

STATES OF JERSEY



POSTAL SERVICES: DIRECTION AND GUIDANCE TO THE JERSEY COMPETITION REGULATORY AUTHORITY (P.138/2010) – COMMENTS

Presented to the States on 2nd November 2010
by the Minister for Economic Development

STATES GREFFE

COMMENTS

Deputy Southern's proposition P.138/2010 contains significant factual inaccuracies and does not comprehend the process that the Law requires the JCRA to follow.

Accordingly, the Minister for Economic Development does not support the proposition.

Threats to the Universal Service Obligation (USO) and Consultation

The decision of the JCRA to consider licences for Hub Europe and Citipost is not the main threat to the USO. The real threat is current market conditions with declining mail volumes (latest figures indicate a 16% year-on-year decline) and increased international competition, exacerbated by the pace at which Jersey Post is able to move to more efficient operations renders the current level of service unsustainable. This was illustrated in the documentation that supported the recent public consultation on the future level of postal services in Jersey undertaken in June 2010.

Contrary to Deputy Southern's Report, the USO consultation was both realistic and necessary in order to place the predicament faced by Jersey Post in the public domain. It is not possible to offer 'options' that cannot be paid for without structural changes within Jersey Post or a highly improbable seismic change in the traditional postal market. Clearly, in the absence of public subsidy, the status quo is unsustainable.

In discussing the future of the USO and Jersey Post with the Economic Affairs Scrutiny Sub-Panel, the point was made that changes to the USO should come as a last resort, and that efficiencies identified and agreed between Jersey Post and the JCRA should be achieved first. The Department believes that the majority of the current loss would be offset by efficiency savings if they are implemented. In the event that these changes can be achieved, a more modest change to the USO, from 6 day delivery to 5 day delivery, should be sustainable.

Comparison with Guernsey

The Report contains a great deal about the situation in Guernsey. In Guernsey, it is the States that sets the USO, rather than the Commerce and Employment Department (CED). In reality, CED took a proposal to the States of Guernsey in 2001 for 6 day collection/delivery. This proposal was accepted. The policy has not been reviewed since, although CED is currently drafting a consultation, in co-operation with Guernsey Post, the OUR and Guernsey's Treasury and Resources Department, which is likely to raise the possibility of changes to the USO, including the option of moving to a 5 days a week service. It is public knowledge that a review of the USO will be carried out. From that perspective, the accompanying report to P.138/2010 is wrong, as the States of Guernsey does not have the ability to develop postal policy in isolation.

In terms of directions, the OUR is directed by the States of Guernsey to ensure the USO as prescribed (by the States, but from the CED proposals) is provided, and the OUR was then separately directed to ensure that a licence condition was included in Guernsey Post's licence to ensure it provided the USO. The OUR licence to Guernsey Post is less prescriptive than the JCRA licence, in that it only refers to ensuring the USO is provided, and the USO itself is set out in the States Direction. What this means is that Deputy Southern is not correct that the OUR is directed to determine the USO;

that is done by the States after consultation with the Regulator. But determining the USO is **not** the Regulator's role.

In terms of market opening, the situation in Guernsey is also more subtle than Deputy Southern describes in his report. Paragraph 7.9 of the States of Guernsey Policy Letter of 2001 refers to the 'Extent of Competition in the Postal Sector':

Having set out a minimum universal service, there is then a question of how the cost of that service should be funded. The international debate on this matter has been similar to that in the telecommunications market and the two principal options are:

- A universal service fund which may be made up of contributions from all operators competing in the relevant market and is then paid to the universal service provider, or
- The creation of a "reserve" area of the market in which the universal service provider has an exclusive right to provide services so that the revenues from this monopoly can fund the cost of universal service.

While there is provision for a Reserved Area, it is to be maintained only to the extent necessary to ensure the USO is provided. In 2009, the OUR raised the question of abolishing it altogether. There is no obligation to retain one and indeed it is at the discretion of the OUR how and when it gets reduced, albeit this was received with much the same indignation as the JCRA's decision to consider greater competition. The Policy letter that finally went to the States did highlight the 2 options – the Reserved Area and the Compensation Fund, and in the event the Reserved Area route was chosen.

While an operator needs a licence to provide postal services in Guernsey within the Reserved Area, outside of that area no licence is required. The impact of this is that as competition is introduced, by lowering the Reserved Area, the OUR has no means by which to require new entrants to pay into a compensation fund (should one be needed). And in effect only Guernsey Post needs a licence (as it has the Reserved Area).

As a result, the only option available to the OUR was to go for a gradual opening of the market while it consults on licensing proposals which can then be considered by the CED, prior to requesting the States to consider an appropriate amendment to the Guernsey Postal Law. The OUR has now consulted on proposals to introduce a licensing regime using licences proposed that are broadly similar to the JCRA proposed licences for new entrants. Due to other pressures, it will likely be the New Year before any proposals to change the Law are taken to the States of Guernsey, but the Law can be changed by Ordinance, which in theory is relatively quickly.

It is also relevant to note that when the OUR considered market opening, Guernsey Post's acceptance of the need for efficiency savings was not initially as well accepted as by Jersey Post, albeit that view has now changed. To that end, Deputy Southern is not correct in saying the Law in Guernsey requires a legal monopoly be maintained. It is certainly more subtle than that.

Impact of proposed changes to Article 9

Finally, it is worth stating that an amendment to Article 9, if the Proposition is actually successful, will not in itself deliver control of the USO to the States. The Postal Services Law will have to be reviewed in its entirety but, simply put, the powers of direction and guidance refer to matters of social or environmental policy. This does not cover the scope of the USO that must logically also include some consideration of its financial impact and the ability of the current incumbent to sustain it. To that extent, the States will not be able to determine what the USO will be purely by changing Article 9. The political ramifications of such a move, however, are clear; and it would attempt to force an unsustainable service on a company that may not have the resources to deliver it in future years. To that extent, the Proposition does not protect Jersey Post, rather it seeks to place it in the position where they may have to hand back their licence or, as requested by many respondents to the consultation document, receive direct public funding.