



Ports of Jersey Limited (POJL) Quality of Services

Final Notice

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1. Overview

This document is a Final Notice (**FN**) that withdraws CICRA's Initial Notice (**IN**) (CICRA 17/34) of 21 December 2017. In the IN, CICRA proposed a set of Quality of Service (QoS) performance measures which it required Ports of Jersey Limited (POJL) to monitor and report on a regular basis.

Following the consultation, CICRA received a response from POJL suggested an alternative set of performance measures. CICRA considers that the development of QoS measures by POJL in conjunction with its customers is important. CICRA welcomes the modified proposals put forward by POJL and proposes that they should initially be adopted as the basis for future reporting.

CICRA is therefore issuing this FN to close the previous IN and will issue a new IN setting out the measures put forward by POJL.

2. Introduction and Background

The States of Jersey adopted the *Air and Sea Ports (Incorporation) (Jersey) Law 2015* (the **Law**) on 2 June 2015. The Law 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 Ports of Jersey Limited (**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.

In accordance with condition 15 of its licence, POJL is required to provide regular reports on its development plans and the performance of services at the airport.

CICRA has previously issued a consultation¹ and carried out market research on QoS in airports and harbours in order to identify areas that are important to customers and port users. On 21 December 2017, CICRA issued an Initial Notice (**IN**) (document CICRA 17/34) which set out a range of specific QoS performance measures which it required POJL to monitor and directed POJL to provide reports to CICRA on a regular basis.

The purpose of this Final Notice (**FN**) is to close CICRA's original (21 December 2017) IN, which will be replaced with a new IN.

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,*

¹ <https://www.cicra.gg/media/597591/poj1224j-consultation-ports-of-jersey-quality-of-service.pdf>

- (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 in Jersey, holds a Principal Port Operator’s Licence and has been found to be dominant in the market for the provision of Port Operations in Jersey².

In accordance with condition 15 of its Licence, POJL is required to progressively achieve standards in line with international best practice and other benchmarks as CICRA may from time to time direct.

In order to facilitate this aim, POJL is required to provide CICRA with a target operating plan, setting out the target operating levels it will achieve for port operations and a monitoring plan for providing accurate measurement of target performance levels. To date POJL has not provided either a target operating plan or a port operations monitoring plan to provide accurate measurement of the relevant target levels.

Condition 15 goes on to note (condition 15.8) that the Licensee shall comply with any Directions issued by CICRA from time to time regarding any other QoS indicators and (condition 15.9) that the Licensee shall provide information required by CICRA for the purpose of assessing service levels.

The issue by CICRA of a direction to POJL to comply with a specific licence condition is considered to be the exercise of a regulatory function in accordance with Article 23 of the

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

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 FN which refers to the IN, summarises the representations received and confirms whether or not CICRA intends to exercise the regulatory function proposed.

4. Proposed Quality of Service Measures

CICRA recognises that, in many of these performance measures, parties other than POJL have an important role to play in delivering services. In each case, POJL itself or the airport infrastructure and its availability plays a role in the ability of POJL and its business partners to deliver a high quality service.

As a result of its consultation and the direct engagement with interested parties through consultation and market research carried out on CICRA's behalf, customers and port users identified the issues and areas of service of most importance to them.

5. Responses

CICRA received a responses to its IN from POJL. The full response from POJL is published on CICRA's website³.

CICRA was disappointed by the tone of POJL's response and disagrees with many of the points raised in it.

In its response, POJL recognises the importance of providing information to passengers and the interest of CICRA and other stakeholders in information relating to the performance of POJL. It also welcomes CICRA's recognition that parties other than POJL have an important role to play in delivering services. It makes a number of specific points in relation to CICRA's Initial notice and approach to QoS, which are summarised below and can be seen in full in the response published on CICRA's website.

- POJL notes a concern that CICRA has proceeded directly to an IN to issue a Direction without engaging POJL and considering what is practical and sensible to measure
- As a result POJL considers that CICRA's suggestions are less likely to reflect the value customers place on aspects of QoS or be easily benchmarked and will place a disproportionate cost on the ports.
- CICRA has not been sufficiently transparent and has not published responses to its consultation⁴. It has not published details of its market research and took no account of the views of 60% of passengers who are visitors to Jersey rather than residents.

³ CICRA acknowledges that it could have published sooner the responses to its initial consultation on quality of services.

⁴Responses from POJL, Manche Iles & Solent Stevedores are published on CICRA website, here:

- POJL is concerned that CICRA has selectively quoted from its evidence base, where POJL's surveys indicate different results.
- Concerning that CICRA has chosen to ignore the wide range of information provided in POJL's consultation response.
- Urge CICRA to publish responses to its QoS consultation⁵ and details of its market research.
- Transparency is important as it allows stakeholders to better understand regulator's proposals make more informed and better responses and is one of the five principles of better regulation.
- POJL recognises the value in providing information to customers and other stakeholders about the performance of Ports of Jersey and intend to extend the range of information about ports published on its website. POJL is concerned CICRA have not gathered a sufficiently robust evidence base on which to base an important regulatory determination.
- Evidence gathered by CICRA does not appear to have been very relevant to determining proposed reporting measures and appear to have ignored important comments made by POJL.
- CICRA would like to use reported measures to compare POJL performance against other operators but have not considered the measures of performance published by other port operators. If POJL reports different measures to other port operators then measures will not be comparable. Performance measures reported by other operators are likely to be a good proxy for what POJL customers and users value.
- POJL remains ready to work with CICRA to undertake a survey of measures undertaken by other port users to inform the development of performance measures that better support benchmarking.
- POJL highlighted that it is important to consider what information is readily available from POJL's existing information systems. POJL does not think it is appropriate to include, as a licence obligation, information provided by third parties which could put POJL at risk of a licence breach due to a third party's failure to provide correct information in a timely manner.
- POJL is happy to work with CICRA to discuss what information is currently or could easily be captured by POJL's information systems.
- POJL considers that a closer dialogue would be better for port users and customers and more in line with CICRA's aims and good regulatory practice.
- POJL has summarised its proposed reporting measures but does not take account of information reported by other similar port operators. Research may suggest more appropriate measures and POJL will help CICRA to carry out further research and

www.cicra.gg/cases/2017/poj1224j-ports-of-jersey-quality-of-service/poj1224j-consultation-ports-of-jersey-quality-of-service/

⁵ see note [3], responses have been published.

develop a robust evidence base before any decision is made on reporting requirements.

CICRA's approach of setting out the proposals in an IN and issuing a direction is in line with its approach across other sectors (eg, Post) and the provisions in POJL's Port Operator's Licence.

CICRA engaged with POJL over a significant period of time, commencing in 2016, in order to understand and identify performance measures and QoS standards. From the outset CICRA's strong preference in this process has been to work with POJL to develop appropriate QoS indicators based on the business' existing performance measures. With that in mind CICRA engaged with POJL over a significant period of time, commencing in 2016, in order to understand and identify performance measures and QoS standards already in place in the business.

However, while it is clear that POJL does engage with customers through various working groups and surveys passengers and boat owners, the business did not have in place appropriate quantitative performance measures.

Ultimately, CICRA put forward its proposals based on market research and consideration of information reported by other port operators (primarily in the UK) because POJL did not measure or report appropriate quantitative performance measures and had not set out the plans required of it under its licence obligations.

CICRA welcomes POJL's progress and its commitment to continue the development of performance and reporting measures including carrying out research to identify more customer focussed measures which can be benchmarked against other operators. CICRA considers that a good starting point for this work would be the broad range of performance measures currently published on a monthly basis by Gatwick airport⁶. While considerably larger than Jersey airport, so the range of measures may be much greater than would be practicable for Jersey Airport, it is one of a small number of airports in the UK which, like Jersey, hold a position of significant market power (SMP). Operators which hold SMP are not subject to the competitive pressures which apply elsewhere and, in the normal course of events, could be expected to drive improvements in efficiency and standards of service without necessarily increasing prices to consumers.

⁶ Available on Gatwick Airport's website:

6. Conclusion

CICRA considers that on balance, taking into account the response and additional information provided by POJL, the most reasonable approach to ensure that reporting measures are put in place as soon as practical would be to adopt the measures proposed by POJL as a common basis for QoS reporting going forward.

CICRA welcomes POJL's engagement in this process and believes that the proposals provide a good initial basis for reporting QoS performance measures going forward. CICRA therefore proposes that these should be implemented as proposed (and will issue a new IN to that effect) from 1 July 2018 with reports provided to CICRA, initially, on a quarterly basis. CICRA looks forward to working with POJL and other stakeholders to implement and develop these performance measures for the future.

CICRA has therefore decided to issue this FN to withdraw its IN, CICRA 17/34, of 21 December 2017. CICRA will issue a new IN and Direction to POJL to report the revised Quality of Service information.

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

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A copy may also be found on CICRA's website, www.cicra.je.