

STATES OF JERSEY



SEA TRANSPORT: REVISED POLICY (P.24/2006) – COMMENTS

**Presented to the States on 28th March 2006
by the Minister for Economic Development**

STATES GREFFE

COMMENTS

Summary

The Minister has considered the sea transport revised policy and agrees with the majority of what the proposition is asking for –

- (a) Agreed;
- (b)
 - (i) not agreed as drafted, see detailed comments below;
 - (ii) agreed;
 - (iii) agreed;
 - (iv) agreed, see note (a), (b) and (e) below;
 - (v) agreed;
 - (vi) agreed;
- (c) not agreed, see detailed comments below.

Background

The States were advised earlier this year that it was the intention to review sea transport policy as a result of the changing market situation towards the end of 2005. That review has been completed and the revised policy on sea transport is **attached** as an Appendix to this report.

The development of Service Level Agreements is now in train and covers most of what the proposition seeks. Where this is not the case, it will be because the policy line is that Service Level Agreements should not be overly prescriptive. The current approach includes the following core elements –

- (a) Setting out the demand that must be met in the relevant market (passengers, vehicles, cars etc.) over the course of the year.
- (b) That vessels must be capable of satisfying the profiled demand and be of a good standard and meeting the appropriate, domestic and international regulations and standards.
- (c) Unless otherwise agreed with the Minister for Economic Development to operate a year-round daily return service.
- (d) Requirement to report on the operating and technical performance of the service and on information required to monitor prices and yields.
- (e) Requirement to have arrangements in place so that the service does not experience significant disruption.
- (f) Requirement to provide information on fares and fare increases, provision for arbitration where increases appear unreasonable.
- (g) Requirement to offer equivalent standard fares whether traffic originates in the Channel Islands, the U.K. or France.
- (h) The provision for promotional fares to encourage traffic growth.
- (i) Customer care provisions regarding compensation arrangements for delays and denied boarding, and the requirement to meet the ISO quality model in respect of the carriage of passengers, which includes a complaints procedure.
- (j) Circumstances under which the Service Level Agreement can be terminated.

Detailed comments

Part (a) of the proposition is already being dealt with as set out above and a number of announcements have been made publicly and to the States about this.

Part (b)(i): There is an important difference between the “scheduled fare” and the “promotional fare” and these important differences are not defined in the Report. There is no problem in approving the scheduled fares – this is done effectively now for the northern route – and those fares are publicly available. The promotional or incentive fares will vary according to market conditions and commercial judgment. As a general rule a SLA should seek to provide for the setting of service standards while at the same time allowing for a commercial response to market conditions.

Part (b)(ii): The operator would be expected to organise its services around a minimum service requirement.

Part (b)(iii): The important point is that the type and capacity of vessels are capable of meeting the profiled demand.

Part (b)(iv) is dealt with by paragraphs (a), (b) and (e) under “Background”.

Part (b)(v) is covered in the draft SLA.

Part (b)(vi): Financial penalties are included in the SLA at present in relation to delays and denied boarding material breaches are covered as potential triggers for a termination of the Service Level Agreement.

Part (c): If this part of the Proposition had asked to take steps to identify additional operators on the routes to ensure that the Island does not remain wholly dependent on a single operating company, than this would have been agreed. However, the requirement to license additional operators ought to be addressed in terms of the position for 2007/2008 and the position for 2009 and beyond. In the short term there is nothing to stop a potential operator putting forward proposals because there is no exclusivity. For the period beyond 1st January 2009, a joint approach to ferry services to the Channel Islands will be developed with Guernsey to determine what will be in the best long-term interests for the Islands and their residents. It remains to be seen whether those interests will be best served by one operator who is able to gain networking benefits or whether the greater benefit would be obtained by encouraging competition. This is an issue that the Jersey and Guernsey authorities will need to address over the next year in anticipation of the requirements for 2009 and beyond. It would not be helpful at this stage if the avenues available to the Island are restricted.

Additional Comments on the Report

On pricing there is no reference to the JCRA. This is surprising as it has indicated that it would wish to see the draft SLAs to ensure that they are consistent with the Competition Law. The JCRA is also empowered to tackle any evidence of the abuse of a market position.

The Report states –

“It is now essential that the Minister recognizes that both the southern and northern routes require an urgent review now, by way of re-examining the risk assessment of relying on one operator to operate two routes. If that operator fails for whatever reason, the Island will be left with grave social consequences to the community, or alternatively the States will run the risk of predatory demands or could be subject to commercial blackmail.”

However, there is no reason at present to believe that the existing operator will fail, or that there would not be another operator interested in taking over the route network provided, as the current operator advises, that the network presents a commercially viable opportunity. Condor has continued to demonstrate their commitment to servicing the Islands and discussions with that operator have been both productive and cooperative during the time of uncertainty for the travelling public.

Condor Ferries has advised us that the promotion pricing of £100 for a car plus 2 passengers return to St. Mal (for sailings throughout the year) was introduced by Emeraude Ferries in January 2005. Condor responded with the promotion of similar fares on a limited basis in April 2005.

Minister for Economic Development Air and Sea Transport Policy

1. Background

- 1.1 The Economic Development Committee approved its “Future Air and Sea Transport Policy” in November 2005 and recommended that the policy should be presented to the Minister for Economic Development for progression.
- 1.2 The policy covered air and sea transport services but the area that has proved most contentious is that of sea transport. In contrast, the main comment in relation to air transport policy was that some would like to retain the Air Transport Permits (Jersey) Law as a form of insurance in the event that it is required in the future. The policy related to air transport is set out at the end of this report.
- 1.3 In December 2005 the market situation with regard to sea transport services changed. Emeraude Jersey Ferries withdrew its service from the Jersey/ St. Malo route and this meant that there was a need to review the policy options available in relation to sea transport.
- 1.4 The review of sea transport policy has now been completed and the Council of Ministers has indicated its support for the policy, which is outlined below, at its February meeting.

2. Key considerations in policy choice

- 2.1 The approach to sea transport policy has taken into account a number of key factors –
 - (i) The Economic Development Committee’s policy report of 8th November 2005.
 - (ii) The Strategic Plan 2005 – 2010 adopted by the States.
 - (iii) The Economic Growth Plan adopted by the States.
 - (iv) The Oxera report on the Viability of Ferry Services to and from the Island of Jersey, July 2004.
 - (v) Submissions by stakeholders involved in the delivery of sea transport services or dependent on them for commerce and travel.
 - (vi) The existence of agreements in place on routes serving the Channel Islands until the end of 2006.
 - (vii) The existence of an agreement between Guernsey and Condor Ferries on the northern route which does not expire until the end of 2008.
 - (viii) The legal and regulatory framework governing sea transport services.
 - (ix) The market conditions and commercial realities facing ferry operators.
 - (x) The potential role of the Jersey Competition Regulatory Authority.
 - (xi) Vessels, used by operators, which currently bundle passenger, passenger and accompanied vehicle and freight services together.
 - (xii) The history of sea transport services on routes serving the Islands.

3. Current situation

- 3.1 **Southern route:** No Service Level Agreement (SLA) exists on the Jersey/ St. Malo route.
- 3.2 **Northern route:** The Service Level Agreement with Condor Ferries on the Jersey/U.K. route expires at the end of 2006.
- 3.3 **Guernsey:** Guernsey's Service Level Agreement with Condor Ferries between the Channel Islands and the U.K. expires at the end of 2008 and this is an exclusive agreement.
- 3.4 The possibility of joining the Guernsey and Jersey markets is likely to be attractive to ferry operators as it is likely to strengthen the commercial viability of routes serving the Channel Islands. It is therefore considered that there would be benefit from closer co-operation between the Islands to secure sufficient and reliable services that meet the needs of the travelling public.
- 3.5 On the northern route, the different expiry dates related to the Guernsey and Jersey Service Level Agreements means there is a need for a managed approach in the short to medium term. If a shared view regarding the nature and provision of ferry services to the Channel Islands can be reached with Guernsey then both Islands would be able to join together to secure the services the Islands need from 2009.
- 3.6 Competition on the southern route in the combined passenger and car carrying ferry market has existed for some time. In the case of passengers Condor Ferries has operated the route for more than 40 years.

4. Sea transport policy approach and implementation

- 4.1 The policy aim must be to secure year round, long-term, reliable, robust and reasonably priced services of sufficient quality and frequency.
- 4.2 Having regard to the considerations in policy choice mentioned earlier, the approach most likely to achieve the policy aim will be one which balances the level of competitive pressure on operators with securing long term, reliable year round services. In order to achieve this key elements of the policy design include –
- (i) No operator should obtain ramp access unless it has a Service Level Agreement.
 - (ii) Service Level Agreements should be designed to focus on core requirements and should not limit an operator's ability to respond to market forces; Service level Agreements will not have provisions that act as unnecessary barriers to market entry by other operators, except where such provisions are necessary in relation to core requirements such as the year round service provision. An important requirement for Service Level Agreements will be to make better provision for the needs of the service's users.
 - (iii) Service Level Agreements will be issued on a non-exclusive basis.
 - (iv) The JCRA should have the appropriate powers to prevent market abuse by the shipping companies or the harbour authorities.
 - (v) The Island's interests are likely to be best served if routes are commercially viable.
 - (vi) All routes will have a service level agreement in place in the short to medium term and will be covered by long-term service level agreements from 1st January 2009.
 - (vii) The domestic regulatory framework governing the access to ramps at harbours will be amended to better underpin the policy approach. Applications for ramp access in the longer term should be considered on their merits taking into account criteria set by the Minister for Economic Development in addition to Harbour operational and safety considerations.
 - (viii) Should the option to test the market for the provision of ferry services in the longer term be taken

up in the form of a tender exercise then this would be conducted as a full, open and transparent exercise similar to that conducted for the provision of ferry services in 1998 on the northern route.

5. Implementation

- 5.1 Sogestran/Emeraude to confirm their intentions so that uncertainty surrounding peak season passenger services are removed.
- 5.2 A Service Level Agreement will be put in place as soon as possible on the Jersey/St. Malo route for the period to the end of 2008.
- 5.3 A new service level agreement will be put in place on the northern route for 2007 and 2008.
- 5.4 For the period beyond 1st January 2009 a joint approach to ferry services to the Channel Islands will be developed with Guernsey.
- 5.5 The option will be retained to test the market for the provision of ferry services from 1st January 2009, when it becomes possible to negotiate services on the basis of the Channel Islands route network as a whole.
- 5.6 Service Level Agreements on the southern route for remainder of this year through 2007-2008 and on the northern route for the period 2007 and 2008 are currently being drafted.
- 5.7 In this period any operator who is prepared to be party to negotiations and to be bound by a Service Level Agreement will be able to operate roll-on roll-off freight, passenger and accompanied vehicle and passenger services on the routes.

6. General

- 6.1 The policy approach includes –
- 6.2 Reviewing freight market competition and service provision issues in general to assist the design of long-term service level agreements to be implemented from 2009. The current Oxera study into trade links with France and the work being undertaken in Normandy, related to the Cherbourg freight hub, will be important elements of this review.
- 6.3 Establishing a consumer group to provide a channel for consumer concerns about ferry services and to assist the design of service level agreements.
- 6.4 Developing and amending the regulatory model to better underpin the policy approach.

7. Monitoring Service Level Agreement compliance

- 7.1 Compliance with the existing Service Level Agreement by the operator on the northern route is currently monitored by my Department. The requirement for monitoring compliance with Service Level Agreements will be ongoing. In addition, the scope of monitoring will increase as a result of the introduction of Service Level Agreements for the southern route, or in the event that other operators enter the market.

8. Air Transport

- 8.1 The continuation of the present “open skies” policy for air transport services will be in the best interests of the Island and of the users of these services.
- 8.2 The Air Transport Permits (Jersey) Law 1998, as amended, should be repealed.

- 8.3 Pressure should continue to be maintained on the United Kingdom Government and the European Union Commission to obtain the required safeguards on slot allocation to provide for air services between the Island and the London hub airports.
- 8.4 The Airport should be run on a commercial basis with support from the taxpayer limited to making a contribution to the cost of the essential major infrastructure investments (e.g. runway resurfacing and concrete replacement where the Airport is required to pursue non-commercial actions on the grounds of the best interests of the community).
- 8.5 The JCRA should have the appropriate powers to prevent any market abuse by the airlines or the Airport.