



Office of Utility Regulation

Postal Licence Terms and Conditions

Decision Notice and Report on the Consultation Paper

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1. Introduction

In August 2001, the Director General of Utility Regulation published a series of consultation papers in relation to the introduction of a new regulatory framework for the postal market within the Bailiwick of Guernsey. This report deals specifically with the issues dealt with in the consultation paper OUR 01/05 entitled “Postal Licence Terms and Conditions” (document OUR 01/05). That paper covered, inter alia;

- The nature of the licence terms and conditions to apply to Guernsey Post Limited;
- The services to be exempted from a licensing requirement; and
- The timing for the future development of the licensing regime.

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/individuals responded to the consultation, as listed below:

- Guernsey Post Office
- Deputy Roy Bisson

The Director noted that certain comments offered by respondents, while not necessarily relevant to this consultation, are nonetheless important. She proposes to deal with those issues in the context of the day-to-day business of the Office and the ongoing development of the regulatory regime. In addition this paper will not comment on respondents views on the specific legal text of the licence documents. A legal review of the text has been carried out in parallel with the consultation process and, wherever appropriate, legal drafting points raised in the responses have been incorporated into the revised texts.

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. Background

2.1. Legislation

The Post Office (Bailiwick of Guernsey) Law, 2001 (“the Postal Law”), and the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“the Regulation Law”)

together provide the legislative basis for the regulation of postal services in Guernsey from their commencement date of 1st October 2001.

As was stated in the Document OUR 01/05, the Postal Law provides that a range of postal activities do not require licensing, ranging from personal private delivery to delivery of court documents and banking instruments¹. However, any postal services that are “reserved services” can only be provided in accordance with a licence issued by the Director General. The Law provides that reserved services may be set out in an Order made by the Director General². The Director General has published the text of an Order defining reserved services in document OUR 01/17.

The Regulation Law provides that the States of Guernsey may issue States Directions to the Director General on certain issues and at its meeting of September 2001, the States agreed directions that:

- define the level of universal postal service in the Bailiwick of Guernsey (the Universal Service Obligation or “USO”)
- require at least one licensee to deliver that universal service,
- require that the first licensee with a USO shall Guernsey Post Limited, and
- require the Director General to reserve services exclusively to Guernsey Post Limited to the extent necessary to meet the USO.

3. Proposed Licence Structure

OUR 01/05 set out the proposed licence conditions to be applied to Guernsey Post Limited from 1st October 2001. The licence terms address issues such as quality of service, control of a dominant operator and pricing issues. Respondents were asked for their opinion as to whether the range of conditions covered all relevant matters or if any of the conditions were superfluous.

Comments Received

In general respondents agree with the Director General’s proposals and no respondent suggested the need for additional conditions. Specific comments were offered by respondents on certain conditions and these shall be dealt with in more detail later.

Director General’s Position

The Director General will now proceed to issue a licence to Guernsey Post Limited along the lines set out in the consultation document, subject to those changes dealt with later in this paper. The exact licence terms and conditions are set out in document OUR01/20.

Decision 3.1

The Director General will issue a licence to Guernsey Post Limited containing the conditions set out in the pro forma postal licence in document OUR 01/20.

¹ Section 1(2) of the Post Office (Bailiwick of Guernsey) Law, 2001

² Section 9 of the Post Office (Bailiwick of Guernsey) Law, 2001

4. Conditions of Specific Importance

4.1. Universal Service

Universal Service (Condition 12)

This condition ensures that the universal service obligation defined in States Direction can be imposed on the Licensee by the Director General. The purpose of the condition is;

- to impose on the first USO licensee the requirement to provide the level of universal service that will be set out in the States Direction. This is expected to include a minimum level of service, defined with reference to deliveries and collections, at a uniform and affordable price to all users, irrespective of their location in the Bailiwick; and
- to provide for Licensee to defray the cost of the USO. This is appropriate as the licensee will be provided with a monopoly on certain services in order to ensure that it is possible to meet the cost of the USO.

Comments Received

Respondents agreed that the condition being proposed should achieve the objectives of the Postal Law and States Direction with regard to the Universal Service Obligation.

Director General's Position

The Director General confirms that this condition will be applied in the licence issued to Guernsey Post Limited.

Decision 4.1

<p>The Director General shall impose as a licence condition the requirement for Guernsey Post Limited to meet the Universal Service Obligation as set out in the Postal Law and States Direction. The relevant condition is condition 12 in the pro forma postal licence set out in document OUR01/20.</p>
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4.2. Public Service Conditions

The Director General set out in both the consultation paper and the appendix her proposal with regard to safeguarding both the level of service users of the postal service will enjoy and the manner in which any service related issues that they may have shall be dealt with. The Director General sought the views of interested parties on these issues and the comments received are set out below.

(a) Service Levels (Condition 14)

Comments Received

Respondents agreed that the proposed condition was necessary. However Guernsey Post pointed out that because of the insular nature and small size of the Bailiwick, a high proportion of mail services is reliant on the input of operators outside its control. In its view this factor must be borne in mind when developing service levels.

Another respondent was of the opinion that in developing the service level that the benchmark used should not be the present level of service. They also felt that any service levels should address delivery times, care of the mail being delivered (i.e. protection from damage) and collection times.

Director General's Position

The Director General has noted Guernsey Post's position with regard to the inputs to the delivery service to the island from other postal administrations. However, because of the importance to the Bailiwick of a first-rate postal service and the reliance upon it by both residential and business users, the Director General believes it is essential that end-to-end service targets are set and met and she believes this is possible.

In fact every postal operator can argue that it relies on the inputs of others to enable it to meet its delivery targets and clearly this relationship needs to be taken into account when setting targets, but it does not prevent the setting of targets in the first place.

With regard to the specific targets and the elements that are measured the Director General is grateful for the suggestions offered. She believes that the development of the service levels will be an ongoing task and should there be a need for further public consultation to inform that task, this will be considered.

Decision 4.2

Guernsey Post Limited shall be required to develop service levels for the delivery of mail to and from the island. Such targets levels shall take account of international best practice and user needs

(b) Consumer Protection (Condition 15)

Ensuring that consumers' interests are protected is of critical importance to the Director General. A high quality service to its customers, coupled with a speedy response to service issues and complaints are key elements in this regard. Respondents were asked whether the proposed licence condition best achieved this objective.

Comments Received

Respondents agreed with the Director General's proposal. However one respondent suggested that the licence should require licensees to recognise a single independent consumer council on matters of relevance and that this body could be consulted on certain issues, such as pricing and new services.

Director General's Position

The Director is pleased that there is strong support for the proposals relating to consumer protection and shall proceed to include such a condition in the licence to be issued to Guernsey Post Limited. While she accepts that there may be merit in having a users group which is representative of the different types of customers, she does not believe it would be appropriate to include it as a requirement in the licence at this time without seeking further views of interested parties on the matter.

Decision 4.3

The Director General shall include a licence condition along the lines of that consulted upon in the Licence to issue to Guernsey Post Limited.

4.3. Control of a Dominant Position and Fair Competition

Fair Competition (Conditions 18 - 24)

The proposed licence shall contain a number of conditions are that are designed to ensure fair competition in markets where Guernsey Post Limited will have a legal monopoly over certain services and therefore will have a position of some power in the market for those services and related services. These conditions are intended to ensure that the Licensee does not abuse that power and behaves in a manner that does not impede competition in other parts of the market. Comments were sought on whether the conditions were appropriate and adequate to achieve their aims.

Comments Received

One respondent raised a number of concerns relating to the application of certain conditions in this section. In respect to Condition 18 it was of the view that this should exclude Users of non-licensed services and sought clarification on how compliance with the publication requirement might be met. It also had concerns about the publication period, believing it to be too long in a competitive environment and felt that prices should only be notified to the Regulator. It further believed an adequate period of time should be given to allow for compliance with the non-discriminatory pricing condition.

Both respondents expressed the opinion that a certain level of cross-subsidisation should be allowed. One expressed the view that this is necessary to ensure that local postal charges remain low. The other respondent was of the opinion that in certain circumstances (introductory/promotional offers) it might be commercially desirable to allow a degree of cross-subsidisation between services that are outside the reserved sector.

Director General's Position

The Director General is mindful of the need to balance the long-term viability of Guernsey Post Limited as the Universal Service Provider with the need to provide a level playing field to allow for competitors to enter the market to offer their services to the people of the Bailiwick.

In relation to the publication of prices, the Director General believes that the availability of information improves consumer choices, and also allows players to compete on a more effective basis and it is important therefore to protect the principle of the provision of information in the market. In the light of comments received on the practicality of implementation of the relevant conditions, she has made some amendments to allow for greater flexibility but has retained the requirement to publish relevant information. The Director General will keep the operation of the condition under review.

With regard to the requirement as to non-discriminatory pricing, the Director General is aware that there are a number of work streams that will impact on the implementation of this licence condition, not least the cost accounting exercise that is currently being undertaken by Guernsey Post. The Director General will once again work on the implementation of this condition having regard to the information available and the timetable for developing systems and producing information to assist in making regulatory decisions. In relation to concerns that Guernsey Post could for a short while be in breach of its licence, she notes that sections 31 and 32 of the Post Office (Bailiwick of Guernsey) Law, 2001 provides a framework for the remedying of any possible breaches and protects the licensee in cases where it is taking steps to remedy a breach or where the breach is not material.

In relation to cross subsidisation, this issue will also be affected by the outcome of the costing project that is currently ongoing as well as other work streams. However, the Director General notes that the licence condition concerned prohibits unfair cross subsidisation, and the regime adopted clearly envisages a certain amount of cross subsidisation that is permitted, by virtue of the fact that certain services are reserved to the USO licensee to enable it to fund the USO. It is not possible to anticipate all circumstances in which cross subsidisation may or may not be unfair and it will be necessary to address this on a case by case basis.

Decision 4.4

The Director General shall impose conditions relating to fair competition on Guernsey Post Limited. The relevant conditions are set out in the pro forma postal licence in document OUR01/20.

5. Conclusion

The Director General shall now proceed to issue Guernsey Post Limited with a licence to operate the postal service in the Bailiwick from 1st October 2001.

/ENDS