final Decision, to provide an overview of the future compliance and monitoring framework.

#### Authority analysis

5.5 The enhanced approach to compliance has been designed to ensure that it is proportionate and not administratively burdensome. It will assist and inform the Authority on three aspects of the price control:

- To ensure Ports of Jersey's annual pricing is compliant with the price control;
- To ensure that the level of price control remains broadly consistent with forecast costs - and other inputs – used in the determination of the price control; and
- To provide the necessary information to inform any considerations for safeguarding the price control (as set out in this chapter).

5.6 The compliance framework is licence-based and implemented through the Initial Notice. Further detail on the framework and process and approach is set out in Table 2 below.

Table 2: Overview of the compliance and monitoring requirements on Ports of Jersey

Requirement	Further detail
1. Quarterly capital expenditure report	<p><b>Purpose:</b> The purpose of this report is to monitor levels of capital expenditure, in particular on the respective masterplans.</p> <p><b>Format:</b> A template requiring information on actual/committed capital expenditure to date, including separate expenditure figures for the respective masterplans. This is to be accompanied by a short explanatory note, of up to five pages, providing an overview of capital expenditure. It is expected this note would explain any deviation from forecast, and relevant mitigations, strategies or proposed adjustments must also be provided.</p> <p><b>Frequency:</b> To be submitted within 20 working days of the last day of each calendar quarter. This requirement only applies for years one to three of the price control.</p>
2: Biannual price control report	<p><b>Purpose:</b> The purpose of this report is to monitor the key inputs to the price control.</p> <p><b>Format:</b> A template requiring information on key price control inputs, such as revenue, operating expenditure and depreciation. This is to be accompanied by a short explanatory note, of up to five pages, providing an overview of each input. It is expected this note would also explain the causes and rationale for any changes in key inputs.</p> <p><b>Frequency:</b> To be submitted in July and January of each year, and no later than 20 working days after the end of each half year.</p>
3. Annual price notification	<p><b>Purpose:</b> The purpose of this report is to ensure Ports of Jersey’s annual pricing is compliant with the control.</p> <p><b>Format:</b> A template requiring the prevailing annual price for each operation, product or service, and the proposed annual price for the following year. To note, the template should be updated to reflect any new services introduced during the control period.</p> <p><b>Frequency:</b> To be submitted once a year on or before the 15 of November, and ahead of new prices taking effect on 1 January the following year.</p>
<p><b>Reporting process:</b> The reports must be submitted using the templates prepared for this purpose, provided as an annex to the Direction. An external audit of the information and data is not required. However, each report must contain a statement confirming the accuracy of all data and any written statements, and each submission must be authorised and approved by Ports of Jersey’s Chief Financial Officer or equivalent. To note, the reports will be confidential to Ports of Jersey and the Authority.</p>	
<p><b>Reviewing the report:</b> Confirmation will be sent to Ports of Jersey upon receipt, and clarifications sought if needed.</p>	

#### Authority conclusion

5.7 In light of stakeholder responses and further detailed analysis, the Authority’s Final Decision is to introduce a comprehensive monitoring and compliance approach, with capital expenditure reporting (quarterly), price control reporting (biannual) and price notification reporting (annual).

#### Safeguarding the price control

5.8 The Draft Decision included measures designed to safeguard the price control. This is in the event of a material change occurring during the price control period, with respect to:

- Cumulative revenue; and

- Material changes or significant delays to the schedule and level of Ports of Jersey’s planned investments.

5.9 It is important that the regulatory framework applied to each of these measures is consistent, and they are discussed together below.

#### Draft Decision proposals

5.10 The Draft Decision noted that the Authority was minded to consider a form of mechanism for the management of cumulative revenues. It also noted that, if the price control took the form of an upward sloping glide-path, the current policy approach using symmetric ‘tramlines’ may not be appropriate. It was stated that the precise scope and nature of any mechanism would be given further consideration ahead of the Final Decision.

5.11 The Draft Decision also explained that in the event there are material changes to the Strategic Business Plan, the Authority may consider a different approach to the price control. For example, a form of rollover price control, albeit for a given period, or a revised price control based on the latest and revised information and evidence. The need for in-period adjustments was also noted: “... *the proposed future pricing framework is conditional upon the schedule and level of investment. 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.*”

#### Draft Decision responses

5.12 Ports of Jersey’s response was supportive of cumulative revenue management, stating that the approach should be straightforward to implement and follow. Ports of Jersey also noted that the control should be linked to the delivery of its capital expenditure programme.

5.13 The BOA response was supportive of cumulative revenue management, albeit in the context of monitoring and compliance. It stated that annual price increases should be subject to Authority verification, including ongoing assessment of Ports of Jersey’s plans.

#### Authority analysis

5.14 The Authority notes that respondents were supportive of cumulative revenue management, although there were different interpretations as to the purpose. While revenues may be considered in the context of compliance, cumulative revenue management is separate to annual price compliance (and monitoring of Ports of Jersey’s costs). Similarly, it is not intended to be a form of revenue share, or a risk sharing mechanism.

5.15 The existing approach to cumulative revenue management was designed to act as an initial stabiliser – as a means for ‘error correction’ – at the time of incorporation. It provided scope for the Authority – and Ports of Jersey – to help manage the process of incorporation, mitigate uncertainties and address any unforeseen risks post-incorporation. Now, nearly ten years after incorporation, Ports of Jersey is a stable business, operating to regularly (Government) approved business plans. Further, there is greater clarity and surety on business operations, commercial objectives and shareholder expectations.

5.16 This is reflected in the Authority’s refined approach to cumulative revenue management, which reflects the relative stability of Ports of Jersey’s businesses. The price control effectively places a constraint on cumulative revenues – in that it controls charges for all regulated services. As

such, there is no requirement for a symmetric approach to cumulative revenue management. The Authority's Final Decision on cumulative revenue management is set out in Box 1.

- 5.17 With respect to the potential for material changes in Ports of Jersey's capital expenditure, Ports of Jersey's Strategic Business Plan remains subject to the risk of material change and delay, typical of large infrastructure projects. Therefore, during the next price control period the Authority may need to take account of any material change in the price control.
- 5.18 In order to ensure the price control allows only for the recovery of efficiently incurred costs, the Final Decision enables the Authority to adjust the price control if Ports of Jersey's capital expenditure is materially less than forecast in its Strategic Business Plan.<sup>13</sup> The framework and process on safeguarding the price control is set out in Box 1 below

### **Box 1 – Safeguarding the price control: Framework and process**

The Authority has adopted a licence-based approach to safeguarding the price control, in particular:

- Condition 5 obliges Ports of Jersey to provide information to the Authority and allows the Authority to appoint an external auditor to examine financial and other records.
- Condition 22 enables the Authority to determine Ports of Jersey maximum charges, by reference to a formula if appropriate, and to apply different limits to different periods of time.

The Authority would use these Licence Conditions to consider a revision to the price control, if either:

- Ports of Jersey's cumulative revenue is materially below that forecast in the price control based on the Strategic Business Plan; or
- Ports of Jersey's capital expenditure is materially less than forecast in its Strategic Business Plan.

If either of these events were to occur, the Authority would require Ports of Jersey to account to the Authority for the change, and it would appoint an independent auditor to examine Ports of Jersey's financial and other records, and to report on the causes of any such change. Informed by this process and independent audit, the Authority would review the price control, where necessary and appropriate, amending the price control to take account of a material change.

The Authority has not adopted a specific metric on materiality. The Authority's approach can therefore better assess change, and whether any such change may be considered material. It also allows the Authority to consider broader economic impacts and other factors. That said, as a high-level guide the Authority notes that:

- Consideration of material changes with respect to cumulative revenue will be against the forecasts adopted at the start of the price control (and reflected in the value of 'X'); and
- Consideration of material changes with respect to capital expenditure will be linked to the delivery of the overall capital programme (consistent with the Strategic Business Plan and reflected in the level of 'X').

To note, these measures are designed to safeguard the price control, the Authority expects the measures to be used by exception only. Also, the Authority's recognises that in-period reviews of

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<sup>13</sup> The Authority notes that some of Ports of Jersey's capital expenditure remains subject to planning approval. The Authority's approach on safeguarding the price control is designed to consider a material reduction in capital expenditure, whether a result of planning issues or otherwise.

the price control would impact both ports users and Ports of Jersey. Therefore, any proposed amendment of the price control would follow a statutory process, including consultation on draft proposals (followed by a Final Decision and Initial Notice).

Further detail on the approach and regulatory framework is contained in the Initial Notice accompanying this Final Decision document.

#### Authority conclusion

- 5.19 In light of stakeholder responses and further detailed analysis, the Authority's Final Decision is to use a licence-based approach to safeguard the price control. This enables the Authority to vary the price control in response to material changes in forecast revenues or costs.

## 6 The Final Decision

6.1 This chapter sets out a summary of the Authority's Final Decision for the pricing framework. These decisions are implemented through the Initial Notice issued alongside this document.

### Structural approach to the price control

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

- Maintain the market definition and significant market power decision established in 2016 (CICRA 16/41);
- Limit price increases/decreases in any given year to a maximum of inflation plus or minus a fixed amount, i.e., +/- X%;
- Adopt a five-year price control period (from 2025 to 2029);
- Use a single till, with each regulated charge subject to the same price control; and
- Use a regulated asset-based model constructed on a nominal basis to determine the value of 'X'.

### Key pricing framework parameters

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

- Assume the capital expenditure set out in the Ports of Jersey Strategic Business Plan adjusted to take account of Assets in the Course of Construction;
- Set the cost of capital at 8.25%;
- Retain the use of the Jersey Retail Price Index (RPI) for the price control;
- Assume the forecast operating expenditure set out in the Ports of Jersey Strategic Business Plan, adjusted for cost volume elasticities and an annual efficiency factor of 1%; and
- Set the level of 'X' in the price control formula to +1.8%.

### Safeguarding the price control

6.4 The Authority's Final Decision with respect to safeguarding the price control is to:

- Introduce a comprehensive monitoring and compliance approach, with capital expenditure reporting (quarterly), price control reporting (biannual) and price notification reporting (annual); and
- Use a licence-based approach to safeguard the price control, enabling the Authority to vary the price control in response to material changes in forecast revenues or costs.