

# Jersey Competition Regulatory Authority



## JCRA DECISION ON POSTAL LICENCE FEES

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**Document No: CICRA 12/19**

**20 February 2012**

**Jersey Competition Regulatory Authority**  
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## **INTRODUCTION**

In March 2011, the JCRA issued a consultation paper proposing that postal licence fees should be calculated on the basis of turnover, as a fair and equitable means by which to spread the cost of regulation between the different players in the market.

Since the Postal Services Law came into force in July 2006, the JCRA has levied fees for Class 1 postal licences on the basis of a £500 application fee and £500 annual fee. This contrasts with the licence fees Jersey Post has paid, which have averaged £244,000 per year.

In July 2010, the Board of the JCRA agreed that the Class 1 application fee should be increased to £1,500 and the annual fee should be set at £1,000.

This Decision Paper concludes that from 1 March 2012, postal licence fees will be calculated on the basis of ‘licensable turnover’ (the sum of a licensee’s turnover generated by the provision of postal services for letters that are below the licensable limits of £1.30 and/or 500 grams). For Jersey Post, as the universal postal operator in Jersey, licensable turnover will also include turnover from its universal service obligations (‘USO’), even though the latter might fall outside of the licensable limits. In effect, this would include Jersey Post’s income from postal and retail services, but would exclude income from Promail, philately, Forex, Fedex (courier and express services) and bulk mail above the licensable limits of £1.30 and/or 500 grams.

The rationale for including USO activities in the definition of ‘licensable turnover’ is that Jersey Post enjoys a significant benefit of approximately £2m p.a. from being the designated USO provider and, moreover, the JCRA’s regulatory functions extend to all of Jersey Post’s USO services.

The JCRA’s cost of postal regulation in 2011 was £250,000. Given the JCRA’s postal workplan, we anticipate that the cost of postal regulation will be at the same level in 2012, but will decline from 2013 onwards.

## **LEGAL BASIS FOR CHARGING FEES**

Article 12 of the *Competition Regulatory (Jersey) Law 2001* and Article 18 of the *Postal Services (Jersey) Law 2004* set out the rights and powers of JCRA in relation to the charging of fees. (Please see Appendix 1 for the full text of the relevant provisions).

The key provisions are Articles 18(1) and 18(2) of the Postal Services Law. Article 18(1) establishes the principle that the fees charged should be referable to the JCRA’s costs, the intention being that the JCRA should be financially self-sufficient. Article 18(2) gives the JCRA power to determine the basis upon which fees should be calculated.

## **RESPONSES TO THE JCRA CONSULTATION PAPER**

The JCRA received just one response to its March 2011 consultation paper, from Jersey Post.

Given the time that has elapsed since the consultation, and the change in management in the intervening period, we considered that it was appropriate to provide Jersey Post with the opportunity to consider whether the response represented its present views on the topic. In the event, Jersey Post did not believe that the views expressed represented its present stance on the topic, and so the response has been withdrawn.

## **FEE STRUCTURE**

There are two types of postal operator licence: a Class I licence to cover postal services to the public but that do not possess significant market power<sup>1</sup>; and a Class II licence for entities providing postal services to the public who are have been designated as the public postal provider and who therefore have significant market power.

Given that there are now four Class I postal licences in place (with a further two likely to be issued shortly), and three of these existing licensees are competing against Jersey Post in the profitable bulk mail market, the JCRA has decided that an annual licence fee calculated on the basis of turnover would be the most appropriate and equitable means by which to spread the costs of regulation between the different players in the market. The JCRA believes that the decision to amend the methodology of licence fees is timely, because of the impending entry of TNT Post (UK) Ltd and Hi-Speed Freight Services Ltd into the bulk mail services market. We conclude that if either of these operators were to win market share from Jersey Post, it would be highly inequitable for the JCRA to continue to charge licence fees at £1,000 per year for a Class I licensee and about £245,000 per annum for Jersey Post.

## **LICENCE FEE**

The JCRA's approach to licence fees is guided both by the fundamental principles established in the Postal Services Law – that the fees should cover the costs of the JCRA - as well as by best practice elsewhere.

### **Class I and Class II Licences**

Under the Law, licence fees 'may be fixed as a percentage of the turnover or profit of a licensee or members of a class of licensees, or on the basis of some other formula relating to a licensee or members of a class of licensees, or on any other basis.' The JCRA concludes

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<sup>1</sup> Significant market power is where an undertaking has at least 50% share of a market

that licence fee for Class I and Class II operators should be based on turnover, which is the same mechanism which the JCRA uses to charge the telecommunications operators licensed by the Authority.

The use of a percentage of turnover to calculate fees is common in many jurisdictions. It enables the costs of regulation to be spread across all licensees in proportion to their activities in the market. The rationale behind spreading the cost in this way is the relationship between the turnover of licensees and the volume of regulatory work generated. This was demonstrated in an internal evaluation by Oftel for a 1997 consultation<sup>2</sup>. The evaluation demonstrated not only that the volume of regulatory work generated by larger operators was greater than that generated by smaller operators, but that as a rule, the complexity of the issues tended to be greater also. Indeed, the JCRA has found that this correlation has applied in the nine years experience in regulating telecommunications in the Island and almost six years experience in postal regulation. In the opinion of the JCRA, this clearly militates against having a flat fee for each licence class, which could not take into account the relative size of operators within that class. The principle of charging licence fees based on turnover has also been confirmed as an appropriate and fair mechanism by Ofcom in its September 2011 consultation paper on postal regulation.<sup>3</sup>

The JCRA also concludes that it is preferable to charge on the basis of turnover, rather than profit, in recognition of the fact that levies based on profits may have an adverse effect on commercial incentives.

### **Mechanism for Calculating Turnover**

We have decided that the charge payable by a particular postal operator should be calculated by multiplying the total estimated cost of regulation by that operator's share of 'licensable turnover' (expressed as a percentage of the total 'licensable turnover' generated by all operators).

'Licensable turnover' is to be calculated as the turnover generated by the provision of postal services for letters which fall within the licensable limits of £1.30 and/or 500 grams (i.e. items in respect of which a licence is required for their conveyance – see Articles 3 and 7 of the Postal Services Law).

For Jersey Post, the licensed public postal operator, we have taken the view that its 'licensable turnover' should also include income from its USO services (much of which might be outside the licensable limits). The rationale for this is that Jersey Post enjoys a significant benefit of approximately £2m pa from being the designated USO provider and, moreover, the JCRA's regulatory functions extend to all of Jersey Post's USO services.

For Class 1 postal operators, we conclude that the fee will be based on forecast 'licensable turnover' with any adjustment made (plus or minus) when the actual turnover figures are

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<sup>2</sup> A Review of Telecommunications Licence Fees in the UK, December 1997

<sup>3</sup> Ofcom: Postal Regulation – Transition to a new regulatory framework 29 September 2011  
Annex 4 – Ofcom statement on charging principles

available after the year end. In telecoms regulation, this is taken from their audited financial statements which are separated into regulated (licensable) turnover and non-licensable turnover. In any event, the JCRA concludes that a minimum annual fee of £1,000 shall apply.

For the designated USO provider, Jersey Post, 'licensable turnover' will be calculated on the basis of the turnover in its latest set of regulatory accounts, and will include turnover for postal and retail services and licensable products up to £1.30 and/or 500 grams, but will exclude income from such non-licensable and non-USO activities, such as Promail, philately, foreign exchange, Fedex, Ship2Me, as well as the conveyance of bulk mail items above £1.30 and/or 500 grams.

The licence fee rate that will apply for 2012 will be 0.9% of licensable turnover.

### **Timing of Payments**

The JCRA concludes that licence fee payments are to be made quarterly, as opposed to on an annual basis, which is currently the case. It is suggested that this will be preferable in terms of cash flow for both the JCRA and the licensees. Telecommunications licence fees are paid quarterly, and this system appears to have worked well from both the perspective of the JCRA and the licensed telecoms operators.

### **Reconciliation of Costs and Fees**

In the event that the amount collected by way of licence fees in a particular year (calculated on the basis of the final year end accounts of the JCRA) exceeds the amount required by the JCRA to meet the purposes described in the Law, the JCRA concludes that such a surplus should not be retained by the JCRA, and that a mechanism be put in place for balancing any excess fee collected. Similarly, if in any year there is a shortfall in the licence fee collected due to unanticipated costs, the JCRA will consider making up such a shortfall imposing an additional fee or levy on the licensees within the calendar year in which the shortfall arises, or by obtaining short term funding and increasing the licence fee or levy in the following calendar year.

### **Enforcement and Recovery of Fees**

The requirement to pay the licence fee is included in the licence conditions and therefore a failure to pay a fee will constitute a breach of licence. However, it should also be noted that under the Law, fees "shall be recoverable as a civil debt to the authority".

In order to encourage the prompt payment of fees, the JCRA also proposes that if a licensee fails to pay any amount due to the JCRA by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at four percentage points above the published base rate of the Bank of England. This is the same procedure currently applied by the JCRA with respect to the telecom operators licensed by the Authority.

**Effective date**

The new licensing fee regime will be introduced on 1 March 2012, to coincide with the potential introduction of the new Class I licences.

## **APPENDIX 1: Legal Provisions Relating to the Charging of Fees**

### **Competition Regulatory Authority (Jersey) Law 2001:**

#### ARTICLE 12

##### **Fees and Charges**

The Authority may charge, retain and apply in the performance of its functions-

- (a) fees and charges of such amounts, paid by such persons, and paid in such manner, as may be specified by or under this or any other such enactment;
- (b) fees for the performance of its function under Article 6(4);
- (c) such fees and such charges (not inconsistent with this or any other enactment) of such amounts, paid by such persons, and paid in such manner, as may be decided by the Authority in respect of any service, item, matter, that does not arise under this or any other enactment; and
- (d) such fees and charges (not inconsistent with this or any other enactment) as may be agreed between the Authority and any person for whom the Authority provides advice, assistance or other services under this or any other enactment, in respect of the advice, assistance or other services.

### **Postal Services (Jersey) Law 2004:**

#### ARTICLE 18

##### **Licence Fees**

- (1) Any payment, or fee, required under this law to be paid to the Authority in respect of a licence (including any application fee or fee required as a condition of a licence) may be determined by the Authority from time to time;
- (2) The Authority may determine such a payment or fee at such amount as is necessary to enable the Authority to recover its costs in whole or in part, so far as those costs are referable to the performance of the functions of the Authority under this Law;
- (3) Those costs include costs of the Authority's establishment, its short-term costs, and its long term costs (whether those costs are actual or projected or direct or apportioned);
- (4) The payment or fee may be fixed as a percentage of the turnover or profit of a licensee or members of a class of licensees, or on the basis of some other formula relating to a licensee or members of a class of licensees, or on any other basis;
- (5) The payment may be recoverable as a civil debt due to the Authority.