



# PORTS OF JERSEY PRICING FRAMEWORK

## POJ1395J

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**FINAL DECISION (Non Statutory)**

**Jersey Competition Regulatory Authority**

**Document No: CICRA 19/29**

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## CONTENTS

1. Executive Summary .....	3
2. Structure of this document.....	3
3. Background .....	3
States of Jersey Ports Regulation Policy .....	4
4. Draft Decision and Responses .....	5
Responses Received.....	5
Clarification of period of price framework and Jersey RPI .....	6
Clarification of the operation of the price cap.....	6
Requirement for separate price control for restructuring prices .....	7
5. Final Decision .....	8
6. Next Steps.....	8

# 1. EXECUTIVE SUMMARY

- 1.1 The Jersey Competition Regulatory Authority (the **Authority**)<sup>1</sup> is issuing this Final Decision closing the non-statutory consultation process on the proposal to allow Ports of Jersey Limited (**PoJL**) to increase prices for services where it has been found dominant (**Regulated Prices**) annually throughout a five year price control period by a maximum of Jersey RPI +1% applied to each charge to customers.
- 1.2 In order to report on the performance of the business as whole, PoJL will also manage total revenue on a ‘single till’ basis within 5% ‘tramlines’, both positive and negative. Should revenues fall outside these tramlines, PoJL will agree a corrective course of action with the Authority.
- 1.3 This control will be monitored on an annual basis with a review commencing in year 3 to allow for any adjustment to be made for a second five year control. Should any tariff restructuring be proposed within the framework which would bring prices above the price cap, these will be subject to the Authority’s normal statutory process outlined in Article 23 of the *Air and Sea Ports (Incorporation) (Jersey) Law 2015* (the **Law**).
- 1.4 This Final Decision paper sets out the non-statutory decision of the Authority. In due course, the Authority will issue an Initial Notice of its intention to issue a Direction to PoJL.

# 2. STRUCTURE OF THIS DOCUMENT

2.1 This document sets out the conclusions which the Authority has reached, having taken full account of information gathered for CICRA 19/05 – Ports of Jersey Long-term Pricing Framework, the Ports of Jersey Pricing Submission 2020-2024 received on 9 April 2019 and responses to the Draft Decision of 24 April 2019.

2.2 The document is structured as follows:

Section 3	Outlines the background and legislative basis for this Decision
Section 4	Sets out responses to the Draft Decision and the Authority’s responses to those responses
Section 5	Contains the Final Decision
Section 6	Sets out the next steps

# 3. BACKGROUND

3.1 Port operations are regulated in Jersey by way of the *Ports of Jersey (Incorporation) (Jersey) Law 2015* (the **Law**). In general terms, the aim of such regulation is to protect users of port operation

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<sup>1</sup> The Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities in the Channel Islands. However, for the purposes of this document, the Authority refers to the JCRA only as the Decision relates to Jersey only.

services (**Port Users**) from the risk of abuse of any dominant position in the provision of such services.

3.2 Port operations (**Port Operations**) are defined in Article 2 of the Law and Article 7 provides that, subject to certain exceptions, no person may carry out port operations in Jersey unless they hold a licence issued by the Authority. The primary duty of the Authority is **to best to protect and further the interests of users of port operations, in the short and long term, and to do so where appropriate by promoting competition in the provision of port operations.**

3.3 Article 15(1)(i) of the Law provides that the licence issued by the Authority may contain conditions relating to the level of prices, premiums and discounts which may be charged or allowed by a licensee having a dominant position in the conduct of port operations.

3.4 The PoJL Port Operations Licence<sup>2</sup> (the **Licence**) contains conditions in respect of price regulated services. Licence Condition 22.2 provides that the JCRA may determine the maximum level of charges the Licensee may apply for port operations within a relevant market in which the Licensee has been found to be dominant.

3.5 PoJL has been found to be dominant in the provision of certain services<sup>3</sup> relating to:

- (i) Airport operation services (excluding private users)
- (ii) Airport operation services to private users
- (iii) Commercial sea port operation services
- (iv) Sea port operation services to marine leisure port users

3.6 In September 2018, the Authority began the process to introduce a long term pricing framework for PoJL by issuing a Call for Information, seeking the views of interested parties about the assumptions proposed by PoJL to underpin a pricing framework. These assumptions were finalised in CICRA 19/05 of 18 February 2019<sup>4</sup> (the **Assumptions Decision**).

## States of Jersey Ports Regulation Policy

3.7 In 2015, the Jersey Regulatory and Competition Framework Review<sup>5</sup> recommended that government should develop a clear policy for each of the sectors regulated by the Authority, including its policy for promoting competition or direct regulation.

3.8 In March 2019, the Office of the Comptroller and Auditor General published a follow up to its Report into 'The States as Shareholder'<sup>6</sup>. This follow up report recommends that the development of Ports Regulation Policy is prioritised by the States of Jersey.

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<sup>2</sup> <https://www.cicra.gg/licences-in-issue/ports-of-jersey-ltd/>

<sup>3</sup> <https://www.cicra.gg/cases/2016/poj1204j-ports-of-jersey-significant-market-power-smp-dominance-designation/poj1204j-final-notice-ports-of-jersey-assessment-of-market-power/>

<sup>4</sup> <https://www.cicra.gg/cases/2018/poj1395j-ports-of-jersey-long-term-pricing-framework/poj1395j-ports-of-jersey-long-term-pricing-framework-assumptions-decision/>

<sup>5</sup> <https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=1744>

<sup>6</sup> <https://www.jerseyauditoffice.je/wp-content/uploads/2019/03/States-as-Shareholder-Follow-up-Report.pdf>

3.9 In the absence of such a policy, guidance has been taken from the primary objective of incorporation included in the Case for Incorporation<sup>7</sup>, and the Assumptions Decision, including the States of Jersey response<sup>8</sup> to the consultation. In summary:

***To enable PoJL to continue to be the provider of essential public services to Jersey but to do so in a commercial and self-sustainable manner that will both enhance services for customers and remove the significant future financial burden to the States.***

## 4. DRAFT DECISION AND RESPONSES

4.1 The Authority has considered in full the responses to the Draft Decision.

4.2 The Draft Decision of the Authority was:

- (i) PoJL regulated prices for individual products be allowed to increase annually throughout the 5 year price control period by a maximum of Jersey RPI +1%.
- (ii) Should PoJL restructure its prices for individual products within that allowance in a way that would increase any individual prices above that maximum amount, the relevant basket of products and services will be considered by the Authority as a new price control submission, carved out of this framework, and subject to statutory process.
- (iii) PoJL will aim to manage cumulative revenues, calculated on a single till basis (i.e. both regulated and non-regulated revenue), in line with that cumulative forecast but within 'tramlines' recognising a 5% tolerance (both positive and negative).
- (iv) Should PoJL revenue fall outside these tramlines (either positively or negatively) PoJL 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.
- (v) This control will be formally monitored on an annual basis with a full review at year 3 to allow for any adjustment to be made for a second five year control.

## Responses Received

4.3 A confidential response was received from a commercial user which accepted the draft decision<sup>9</sup>.

4.4 A response was also received from a local boat owner expressing the view that pricing needs to be compared with services, that services and standards have been declining and this should be

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<sup>7</sup> <https://www.gov.je/Government/Consultations/Pages/PortsIncorporation.aspx>

<sup>8</sup> <https://www.cicra.gg/cases/2018/poj1395j-ports-of-jersey-long-term-pricing-framework/poj1395j-ports-of-jersey-long-term-pricing-framework-assumptions-decision/>

<sup>9</sup> [Response redacted]

taken into account when prices are set. The response is attached at Annex 1. It does not directly relate to the proposed pricing framework.

4.5 PoJL provided a response to the Draft Decision which is attached at Annex 2. The response refers to the following points which are considered in more detail below:

- (i) Clarification of period of price control framework and Jersey RPI
- (ii) Clarification of the operation of the price cap
- (iii) Requirement for separate price control for restructuring prices
- (iv) Requirement for PoJL to manage cumulative revenues

#### CLARIFICATION OF PERIOD OF PRICE FRAMEWORK AND JERSEY RPI

4.6 In its response, PoJL propose that pricing framework operates from January 2020 until December 2024, and that the annual price cap should operate on a calendar year basis. PoJL also proposed that the RPI figure to be used should be the annual increase in the third quarter Jersey Retail Price Index, being the most recent figure published before the end of the calendar year.

4.7 The Authority agrees with these points of clarification from PoJL.

#### CLARIFICATION OF THE OPERATION OF THE PRICE CAP

4.8 PoJL propose that the price cap operates on a pro-rata and cumulative basis, as follows:

- (i) *A pro-rata basis means that a price increase later in the year (for which customers only have to pay the higher prices for part of the year) are calculated on an average basis across the year (based on the number of days at the lower and higher prices) to confirm their compliance with the price cap. This would also apply to the average price in the previous year that the price rise is being compared to.*
- (ii) *A cumulative increase means that if PoJL does not use some or all of their allowed price increase in one year, they can carry the allowance over to subsequent years. This is important because unlike many other regulated services, if there is a downturn in its market, PoJL may not be able to increase prices without losing volume. If they are unable to recover the revenue loss when demand picks up in subsequent years, they may not be able to generate sufficient cash to finance their activities. This will also make the operation of the price cap consistent with the operation of the tramlines which are on a cumulative basis.*

4.9 The Authority agrees with the clarification that the price used as the basis for the allowed increase should be the average price for the relevant year. The Authority also agrees with the proposal to allow allowable price increases to be carried forward on a cumulative basis. Neither of these proposals would result in any additional price increases for customers above the allowed price cap over the five year price control period.

## REQUIREMENT FOR SEPARATE PRICE CONTROL FOR RESTRUCTURING PRICES

4.10 In its response, PoJL states: *'it would be proportionate and pragmatic to avoid the need for a separate price control in certain specific circumstances, and to take into account any customer consultation that PoJL has carried out. Examples might include:*

- *Price rises for products with a de minimis annual revenue of £20,000 per year, where the extra cost of a separate price control would outweigh the benefits of extra regulatory oversight*
- *Products that are part of a suite of products that are typically purchased together and where the average price increase is less than the RPI +1% cap, but where rebalancing of prices within that suite of services means that the price of one service exceeds the cap*
- *Price changes (increase or decreases) that are a result of changes to GST or similar factors that are outside of PoJL's control should be excluded*
- *Items where prices are rounded to make charging more convenient for customers. For example marina electricity charges are currently charged at £2.50 / £3.50 per day depending on the length of boat, might be increased to £3.00 / £4.00 with an offsetting reduction in other charges, rather than increasing them to say £2.67 and £3.74 which might be the maximum allowed by an RPI +1% but would be awkward to work with*
- *Products where the cost of provision exceeds the price and therefore to charge at below cost might be considered in breach of Licence Condition 22.3, or other prices that might otherwise be considered in breach of Licence Condition 22.3.'*

4.11 At this stage in the development of price regulation for port operations, the Authority does not believe it would be appropriate to exclude certain categories of prices from the control as proposed. There is insufficient information currently available to assess the impact of any such exemption, for example prices for products with a de minimis annual revenue. Likewise, without defining and understanding the nature of products purchased together, it is not possible to come to a conclusion whether these could be treated in a different way to the rest of the price control.

4.12 For prices which are rounded for convenience, rather than excluding such prices from the price control and, in the example provided permit a 20% price increase for electricity, these prices could better be treated cumulatively, as described above, noting that the permitted price increase is a maximum allowable increase rather than a fixed amount. The price cap will apply to prices excluding GST, so will be unaffected by any changes in the rate.

4.13 The final category of prices, where the cost of provision may exceed the price, would be better dealt with a separate price control as consideration would be needed into how the cost of provision has been calculated.

4.14 In order to deal with all these types of questions and principles to be applied, at least for the first price control framework, it would seem clearer to consider the charges in question as part of a new price control, carved out of this framework, as described in (ii) of the proposed price control. It seems unlikely that such changes would arise particularly frequently, and might better be resolved on an annual basis as part of any general price review.

## 5. FINAL DECISION

5.1 For the reasons set out in this document, the Authority now intends to issue an Initial Notice giving notice of its intention to direct PoJL under Condition 22.2 of its licence as follows:

1. Prices for products and services where it has been determined that PoJL holds a dominant position for port operations be allowed to increase annually throughout the five year price control period by a maximum of Jersey RPI +1% (September). This may be managed on a cumulative and pro rata basis across the five year period.
2. PoJL will manage total revenues (i.e. both regulated and non-regulated revenue), calculated on a single till basis, in line with that cumulative forecast but within 'tramlines' recognising a 5% tolerance (both positive and negative).
3. This control will be formally monitored on an annual basis with a full review at year three to allow for any adjustment to be made for a second five year control

5.2 Should PoJL need to restructure its prices outside this framework, this should follow the process outlined in Licence Condition 22 and 23, with a new determination being required under Licence Condition 22.2. The nature of any such determination and the process required to achieve this will depend on the nature and scale of the proposed changes, however will not this current process to be re-run. Any new determination for a particular product(s) or services(s) could take it out of this framework.

5.3 Should PoJL revenue fall outside these tramlines (either positively or negatively) PoJL 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.

## 6. NEXT STEPS

6.1 The Authority will now progress to its statutory Initial Notice, following the process outlined in Article 23 of the Law. This will give notice to PoJL of the regulatory function which the Authority intends to exercise.

6.2 If no written responses are received from PoJL within the specified period of time, the Authority will issue the Direction to PoJL. If responses are received, the Authority will consider these and either issue a Final Decision or a new Initial Notice or decide not to take the proposed action.

6.3 While the Authority considers any decision made as part of the pre-statutory process, including this decision, to be as a statement of its current expectations, this is not binding on any party until such time as the Direction has been issued in line with Article 23.