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Please quote our reference on all correspondence

Your Ref:

Our Ref: RS/CHE/ljp/G1511005/finn-102

7 October 2004

Ms Regina Finn
Director General
Office of Utility Regulation
Suites B1 & B2
Hirzel Court
St Peter Port
GUERNSEY
GY1 2NH

Via Facsimile : 711140

Dear Ms Finn

Extension of Powers to Enable Control of Post Prices Outside the Reserved Sector Statutory Invitation to Comment

I refer to the above, which gives notice of a proposal to modify the licence issued to Guernsey Post Limited, under section 2(1) of the Post Office (Bailiwick of Guernsey) Law, 2001 (“the Post Law”).

As you are aware, I act for Guernsey Post Limited in relation to this matter, and set out herein my client’s response to the above notification.

The notification states that it is proposed to delete the existing condition 18 to the licence issued to my client on 1 October 2001, and replace it with an amended condition 18. The effect of the amendment is to extend the scope of condition 18 to include Non-Licensed Services, as well as Licensed Services.

My client opposes that proposal.

It is noted that “Licensed Services” is defined under condition 1 of my client’s licence to mean postal services, the provision of which is prohibited unless authorised under section (1) of the Post Law. Conversely, “Non-Licensed Services” means postal services, the provision of which are permitted without a licence under section 1(1) of the Post Law.

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Postal services is not defined within my client's licence, though it is defined at section 45 of the Post Law to mean:

"The service of conveying postal packets from one place to another, the incidental services of receiving, collecting and delivering such packets and any other services which relates to such services."

Section 1(1) of the Post Law prohibits the provision of postal services in the Bailiwick except under the authority of, and in accordance with, the conditions of a licence granted by the Director General.

Section 1(2) of the Post Law provides for a number of exceptions, which are not regarded as contraventions of section 1(1). Most materially section 1(2)(a) provides an exception for the provision of postal services which are not reserved services.

"Reserved services" means postal services designated by the Director General under section 9(1).

The Post Office Reserved Postal Services Order, 2001, which came into operation on 1 October 2001, defines reserved postal services as:

"Postal services provided in consideration of a payment of less than £1.35."

In simple terms, the present scope of condition 18 extends to the provision by my client of postal services where those services are provided for a consideration of less than £1.35. The proposal, if acted upon, would extend the scope of condition 18 to include postal services provided for a consideration in excess of £1.35.

At present, section 1(2) of the Post Law provides that a person does not require a licence to provide those services, that is, services provided for a consideration in excess of £1.35.

I am instructed that my client is the only person to whom a licence has been awarded under the Post Law.

Section 2 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 sets out those objectives which it is the duty of the Director General to promote. Further, section 4(2) of that law provides that the Director General shall exercise her functions and powers with fairness, impartiality and independence, and in a manner that is timely, transparent, objective and consistent with States directions, the provisions of the law and any relevant sector law.

My client does not regard the proposal to extend the scope of the operation of condition 18 of my client's licence as either fair or impartial.

Further, my client regards the proposal as contrary to the Director General's objective to ensure that utility activities are carried out in a way so as to best serve and contribute to

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the economic and social development and wellbeing of the Bailiwick. Further, it will not promote effective and sustainable competition in the provision of utility services in the Bailiwick. Those are both matters that are required to be taken into account.

My client notes that there is evidence of market analysis conducted by your office. Indeed it was my client through submissions within the tariff determination process of 2004 who identified the products and services that it believed sat in the reserved sector. Whilst my client accepts that it has a legal monopoly in relation to the provision of reserved services, it also instructs me that the market for services other than reserved services is competitive. Additionally, the market consists of several sub-markets, and it may be that while my client (or indeed other operators) are dominant in some of those sub-markets, they are not dominant in others.

My client notes that other operators do not require a licence in order to carry out postal services other than the reserved services. If the proposal were acted upon, my client will be placed in an unfair position in that my client would be subject to regulation (via condition 18 of its licence) in relation to those markets for postal services other than the reserved services, in which the Company was found to be dominant, whereas other operators who may be dominant in markets for postal services other than the reserved services would not be subject to regulation, being, as they are, unlicensed.

In what, I am instructed, is a competitive market, the unfairness is exacerbated.

My client would have wished to provide, on a confidential basis, statistical information reinforcing this competitiveness subject to provision by your Office of the clear definition of markets and dominance. Regrettably, as the work required to generate and verify this data for the Bailiwick would take several months, the decision of your office not to further extend the time for response has made that impossible.

Similarly, my client also wished to seek comment, as stakeholder, from the Commerce and Employment Department and Treasury and Resources Department. Again, the failure by your office to permit a further extension of the deadline has made that impossible.

In my client's view the proposal is discriminatory, unfair, disproportionate and unreasonable. Were it to be introduced, the ability of my client to act within a market for postal services other than the reserved services in which it was dominant would be subject to limitations not imposed upon competitors. That is notwithstanding that those competitors may themselves be dominant in other like markets.

My client regards this as little more than regulation by stealth.

It further regards the costs incumbent upon such regulation as unreasonable and disproportionate to the benefits to be achieved, if any.

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My client notes that in the telecommunications industry, a consultation was carried out in relation to internet service providers. As a result of representations received, your office proceeded to require that internet service providers be licensed.

One of the obligations incumbent upon your office is to act in a consistent and fair manner. If it were the case that it was proposed to amend condition 18 of my client's licence, then my client would expect that the providers of postal services who are dominant in a market other than reserved services would be required to be licensed and subject to the same restraints as my client. To do otherwise is discriminatory.

I trust that I have clearly stated my client's position. Should your office have any further questions, I would be more than pleased to address them either in writing or in person.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Christopher Edwards', written in a cursive style.

Christopher Edwards