



# Ports of Jersey Limited (POJL) Determination of Prices for 2018

---

## Final Notice

**Document No: CICRA 18 / 06**

**15 March 2018**

Jersey Competition Regulatory Authority  
2nd Floor Salisbury House, 1-9 Union Street,  
St Helier, Jersey, JE2 3RF  
Tel: +44 (0)1534 514990  
Web: [www.cicra.je](http://www.cicra.je)

## Contents

<b>1. Overview.....</b>	<b>2</b>
<b>2. Introduction and Background.....</b>	<b>2</b>
<b>3. Legal Consideration.....</b>	<b>3</b>
<b>4. POJL Request for a price increase in 2018 .....</b>	<b>4</b>
<b>5. Responses.....</b>	<b>5</b>
<b>6. Conclusion.....</b>	<b>7</b>

## 1. Overview

This document is a Final Notice (**FN**) that withdraws CICRA's Initial Notice (**IN**) (CICRA 17/33) of 21 December 2017. The IN proposed a price increase of 1.3% to specified charges by POJL following a request by Ports of Jersey Limited (**POJL**) for a 5.2% price increase for 2018.

The Principal Port Operator's Licence<sup>1</sup> issued to POJL provides that CICRA may determine the maximum level of charges which POJL may apply for port operations in Jersey, within a relevant market in which POJL has been found to be dominant. POJL is the sole port operator in Jersey and has been found to be dominant in the provision of port operations, in Jersey.

Having considered POJL's application, together with the financial position and resources available to POJL, CICRA concluded that POJL would be able to finance the intended investment for 2018 with an increase of 1.3% from 1 April 2018.

Following the response from POJL, which introduced new information and provided more detail of its investment plans, CICRA withdraws the IN proposing a 1.3% increase to specified charges.

## 2. Introduction and Background

The States of Jersey enacted the *Air and Sea Ports (Incorporation) (Jersey) Law 2015* (the **Law**) on 2 June 2015. This requires that any person carrying out port operations must have a licence issued by the Jersey Competition Regulatory Authority (**JCRA**), also referred to in this document as CICRA (Channel Islands Competition and Regulatory Authorities).

Port Operations in Jersey were commercialised from 1 October 2015 and CICRA issued a Principal Port Operator's Licence (the **Licence**) to POJL on 1 November 2015, to carry out Port Operations in Jersey. POJL is the only port licensee in Jersey and is responsible for the operation of Jersey airport, Jersey harbour and various marinas and outlying harbours.

Shortly after incorporation POJL requested a 1.4% price increase and CICRA permitted an increase of 0.9%, in line with the change in RPI, for 2016. In January 2017, POJL applied for a further 2% price increase from 1 April 2017, but withdrew that request in July 2017.

In November 2017, POJL submitted a request for a further price increase. This was for an average increase of 5.2%, to take effect on 1 April 2018, in order to finance various investment projects. In response to that request, CICRA considered the information provided by POJL and on 21 December 2017, published its IN which proposed the following price increases for 2018 onwards:

2018	2019	2020	2021	2022
1.3%	0	0	0	0

<sup>1</sup> <https://www.cicra.gg/licences-in-issue/ports-of-jersey-ltd/>

### 3. Legal Consideration

The ports of Jersey – including Jersey Airport and Harbour – are regulated in accordance with the Law. Under the Law, the primary object of POJL is, “to provide, or ensure the provision of, safe, secure and efficient port operations for Jersey, whether by itself or by any other person acting as its subsidiary, agent, employee or sub-contractor”. Both CICRA and the Minister for Economic Development, Tourism, Sport and Culture have a number of duties defined under the Law, in Article 26:

- (1) *In relation to port operations, the Minister and the JCRA shall each have a primary duty to perform their respective functions under this Law –*
  - (a) *so as 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; and,*
  - (b) *so as best to ensure –*
    - (i) *that provision is made to satisfy all reasonable demands, both current and prospective, for port operations,*
    - (ii) *that port operations are provided efficiently and effectively, and,*
    - (iii) *that a company (in particular including POJL), to the extent that it is or is to be licensed under this Law, has sufficient financial resources to discharge its liabilities under securities issued by the company to the States.*
- (2) *In relation to lifeline services, the Minister and the JCRA shall each have a primary duty to perform their respective functions under this Law so as best to ensure that such services are provided –*
  - (a) *efficiently, effectively and without interruption; and,*
  - (b) *so far as consistent with sub-paragraph (a), with due regard to –*
    - (i) *any relevant policies of the States,*
    - (ii) *the interests of persons using or likely to use such services, and,*
    - (iii) *the special needs of persons who are disabled.*
- (3) *So far as consistent with paragraphs (1) and (2), the Minister and the JCRA shall each have duties to perform their respective functions under this Law –*
  - (a) *so as best to encourage sustainable growth in the economy of Jersey in the medium to long term;*
  - (b) *so as to impose a minimum of restriction on persons engaging in commercial activities;*
  - (c) *with due regard to any relevant policies of the States;*
  - (d) *with due regard to preserving and maximizing the benefits of Jersey’s resources; and,*
  - (e) *with due regard to the special needs of persons who are disabled.*

POJL is the only port operator and licensee in Jersey and has been found to be dominant in the market for the provision of Port Operations in Jersey<sup>2</sup>. In accordance with licence condition 22 of POJL's licence, where such a Licensee intends to introduce new prices for any Port Operations, or any discounts or premiums to published prices or special offers, for any or all of its customers, it must do so at least 21 days in advance of those prices coming into effect and provide full details to CICRA.

Also under condition 22 of POJL's licence, CICRA may determine the maximum level of charges such a Licensee may apply for Port Operations for a relevant market in which the licensee has been found to be dominant. This price determination does not apply to either POJL's Public Service Obligations (**PSOs**) which are separately defined under the Law or to services which are not Port Operations.

The issue by CICRA of a decision setting out the maximum level of charges (or permitted increase) is considered to be the exercise of a regulatory function in accordance with Article 23 of the Law.

Where representations are made within the period specified in an IN, CICRA must consider the responses and, in accordance with article 23(4) of the Law, issue a Final Notice (**FN**) which refers to the IN, summarises the representations received and confirms whether or not CICRA intends to exercise the regulatory function proposed.

#### **4. POJL Request for a price increase in 2018**

Both CICRA and POJL agree that it would be beneficial to all stakeholders for a long term pricing decision to be implemented, as opposed to repeated short term requests for increases, to provide a greater degree of certainty for the business, its shareholder and customers going forwards.

However, the basis for a longer term price control remains open to discussion and will require broader consultation on the underlying principles and inputs to that process. Given the work involved it was recognised that it would not be possible to implement such an approach in the short term and that an interim solution would be needed if POJL required a price increase in 2018.

In November, CICRA received a request from POJL to increase prices for port operations by (on average) 5.2%, from 1 April 2018. This would deliver an additional £1.3m of revenue in order to support expenditure on a number of capital projects, focussed on IT infrastructure and new investment in the Elizabeth Terminal.

After the initial submission a number of clarifications were made. POJL confirmed that 5.2% represented the average increase across a range of services, with the specific increases for

---

<sup>2</sup> <https://www.cicra.gg/cases/2016/poj1204j-significant-market-power-smpdominance-designation/poj1204j-final-notice-ports-of-jersey-assessment-of-market-power/>

individual tariff items ranging from zero on some services up to a 15% on others. POJL provided an updated submission for CICRA's consideration on 1 December 2017.

CICRA considered POJL's request for a price increase on 13 December. It did not agree POJL's request for full 5.2% increase to deliver £1.3m additional revenue, but determined that an increase of 1.3% would be sufficient to permit POJL to finance £1.3m of investment in its various projects in 2018. Furthermore, CICRA did not consider that POJL's financial position meant that it would require its investment to be financed on the basis of cash pass through.

CICRA published its IN on 21 December 2017, proposing a price increase of 1.3% from 1 April 2018, followed by 0% in following years up to 2022. The IN sought responses to this proposal.

## 5. Responses

CICRA received 3 responses to its IN. Two were responses from a Jersey airport user and a Jersey harbour user, both of which indicated that their responses were confidential. Their full responses are therefore not made public but key points made are summarised below.

In their responses, the airport and harbour users indicated that they were opposed to increases in prices proposed by POJL, and key points from the responses are summarised as follows:

- *Prices at Jersey airport and harbour are already high and more expensive than UK or other comparators.*
- *POJL's customers cannot necessarily pass on increases to their customers because of commercial or competitive constraints.*
- *There appears to have been under investment in infrastructure before and since incorporation.*
- *Historic increases have permitted POJL to build up reserves, it is unreasonable to expect additional increases for catch-up investment.*
- *Investment in new systems etc. required by incorporation should have been considered at transition rather than passed on to customers.*
- *The increases in some tariffs are not fair or reflective of the level of investment.*
- *Increasing prices will not support Visit Jersey's strategy to increase visitor numbers.*
- *Customers of POJL have not been fully consulted or been able to comment on costs or the choice of priorities.*

POJL provided a public response, the full text of which is available on CICRA's website. In its response, POJL raises a number of points which are summarised below. The full response is published on CICRA's website.

- *CICRA misunderstood POJL's request and has therefore significantly underestimated the price rise necessary to finance the four investment projects proposed.*

- *POJL was not able to explain to CICRA's satisfaction the rationale for its intended 2% increase in 2017 and hence had to forgo that adjustment.*
- *POJL welcomes CICRA's preference for a move to a longer term price control and that while it could not be put in place for 2018, it should be put in place for 2019.*
- *POJL's submission was based on focussed funding of the additional cost of four key investments on a cash flow basis rather than the financial situation of the business as a whole.*
- *CICRA misunderstood the basis of POJL's application and that applying CICRA's approach to the full £13.98m, 10 year investment proposed by POJL would have resulted in a price increase of 14%.*
- *CICRA should not have taken account of POJL's overall financial position and comments relating to financial position are incorrect and therefore misplaced.*
- *POJL notes that it raised this concern with CICRA on the 9 January and subsequent meeting.*
- *The full £14m investment programme over 10 years was the basis for POJL's request for an increase of £1.32m in its revenue. The projects considered include a mix of capex and opex and the amount invested in 2018 would not be the £1.3m identified by CICRA, which represented the average annual investment over 10 years.*
- *CICRA highlighted POJL's cash reserves (£28m) and concluded it would not be necessary to finance additional capex on a cash basis. POJL comments that this is based on an assumption that the projects in the price submission are the entirety of the POJL capital programme, which is not the case.*
- *The assumptions used by CICRA in its assessment are wrong. POJL has previously provided a reasonable assessment of the cost of capital rather than the 5% proposed by CICRA, asset life should be 10 rather than 5 years.*
- *Depreciation costs alone would justify the price request. POJL has been extremely conservative in only asking for a 5.2% price rise.*
- *POJL does not agree CICRA can take account of changes to assumptions in future prices.*
  - *The size of increase required to do so would be unlikely to be favoured by customers and could put at risk more marginal routes valued by customers;*
  - *POJL, unlike other regulated businesses, does not have in place a regulatory framework which can be transparently adjusted;*
  - *It would add significant extra complexity to any future pricing framework;*
- *On consultation with customers, POJL agrees with CICRA's view of the difficulty of consulting meaningfully with customers on general IT projects. It considers CICRA's view of POJL's position is mistaken. POJL's position is that it is difficult to discuss pricing with customers when POJL cannot introduce changes agreed with customers without regulatory approval.*
- *POJL is not seeking a "bilateral discussion between CICRA as economic regulator and POJL as Jersey's licensed port operator" – which it considers would be impossible since it is based on public consultation which allows all interested stakeholders to comment and respond. However, POJL does not see how it is possible to effectively discuss the balance of priorities with customers when the outcome of a potential investment could be the 5.2% increase requested, the 1.3% proposed by CICRA or the 14% increase which would result from applying CICRA's approach to the actual cost of investment.*
- *POJL hopes that in advance of the 2019 price submission CICRA will have made sufficient progress to develop a long term pricing framework.*

- *The increase proposed by POJL is consistent with other businesses in similar sectors and less than Jersey RPI for the period.*
- *CICRA has concluded a 5 year schedule without asking for information on POJL's future costs.*
- *POJL's submission was for a one off increase in prices and did not provide any information relating to the costs or financial situation of the business for subsequent years or the need for price increases after 2018. CICRA therefore has no basis on which to determine price increases for 2019 to 2022 or to satisfy themselves that they have made the determination in line with their duties under article 26 of the Law.*
- *POJL considers that CICRA has changed its stated approach to publication of consultation responses from website publication to "CICRA intends to make responses available for inspection".*
- *POJL concludes that CICRA's draft determination is based on a misunderstanding of the cost of the required investment projects discussed in its submission.*
- *As a result the proposed price increase will not provide the funds necessary for it to carry out the investments and for subsequent years CICRA does not have sufficient information to set a price cap. CICRA should reissue its Initial notice with POJL's request for a 5.2% price increase in 2018.*

## 6. Conclusion

CICRA has taken into account the responses from customers as well as the additional information provided by POJL since publication of the original IN, including new information which has been provided.

CICRA has decided to issue this FN to withdraw its IN of 21 December 2017. No price increase is currently proposed for POJL. CICRA will review the new information provided together with the comments made by customers and by POJL before deciding next steps.

The text of this Final Notice is available for inspection at CICRA's Jersey office at:

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

A copy may also be found on CICRA's website, [www.cicra.je](http://www.cicra.je).