



Office of Utility Regulation

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

Consultation Paper

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1. Introduction

In preparing the regulatory framework that will apply in the postal market in Guernsey from 1st October 2001, the Director General of Utility Regulation (“the Director General”) is required to publish notice of her intention to take certain steps in accordance with the Post Office (Bailiwick of Guernsey) Law, 2001 (“the Postal Law”). This paper sets out a number of proposed decisions and invites comments on these decisions. Interested parties considering these decisions may wish to comment also on Document OUR01/05: Postal Licence Conditions - Consultation Paper.

The Decisions that the Director General is now addressing are the following decisions under section 5 of the Postal Law:

- (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 consultative document does not constitute legal, commercial or technical advice. The Director General is not bound by it. The consultation is without prejudice to the legal position of the Director General or her rights and duties to regulate the market generally.

2. Consultation Procedure and Timetable

The consultation period will run from Monday 13th August to Friday 31st August 2001. Written comments should be submitted before 5.00pm on August 31st to:

Office of Utility Regulation
Suite B1 & B2,
Hirzel Court,
St. Peter Port,
Guernsey GY1 2NH.

Email: info@regutil.gg

All comments should be clearly marked “Comments on Proposed Decisions under the Post Office (Bailiwick of Guernsey) Law, 2001 - Consultation Paper”.

All comments are welcome, but it would make the task of analysing responses easier if comments reference the relevant question numbers from this document. In line with the policy set out in Document OUR01/01 – “Regulation in Guernsey; the OUR Approach and Consultation Procedures”, the Director General intends to make responses to the consultation available for inspection. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential.

The Director General regrets that she is not in a position to respond individually to the responses to this consultation, but she proposes to issue a response to the consultation, including published licence terms and conditions in September 2001.

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

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.

However, in considering the postal market in particular, the Director General notes that the States of Deliberation is scheduled to consider proposed Directions at its meeting of September 2001. It is anticipated that the States will define a universal postal service in the Bailiwick of Guernsey and require at least one licensee to deliver that universal service, direct that the first licensee with a USO shall be the successor company to Guernsey Post and direct that the Director General reserve services exclusively to that licensee to the extent necessary to meet the USO.

Therefore the Director General anticipates that the first USO licensee in the postal sector will be provided with an exclusive right, or monopoly, to provide a specified set of services that will be known as “reserved services”. Document OUR01/05 provides more information on this issue. This is reflected in the proposed decisions set out below. This is without prejudice to any final States Directions and the Director General will adjust any final decisions as appropriate to comply with such Directions.

3.1. *Relevant Market*

For this present decision the Director General has considered the relevant market having regard to the geographic area of the market and the product and services market and then considered the position of the main player in those markets – Guernsey Post Office (“Guernsey Post”).

Geographic extent of the market: The Director General intends to define the geographic market for postal services with reference to the area in which relevant parties are authorised to operate. Therefore the Director General will consider the Bailiwick of Guernsey as the geographic market in this case.

Products and Services in the market: There are various ways of identifying product and services markets, including consideration of supply and demand side substitutability. However, for the purposes of the postal licensing framework, the Director General considers that it is only necessary to consider the market for “reserved services”. As the USO licensee will be provided with an exclusive privilege to provide these services, these detailed tests are redundant because there is a legal impediment to any supplier other than the Licensee providing those services or products, and a similar legal barrier to any customer receiving the services from an alternative supplier.

Therefore the Director General proposes to consider dominance in the market for reserved services at this time.

3.2. Dominant position

Once again, there is considerable international experience in determining if an undertaking has a dominant position in a relevant market. 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.

There is a variety of matters that can be considered when making such a decision, including the market share of an undertaking, barriers to entry into the market and price rivalry. However, in the market under consideration, the Licensee will have a monopoly and therefore these matters are simple to analyse. For example there is a complete barrier to entry because no other party is allowed to enter the market, there is no price rivalry because there are no other suppliers, and the market share of the Licensee will be 100%.

In these circumstances the Licensee is free to act independently of competitors (as there are none in this market) and of customers and consumers because the customers and consumers have no choice and cannot switch to alternative suppliers. Therefore the Director General proposes to decide that the Licensee (the successor company to Guernsey Post) has a dominant position in the relevant market.

Q 3 Respondents are invited to make any comments on this proposed decision.

4. Proposed 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 proposes to include a number of specific conditions in the licence in order to control the Licensee’s dominant position. These conditions are set out in section III of the draft postal licence at Appendix 2 to document OUR01/05 – Postal Licence Conditions – Consultation Paper. A description of the conditions is in Appendix 1 of that document.

Q.4 Respondents are invited to comment on the proposed decision to include these conditions and on the draft conditions in the context of their response to this document and document OUR01/05.

5. Proposed decision to regulate the prices, premiums and discounts of a dominant operator.

The Director General proposes 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 OUR01/05).

Q.5 Respondents are invited to comment on the proposed decision and on the proposed conditions in the context of their response to this document and document OUR01/05.

6. Proposed decision to include quality of service conditions in any licence.

The Director General proposes 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.

Q.6 Respondents are invited to comment on the proposed decision to include these conditions and on the draft conditions in the context of their response to this document and document OUR01/03.

/ENDS