

## **JERSEY COMPETITION REGULATORY AUTHORITY**

### **INITIAL NOTICE OF THE PROPOSED GRANT OF A CLASS I POSTAL OPERATOR'S LICENCE TO TNT POST UK LIMITED**

#### **Under Article 24 of the Postal Services (Jersey) Law 2004**

The Jersey Competition Regulatory Authority ('JCRA') in exercise of its powers under Article 15 of the Postal Services (Jersey) Law 2004 ('the Law') proposes to grant to TNT Post UK Limited ('TNT Post') a Class I Postal Operator's Licence. The Licence would permit the conveyance of Packets (from the date that the Licence is signed by the JCRA) and Large Letters (from 1 January 2012), subject to a Minimum Volume Requirement, but not the conveyance of Letter format mail.

The Law requires the JCRA to perform its functions in a manner consistent with the duties set forth in Article 8(1) and 8(2). The JCRA's consideration of these duties is detailed below.

#### ***Background***

In April 2010, TNT Post submitted an application to the JCRA for a Class I Postal Operator's Licence to provide postal services for Jersey based fulfilment companies. They also requested that if the JCRA permitted, to be allowed to convey Letters as well.

On 19 October 2010, the JCRA published a Final Notice decision of its proposals to award a Class I Postal Operator's Licence to both Citipost DSA Ltd ('Citipost') and Hub Europe Ltd ('Hub') to convey Packets from 18 November 2010 and Large Letters from 1 January 2012. This decision followed an analysis by the JCRA on the affect the opening up of these markets would have on Jersey Post Limited's ('JP') ability to fund the Universal Service ('USO'), which involved undertaking a competitive impact assessment of JP's profitability under various competitive scenarios. In this Final Notice, the JCRA concluded that by phasing the opening up of the bulk mail market into two phases, this would allow JP sufficient time to implement its planned £4m plus cost savings programme, which once achieved will enable them to fund the USO without relying on cross-subsidisation from the bulk mail market.

Clearly, the question of the cost of the USO and JP's ability to fund it is highly relevant to the question of the proposed grant of additional postal Licences.

*Consideration of TNT Post's application in the light of the JCRA's duties under the Law*

## **I. Considerations under Article 8(1) of the Law**

1. The JCRA has a primary duty under Article 8(1)(a) of the Law to perform its functions in such manner as is best calculated to ensure that (so far as in its view is reasonably practicable) postal services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising. In considering whether postal services satisfy demands under Article 8(1)(a), under Article 8(3) the JCRA must have regard, *inter alia*, to whether the services are rapid, of high quality and reliable, and are affordable by and accessible to, the highest number of business and domestic users.
2. The evidence suggests that there is demand, both current and prospective, for the postal services which would be subject to the proposed Licence. Specifically, as part of the work in considering Citipost's and Hub's licences, eight of the main fulfilment companies in Jersey were interviewed about the desirability of having other providers of postal services to satisfy their requirements. All eight were supportive of the introduction of further competition which should lead to a reduction of prices, an improvement in quality of service (such as rapidity of delivery) and the choice of services on offer.
3. The scope of Article 8(1)(a) also requires the JCRA to consider the effect, if any, that the grant of a Licence to TNT Post may have on existing Licensees to satisfy demands for postal services. In the current context this principally concerns the effect upon JP's ability to provide the USO in Jersey.
4. JP's Licence requires it to defray the cost of the USO from profits generated by its Licensed Services and allows it to cross-subsidise the USO from other parts of the business<sup>1</sup>. JP currently uses revenues derived from services it provides to fulfilment companies to help offset the cost of providing the USO. Thus any loss of business on its services to fulfilment companies could have a detrimental effect on its ability to fund the USO.
5. As indicated above, the JCRA has recently carried out work on the cost of providing the USO and has carefully considered the impact which the grant of a Licence to TNT Post may have on JP's ability to provide the USO.
6. For the following reasons, the JCRA does not consider that the grant of a Licence to TNT Post would result in JP no longer being able to provide the USO. In no particular order, these reasons are:
  - That JP has scope for at least £4m of efficiency savings which once made, means that JP can self fund the USO;

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<sup>1</sup> See Conditions 12.2 and 24.1.

- Jersey Post International Limited has sufficient cash reserves which could be used in part to fund the USO if JP were to lose a significant amount of business to TNT Post;
  - The proposed Licence expressly limits both the format of the items that TNT Post will be permitted to convey, and the customers in Jersey that they will be able to provide their services to, namely:
    - a) the proposed Licence is expressly limited to the conveyance of Large Letters and Packets only, and not the conveyance of Letter format mail; and
    - b) the proposed Licence has a Minimum Volume Requirement, which means that under the proposed Licence, TNT Post can only convey mailings from customers in Jersey of 50 or more items for Large Letters, and/or mailings of 25 or more items for Packets.
  - The JCRA still retains discretion to introduce a USO funding mechanism should JP be able to show that the provision of the USO represents an unfair burden on JP<sup>2</sup>.
7. In terms of the matters set out in Article 8(3), TNT Post's application, the non-confidential version of which is published with this Initial Notice. In short, TNT Post says that the proposed services are rapid (comparable to any other provider) and that TNT Post has a track record of high quality and reliability. Furthermore the services to be offered will be competitively priced and accessible to users sending Large Letters or Packets, subject to the Minimum Volume Requirement, as well as being tailored to meet potential users' requirements. Finally, customers of TNT Post will have the opportunity to express views on the service provision. The JCRA has no reason to doubt any of these statements.
  8. The JCRA therefore believes that the proposed grant of the Licence to TNT Post is consistent with its duty under Article 8(1)(a) of the Law.

## **II. Considerations under Article 8(2) of the Law**

9. Article 8(2) of the Law specifies additional duties to which the JCRA must have regard, although only in so far as is consistent with its primary duty under Article 8(1). The JCRA's consideration of these Article 8(2) duties is set forth below.

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<sup>2</sup> See Condition 12.2 of JPL's Licence and Condition 19 of the proposed Citipost licence.

## A. Article 8(2)(a)

10. The JCRA has a duty under Article 8(2)(a) to perform its functions in such manner as it considers best calculated to protect and further the short and long term interests of users within Jersey of postal services and to perform them, wherever it considers appropriate, by promoting competition among persons engaged in commercial activities connected with postal services in Jersey.
11. The benefits of competition in terms of the benefits which it brings to users in the way of lower prices, greater choice and innovative products and services are well known. In the postal sector, the 2008 Hooper Report<sup>3</sup> and the 2010 updated Hooper Report<sup>4</sup> looked at policies which may be needed to ensure the continued provision of the universal service. As regards competition, the 2008 Report concluded that competition between postal operators can support the universal service by encouraging cost reductions by the universal service provider, and therefore greater efficiency. Furthermore, such competition should encourage innovation in the products and services offered which can create further revenue streams which may be used to support the universal service (see, in particular, page 95 of the Report).
12. The Hooper Report did, however, recognise that in the UK, since 2005, large businesses have benefited from liberalisation through lower prices and that these benefits might not otherwise have been expected without competition. The Report also stated that whilst competition is beneficial to consumers, it does also entail some risks, such as a potential reduction in the revenue stream available to support the universal service. It also stated that some forms of competition can be inefficient if they take advantage of constraints which might be placed upon the universal service provider. On balance, however, the Report concluded that these risks were manageable.
13. The EU countries where competition has been introduced (The Netherlands, Germany and the UK being three good examples) have shown the resulting efficiency drive within the incumbent. Although there is a clearly perceived decline in letter mail volumes, there is expected growth in packet and parcel services from increased e-commerce. By granting this licence, the JCRA believes that it will create more customer choice and that the services for these items are as customer-responsive, cost effective and efficient as possible.
14. As noted at paragraphs 4 to 6 above, the JCRA has considered the potential risks to JP's provision of the USO but for the reasons set out in paragraph 6 does not consider that the grant of the proposed Licence to TNT Post would

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<sup>3</sup> Hooper (2008) *“Modernise or decline: Policies to maintain the universal postal service in the United Kingdom”*.

<sup>4</sup> Saving the Royal Mail's universal Postal Services in the digital age – An update of the 2008 Independent Review of the Postal Services Sector – September 2010

prevent JP from continuing to satisfy the USO. For those reasons the JCRA believes the grant of the Licence is consistent with its duty under Article 8(2)(a).

### **B. Article 8(2)(b)**

15. The JCRA has a duty under Article 8(2)(b) to perform its functions in such manner as it considers best calculated to promote efficiency, economy and effectiveness in commercial activities connected with postal service in Jersey. It is widely recognised that the introduction of competition serves to increase productive, dynamic and allocative efficiencies. Currently JP, (and as of 18 November 2010), Citipost and Hub, are the providers of the services in Jersey intended to be offered by TNT Post. The grant of the proposed Licence would therefore facilitate the promotion of competition for postal services and thereby advance the Article 8(2)(b) objectives.

### **C. Article 8(2)(c)**

16. The JCRA has a duty under Article 8(2)(c) to perform its functions in such manner as it considers is best calculated to further Jersey's economic interests.
17. The JCRA is still of the view it expressed in the April 2009 consultation of the proposed grant of a Licence to Citipost and Hub<sup>5</sup>, namely:

*“Should the grant of a licence to Citipost and Hub result, through competition, in lower prices for postal services to existing providers of fulfilment services, this could potentially enable them to cut their costs and become more competitive against fulfilment companies located in other jurisdictions. More diverse postal fulfilment services may also attract new providers of fulfilment services to Jersey. Finally, greater competition in the provision of postal services to fulfilment companies may also benefit Jersey by giving incentives to current providers of fulfilment services in Jersey to stay located in this jurisdiction. The JCRA has observed in the past that while JP currently holds a monopoly for the provision of fulfilment services in Jersey<sup>6</sup>, Jersey itself faces competition from other offshore jurisdictions (such as Guernsey and Switzerland) as a platform from which to provide such services<sup>7</sup>.”*

18. The grant of the Licence would therefore be in the economic interests of Jersey.

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<sup>5</sup> Consultation on Citipost DSA Ltd's application for a Class I postal operator's Licence, published 8<sup>th</sup> April 2009, available on the JCRA website.

<sup>6</sup> Citipost and Hub Europe's licence will come into effect on 18 November 2010.

<sup>7</sup> JCRA Final Notice to Jersey Post Limited Concerning Price Control.

**D. Article 8(2)(d)**

19. The JCRA has a duty under Article 8(2)(d) to perform its functions as it is best calculated to impose a minimum of restrictions on persons engaged in commercial activities connected with postal services in Jersey.
20. The proposed Licence does have restrictions on the format of items and the customers (in terms of quantities of items) that TNT Post may deal with. The JCRA has included these restrictions in the proposed Licence to limit its application to fulfilment companies in Jersey. The JCRA would review these restrictions in 2013, in light of market developments.

**E. Article 8(2)(e)**

20. The JCRA has a duty under Article 8(2)(e) to have regard to the need to ensure that postal providers have sufficient financial and other resources to conduct those activities.
21. TNT Post is the UK's market leader in providing alternative mail solutions and the number one competitor to Royal Mail. In the UK, it employs over 1,000 people, has over 5,000 customers and in 2009, posted an annual turnover of £337.2m. The JCRA has been provided with sufficient evidence to satisfy itself that TNT Post has sufficient financial and other resources to conduct the activities to be covered by the Licence.
22. Similarly, for the reasons given in paragraph 6 above, the JCRA does not believe that the grant of the Licence will result in JP having insufficient financial and other resources to satisfy its current USO obligations.

**F. Article 8(2)(f)**

23. Article 8(2)(f) requires the JCRA to have regard to any special needs of persons who are disabled, have limited financial resources or other special needs. The JCRA believes that the grant of the Licence will be neutral in terms of its effect on the categories of persons identified in Article 8(2)(f).

**III. Date when the proposed Licence will take effect**

24. The proposed Licence will take effect on **24 December 2010** unless the JCRA receives representations or objections about the proposal prior to that date, in which case the effective date will be specified in any Final Notice issued by the JCRA under Article 24(5) of the Law.

25. A copy of the draft Licence is available for inspection between the hours of 09-00 and 17-00 Monday to Friday at the offices of the JCRA (address set out below). A copy is also available on the JCRA's website, [www.jcra.je](http://www.jcra.je) .

**IV. Period for written representations or objections**

26. Any written representations or objections in respect of the proposal to grant this Licence may be made by midnight on **23 December 2010** to the JCRA at:

Jersey Competition Regulatory Authority  
2<sup>nd</sup> Floor, Salisbury House,  
1-9 Union Street,  
St. Helier, Jersey  
JE2 3RF

Or by e-mail to [p.hamilton@jcra.je](mailto:p.hamilton@jcra.je) or by fax to + 44 (0) 1534 514991

19 November 2010

By Order of the Board of the JCRA