



Office of Utility Regulation

# **Extension of Powers to Control Postal Prices outside the Reserved Sector**

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Report on the Consultation

Notice of Modification to the Licence issued to  
Guernsey Post Ltd under Section 2(1) of the Post  
Office (Bailiwick of Guernsey) Law, 2001

**Document No:** OUR 04/22

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# 1 Introduction

Document OUR 04/18 gave notice<sup>1</sup> of the Director General's intention to modify the Licence issued to Guernsey Post Ltd ("GPL") on 1<sup>st</sup> October 2001 under section 2(1) of the Post Office (Bailiwick of Guernsey) Law, 2001. The modification to the licence entailed the replacement of the existing condition 18 of GPL's Licence with a new condition which included reference to non-licensed postal services.

The reason for this proposed modification was to empower the Director General to regulate GPL's prices where it is found to be dominant in a relevant market for Non-Licensed Services. This would enable the Director General to perform her duties set out in section 2 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 which include *inter alia*:

- protecting the interests of consumers and other users in the Bailiwick in respect of the prices charged for utility services; and
- ensuring that utility activities are carried out in such a way as best to serve and contribute to the economic and social well-being of the Bailiwick.

The Director General received two responses to the statutory invitation to comment with formal submissions from:

- EA Carey;
- John McQuaigue, Mx2; and
- Guernsey Post Limited.

The Director General wishes to thank those who have responded for their contributions in helping to inform the Director General's consideration of the issue. In line with OUR standard practice, with the exception of any responses marked as confidential, written comments are available for inspection at the OUR's office and are also published on the OUR's website [www.regutil.gg](http://www.regutil.gg).

This paper is structured as follows:

**Section 2** presents the responses that were received from interested parties and, in light of consideration of those comments, the Director General's position on the proposed licence modification; and

**Annex 1** contains the notice of the modification to Guernsey Post Ltd's Licence.

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<sup>1</sup> Extension of Powers to Enable Control of Postal Prices outside the Reserved Sector – Statutory Invitation to Comment Notice of Proposal to Modify the Licence issued to Guernsey Post Ltd under Section 2(1) of the Post Office (Bailiwick of Guernsey) Law, 2001

## **2 Consideration of Responses**

Copies of the respondents' written representations and objections to the statutory invitation to comment are available from the OUR and on the OUR's website ([www.regutil.gg](http://www.regutil.gg)). This section summarises the key points raised by the respondents and the Director General's response to those comments.

### **2.1 Respondents Views**

EA Carey expressed its support for the proposed licence modification as currently the majority of that company's mail falls outside the reserved sector and it welcomed the OUR having the ability to control prices for those items charged above £1.35 per item if deemed necessary.

GPL stated that the proposal is not fair or impartial. It further contended that the proposed amendment is unfair, discriminatory, disproportionate, unreasonable and comprises regulation by stealth. GPL claimed that the proposal is contrary to the Director General's objectives of;

- ensuring that utility activities are carried out in such a way so as to best serve and contribute towards the economic and social wellbeing of the Bailiwick, and
- introducing, maintaining and promoting effective and sustainable competition.

Furthermore GPL believed that the costs incumbent upon such regulation are unreasonable and disproportionate to the benefits to be achieved.

GPL also claimed that the market for services other than reserved services is competitive. The company stated that it would have wished to provide statistical information, subject to the provision by the OUR of clear definitions of markets and dominance, to demonstrate this competitiveness. GPL recognised that this data collection would have taken several months to compile and was not possible within the timetable allowed for the statutory invitation to comment.

GPL further stated that the market consists of several sub-markets and operators may be dominant in some markets and not in others. GPL alleged the proposal to be discriminatory, unfair, disproportionate and unreasonable as GPL's ability to act within a market for postal services (other than the reserved sector) in which it was dominant would be subject to limitations not imposed upon competitors. As a result GPL expected that in order to avoid discrimination the providers of postal services who are dominant in markets other than the reserved sector would be required to be licensed and subject to the same dominance conditions.

### **2.2 Director General's Response**

The Director General acknowledges the contributions from the two respondents to the modification of GPL's Licence but is disappointed that there has not been more responses from potentially affected parties.

This section sets out the Director General's position in relation to the arguments made by GPL that the intended modification is unfair, discriminatory, disproportionate, unreasonable and contrary to the Director General's objectives in Law.

## 2.2.1 General Duties of the Director General

GPL alleges that the proposed modification is not in accordance with the Director General's statutory duties. The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 sets out the overarching objectives that the Director General must take into account when exercising her functions and powers in any of the regulated sectors. The Director General has a duty to promote (and, where they conflict, to balance) the following objectives<sup>2</sup>:

- a. protect the interests of consumers and other users in the Bailiwick in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services;
- b. secure, so far as practicable, the provision of utility services that satisfy all reasonable demands for such services within the Bailiwick, whether those services are supplied from, within or to the Bailiwick;
- c. ensure that utility activities are carried out in such a way as best to serve and contribute to the economic and social development and well-being of the Bailiwick;
- d. introduce, maintain and promote effective and sustainable competition in the provision of utility services in the Bailiwick, subject to any special or exclusive rights awarded to a licensee by the Director General pursuant to States' Directions;
- e. improve the quality and coverage of utility services and to facilitate the availability of new utility services within the Bailiwick; and
- f. to lessen, where practicable, any adverse impact of utility activities on the environment;

In accordance with Section 5(1) of the Post Office (Bailiwick of Guernsey) Law, 2001 the Director General has already included conditions within GPL's licence that are designed to prevent and control anti-competitive behaviour and to regulate the prices, premiums and discounts that may be charged or (as the case may be) allowed by GPL where the company has been found to have dominant position in a relevant market. This is a consistent approach provided for in law and adopted by the Director General across all of the regulated sectors.

The reasons for adopting price control in markets where there is a dominant operator have been previously stated in published OUR documents relating to telecommunications<sup>3</sup>, electricity<sup>4</sup> and postal prices<sup>5</sup> and will not therefore be revisited in detail here. However the Director General can confirm her position (as articulated in those documents and in line with internationally accepted theory and practice) that price regulation may be necessary in circumstances where there is a monopoly/dominant incumbent in order to protect consumers' interests. Furthermore, as has also been previously stated, appropriately targeted price controls can help to foster competition by eliminating unfair cross subsidies, amongst other things. GPL has provided no reasons to support its allegation that the proposed modification is not in line with the Director General's statutory duties.

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<sup>2</sup> The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, section 2

<sup>3</sup> Documents OUR 01/22, OUR 02/11 and OUR 04/10

<sup>4</sup> Document OUR 02/29 and OUR 03/07

<sup>5</sup> Document OUR 03/34

The Director General's position is that extending the jurisdiction of condition 18 to non-licensed postal services is wholly consistent with her statutory duties.

### **2.2.2 Costs and Benefits**

With regard to GPL's allegation that the costs associated with this proposed licence amendment are unreasonable and disproportionate to the benefits if any, GPL has provided no indicative information to substantiate this allegation nor any indication of the costs that it considers would be incurred due to the proposed modification. In fact the modification of GPL's Licence in this particular way does not in itself incur any significant costs. It is a precursor to the examination of relevant markets and competition in those markets. It is doubtful as to whether there is any cost at all associated with it. If costs are to be incurred they might only be incurred if during a subsequent examination of relevant markets GPL is found dominant in any of those markets and the consequent price control that would result. Therefore, it is difficult to see how the proposed modification incurs any cost at all.

The benefit, however, is that it provides a clear basis for the consideration of whether or not further action is appropriate, i.e. whether GPL is dominant in any relevant market and if so, whether price control is appropriate for that market. The Director General's position is that the proposed modification does not impose unreasonable or disproportionate costs and may impose no cost other than the cost of replying to this consultation.

### **2.2.3 Assessment of Competition and Finding of Dominance**

GPL makes a number of comments in relation to competition and any finding of dominance, including the assertion that the market for non reserved services is competitive. GPL claims that the market for non licensed postal services comprises various sub markets, and that it wished to provide statistical data to support the allegations that the market is competitive but was prevented due to the timetable for responses to this consultation. GPL also noted that "there is evidence of market analysis conducted" by the OUR. OUR assumes this is a typographical error as to date the OUR has not performed any market analysis of the postal sector outside the reserved area.

In the first instance, the need for such market analysis (should the proposed licence modification be implemented) was identified and highlighted in Document 04/19 which set out the OUR's work programme leading up to the review of GPL's tariffs for April 2006. Document OUR 04/19 stated that, should the OUR conclude that the GPL licence should be amended, then the OUR would proceed with a consideration of GPL's position in the market for non-licensed postal services. If it was proposed to consider making a finding of dominance in a relevant market, an appropriate consultation would be undertaken on any such proposals. Any finding of dominance would be made in accordance with section 5(2) of the Post Office (Bailiwick of Guernsey) Law, 2001. It was further proposed that this work stream would take place over the period from November 2004 to February 2005 and any consultation would be scheduled to take place during that period, providing ample opportunity for GPL to gather and submit any relevant data in support of its assertions.

In the second place, if a finding of dominance is made in a relevant market, the OUR will, in accordance with the legislation, consult on any proposal to impose price

control in relation to services in that market, thus affording GPL another opportunity to comment on any proposals. It is at this stage that a cost benefit analysis might be more appropriate.

It is clear therefore that the proposed licence modification simply allows for the extension of powers to enable the OUR to control postal prices outside the reserved area, where GPL is found to be dominant. At this stage there is no finding that GPL is dominant outside the reserved area and this market review will be undertaken in the coming months as reflected in the report on the consultation on Document OUR 04/19: 2006 Postal Pricing Review – Process and Timetable. GPL will have ample opportunity to explain and support its views in relation to competition in the market at that stage. The OUR looks forward to hearing from all interested parties in detail at that stage.

Finally, additional assertions on behalf of GPL that the OUR's explanation of the further consultation process is "disingenuous" and that the "damage will have been done" by the licence modification should it proceed, are unfounded, untrue and unhelpful.

#### **2.2.4 Postal Licensing Regime**

The Director General notes GPL's concerns regarding the activities of potentially dominant unlicensed postal operators in a relevant market for the provision of postal services and understands this to inform some of GPL's allegation that the proposed licence modification is discriminatory, unfair, disproportionate and unreasonable. Whether or not there are other dominant operators in the postal market is an issue that can be identified in the review of the postal market between November 2004 and February 2005. The Director General will be pleased to receive submissions from GPL to support its assertions at that time and will consider the matter based on the facts.

Should there be operators other than GPL that are considered dominant in a relevant market, and should it be considered appropriate to regulate those operators, the Director General will be pleased to consider developing appropriate proposals at that time either for implementation by the OUR or by the States of Guernsey.

#### **2.2.5 General Objections**

Finally, with regard to the general allegations of unfairness, lack of impartiality, discrimination, disproportionality, unreasonableness and "regulation by stealth", the Director General does not accept any of these unsupported allegations. In particular the transparent, open consultation process provides full sight of all proposals and offers repeated opportunities for GPL to comment and make its views known. Insofar as the allegations were associated with the issues addressed in sections 2.2.1 to 2.2.4, they have been addressed in those sections.

### **2.3 Conclusion**

In conclusion, GPL has not provided any objections or representations that lead the Director General to the view that the licence amendment should not proceed. The Director General will therefore proceed to implement the proposal to modify GPL's licence as described in Annex 1 to this document.

## Annex 1            Notice of Modification of Licence

On 10 September, 2004 the Director General published notice of her intention to modify the licence of Guernsey Post Ltd, in accordance with;

- Section 8 of the Post Office (Bailiwick of Guernsey) Law, 2001; and
- Condition 6 of the Licence issued to Guernsey Electricity Ltd under section 2(1) of the Post Office (Bailiwick of Guernsey) Law, 2001.

The notice was published in Document OUR 04/18 on the OUR website and a notice was also placed in the Gazette Officielle inviting comments on the proposal in accordance with section 8(2)(c) of the Post Office (Bailiwick of Guernsey) Law, 2001. GPL requested an extension to the original deadline and the Director General extended the deadline for submission of responses to the statutory invitation to comment from 24<sup>th</sup> September 2004 to 8<sup>th</sup> October 2004. The Director General has considered all written representations and objections to the proposed licence modification.

Having followed the procedure set out in subsection 8 of the Post Office (Bailiwick of Guernsey) Law, 2001, the Director General hereby gives notice of the following modification of the Licence issued to Guernsey Post Ltd under Section 2(1) of the Post Office (Bailiwick of Guernsey) Law 2001 as follows:

The following condition of the Licence is hereby deleted:

**18.        REGULATED PRICES FOR SERVICES**

- 18.1        *Where the Director General has decided, in accordance with Section 5 of the Postal Law, that a licensee has a dominant position in a relevant market, she may determine that the provisions of this Part III apply.*
- 18.2        *Where the Licensee intends to introduce:*
- (a) *new prices for any Licensed Services, or prices for new Licensed Services to be introduced;*
  - (b) *any discounts to published prices for Licensed Services or for any Users to whom additional services or goods are provided by the Licensee or any of its Associated Companies; or*
  - (c) *special offers to all or any of its Users for particular categories of Licensed Services it shall submit to the Director General and publish the same in a manner that will ensure reasonable publicity for them.*
- 18.3        *The Director General may determine the maximum level of charges the Licensee may apply for Licensed Services within a Relevant Market in which the Licensee has been found to be dominant. A determination may;*
- (a) *provide for the overall limit to apply to such Licensed Services or categories of Licensed Services or any combination of Licensed Services;*
  - (b) *restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
  - (c) *provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.*
- 18.4        *All published prices, discount schemes and special offers of, or introduced by, the Licensee for Licensed Services shall be transparent and non-*



*discriminatory; all discount schemes shall be cost-justified and all special offers shall be objectively justifiable.*

18.5 *If the Director General, after consulting the Licensee and such other persons as she may determine, is satisfied that any published price, discount scheme or special offer is in breach of any part of this Condition 18, the Director General may, by issuing a direction, require the Licensee to bring the relevant prices, discount schemes or special offers into conformity with this Licence.*

and replaced with the following:

### **18. REGULATED PRICES FOR SERVICES**

18.1 *Where the Director General has decided, in accordance with Section 5 of the Postal Law, that a licensee has a dominant position in a relevant market, she may determine that the provisions of this Part III apply.*

18.2 *Where the Licensee intends to introduce:*

- (a) new prices for any Licensed Services and/or Non-Licensed Services, or prices for new Licensed Services and/or Non-Licensed Services to be introduced;*
- (b) any discounts to published prices for Licensed Services and/or Non-Licensed Services or for any Users to whom additional services or goods are provided by the Licensee or any of its Associated Companies; or*
- (c) special offers to all or any of its Users for particular categories of Licensed Services and/or Non-Licensed Services, it shall submit details of such prices, discounts and/or offers to the Director General and publish the same in a manner that will ensure reasonable publicity for them.*

18.3 *The Director General may determine the maximum level of charges the Licensee may apply for Licensed Services and/or Non-Licensed Services within a Relevant Market in which the Licensee has been found to be dominant. A determination may;*

- (a) provide for the overall limit to apply to such Licensed Services and/or Non-Licensed Services or categories of Licensed Services and/or Non-Licensed Services or any combination of Licensed Services and/or Non-Licensed Services;*
- (b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
- (c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.*

18.4 *All published prices, discount schemes and special offers of, or introduced by, the Licensee for Licensed Services and/or Non-Licensed Services shall be transparent and Non-discriminatory; all discount schemes shall be cost-justified and all special offers shall be objectively justifiable.*

18.5 *If the Director General, after consulting the Licensee and such other persons as she may determine, is satisfied that any published price, discount scheme or special offer is in breach of any part of this Condition 18, the Director General may, by issuing a direction, require*

*the Licensee to bring the relevant prices, discount schemes or special offers into conformity with this Licence.*

The reason for this modification is to perform her duties set out in section 2 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 which include inter alia:

- protecting the interests of consumers and other users in the Bailiwick in respect of the prices charged for utility services; and
- ensuring that utility activities are carried out in such a way as best to serve and contribute to the economic and social well-being of the Bailiwick.

This modification takes effect from the date of publication of this notice, which is Friday 22 October 2004.

**/ENDS**