



Office of Utility Regulation

**Decisions under
The Post Office (Bailiwick of Guernsey)
Law, 2001**

Decision Notice and Report on the
Consultation Paper

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1. Introduction

In August 2001, the Director General published notice of her intention to take certain steps in accordance with the Post Office (Bailiwick of Guernsey) Law, 2001 (“the Postal Law”). That paper, OUR 01/06 entitled “Proposed Decisions under the Post Office (Bailiwick of Guernsey) Law, 2001” set out a number of proposed decisions and invited comments on these decisions. The proposed decisions, which are being made under section 5 of the Postal Law related to:

- (a) A proposed decision as to whether a person has a dominant position in a relevant market ;
- (b) A proposed decision to include conditions in the licence to be granted to that person in relation to the control of that dominant position, and what those conditions are;
- (c) A proposed decision to regulate the prices, premiums, discounts that may be charged or allowed by a licensee which has a dominant position in a relevant market; and
- (d) A proposed decision to include quality of service conditions in any licence.

This report sets out the Director General’s conclusions following detailed consideration of the responses received. This report is structured along the lines of the consultation document and each section will summarise the matter consulted upon, the responses received and the Director General’s consideration of the matter.

Two organisations responded to the consultation, as listed below:

- Guernsey Post Limited
- Bulk Posters Group

The Director General wishes to thank those who have responded to this consultation document for their contributions in helping to shape the regulatory regime. With the exception of the responses marked as confidential, written comments are available for inspection at the OUR’s office.

2. Overview

As stated in Consultation Document OUR 01/06, there is a considerable amount of international literature and experience in the matter of defining markets and determining whether there is dominance or market power in those markets, but there is little precedent in Guernsey.

The Director General proposes to develop further a body of analysis of markets that will assist in discharging this function in the future and will consider practice elsewhere as well as the specific conditions of the Bailiwick.

3. Decision as to whether a person has a dominant position in a relevant market.

Of particular importance in the postal market in Guernsey are States Directions that were approved by the States of Guernsey at its meeting in September 2001. The States has now agreed on the scope of the universal postal service that shall exist in the Bailiwick of Guernsey (the Universal Service Obligation or “USO”) and has also agreed to direct the Director General to ensure that at least one licensee to deliver that universal service, that the first licensee with a USO shall be Guernsey Post Limited, the successor company to Guernsey Post Office Board, and that the Director General shall reserve services exclusively to that licensee to the extent necessary to meet the USO.

Therefore the licence that the Director General will grant to Guernsey Post Limited will include the USO and also an exclusive right or monopoly to provide a specified set of services that will be known as “reserved services”. Document OUR 01/17 sets out an Order that the Director General intends to make under the Post Office (Bailiwick of Guernsey) Law, 2001 defining reserved services.

The fact that Guernsey Post Limited will therefore have a legal monopoly in certain markets has influenced the Director General’s decisions as notified in this paper.

3.1. *Relevant Market*

The Director General set out her thinking on the relevant market in question in Document OUR 01/06. As no comments were received on this aspect of the consultation, she now confirms her position as set out in that document.

Decision 2.1

The Director General considers that the Bailiwick of Guernsey is the geographic market in relation to the postal market.

The Director General considers that the product and services market to which dominance applies is the market for reserved services.

3.2. *Dominant position*

The Director General set out her position on this matter and her arguments and methodology for determining the organisations with dominance in the markets described above. As was noted in the consultation paper, a generally accepted principle is that an undertaking can be considered dominant if either individually or jointly with others it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors customers and ultimately consumers.

Comments Received

One respondent while acknowledging that Guernsey Post Limited has a dominant position within the Bailiwick, stated that it was not dominant outside the Bailiwick and that there were no barriers to customers posting their mail outside of the

Bailiwick and that postal users had easy access to the postal networks of Jersey and the UK.

Director General's Position

The Director has noted the comments of the respondent on this matter and is aware of the nature of competitive pressures from outside the Bailiwick of Guernsey. However, the relevant market in question is the Bailiwick and the legal jurisdiction covered by relevant legislation is confined to the Bailiwick. In addition, whether users choose to avail of the services of other operators outside the relevant market does not affect the exclusive rights that Guernsey Post Limited will have within the relevant market.

Decision 2.2

The Director General hereby designated Guernsey Post Limited as being dominant in the market for reserved services in the Bailiwick of Guernsey.
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4. Decision to include conditions in a licence in relation to control of a dominant position.

Given this strong position in the market, the Director General stated her intention to include a number of specific conditions in the licence in order to control the Licensee's dominant position. These conditions were first set out in section III of the draft postal licence at Appendix 2 to document OUR01/05 – Postal Licence Conditions – Consultation Paper.

Comments Received

One respondent while acknowledging that Guernsey Post Limited has a dominant position within the Bailiwick, stated that it was not dominant outside the Bailiwick and that there were no barriers to customers posting their mail outside of the Bailiwick and that postal users had easy access to the postal networks of Jersey and the UK.

Director General's Position

The Director has noted the comments of the respondent on this matter. However, she repeats the point that the relevant market is the Bailiwick of Guernsey and she believes that the company's position within that market justifies the application of the relevant conditions designed to control dominance.

Decision 3.1

The Director General shall impose conditions on Guernsey Post Limited in order to control its dominant position in the market. The relevant conditions are those set out in part III of the pro-form postal licence in document OUR 01/20.
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5. Decision to regulate the prices, premiums and discounts of a dominant operator.

The Director General stated her intention to include conditions relating to the prices, premiums and discounts that dominant operators may charge or allow. The relevant condition is condition 18 in the draft licence conditions (see OUR 01/05).

Comments Received

Respondents expressed the view that further time should be allowed for the consideration of this matter and that its application should follow an extended period of consultation. One respondent was of the opinion that because of the nature of certain clients of the Post Office that its introduction without such an extended period of consultation will introduce uncertainty for such clients and have a knock on effect on Guernsey Post Limited. In addition it felt that a three month notice period should be given before any pricing changes are implemented.

Director General's Position

The Director General is aware that, because of the nature of their relationship with Guernsey Post Limited different users have different requirements with regard to pricing information. However, she is mindful of the need to strike a balance that is in the best interests of the Bailiwick as a whole. The requirement in the licence condition to publish information is the minimum notice period that the Director General expects Guernsey Post Limited to comply with. Should it wish to announce price changes earlier, then there is no impediment and it would be a commercial decision for the company to make, so long as its is in compliance with its other regulatory obligations, in particular the non-discrimination between itself and other operators or between different operators.

Decision 4.1

<p>The Director General shall impose an obligation on Guernsey Post Limited to comply with a condition relating to the setting and publication of pricing information. The relevant condition is condition 18 as set out in the pro-forma postal licence in document OUR 01/20.</p>

6. Decision to include quality of service conditions in any licence.

The Director General indicated that she intends to include specific conditions relating to quality of service in the first postal licence (conditions 13, 14 and 15 in Appendix 2 of Document OUR01/05). These conditions are designed to ensure that the Licensee meets quality of service targets and the Director General receives sufficient information to monitor its compliance.

Comments Received

One respondent expressed the view that factors to be monitored needed to be considered more and expressed the view that it believed that the integrity of the mail

should be included. Both respondents shared the view that the number of external factors that influence the postal service in the Bailiwick makes the setting of appropriate target levels more difficult.

Director General's Position

The Director is aware that appropriate target levels should be set and believes that further discussion is needed to finalise this matter. In addition, the Director General sees any target levels as being dynamic in nature and should be a matter for continuous review by the Post Office.

Decision 5.1

The Director General shall impose quality of service conditions in the licence to be issued to Guernsey Post Limited. The relevant conditions are conditions 13, 14, and 15 in the pro-forma postal licence text set out in document OUR 01/20
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/ENDS