



Green Paper

Competition, Licensing and Regulation in the Car and Passenger Ferry Market

10 June 2010

Purpose

To review the car and passenger ferry market in the Channel Islands and obtain public opinion on service levels, fares and associated competition and regulatory options.

Type of Consultation - Green Paper

Closing date 2 September 2010

Summary

The paper reviews competition, licensing and regulation in the car and passenger ferry market.

Current position

Jersey has legislation which requires operator to apply for a licence to provide services and to get approval for changes in fare levels. Guernsey is considering the enactment of similar legislation and the paper is drafted on the basis that this will happen. In the meantime Guernsey has in place informal agreements.

The current joint Channel Island policy leaves the door open for new operators at any time. However, it expects operators to offer a robust, reliable service which is sustained year round.

The requirement to provided services over and above what might be justified on purely commercial grounds will inevitably be reflected in fare levels.

Customer views

Condor's customer satisfaction surveys show that Channel Island residents are mostly satisfied with the quality of service. Jersey social surveys show

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that the conventional service to the UK is seen as vital by almost all respondents and that fast ferries are also important. However, fares for private vehicles on the St Malo route were considered too high by many respondents.

Competition

External advice has concluded that winter competition does *not* appear to be financially viable and that summer competition may also not be viable, although it cannot be ruled out, particularly on the route to St Malo.

Regulation

Regulation is currently undertaken by the relevant States Departments in Jersey and Guernsey taking advice from expert regulators when necessary. This approach could be enhanced by introducing permit conditions which require publication of audited fare comparisons and performance data. This evidence would then be taken into account when permits were due for renewal. Volume targets and a commitment to sell a minimum proportion of 'offer' fares could also be considered.

Alternatively an independent regulator could be appointed to oversee ferry services in both islands and could assume responsibility for price regulation but this would require the introduction of new legislation and could cost £250,000 or more a year. If this were funded from operator licence fees, it could result in increased fares.

Conclusions

Overall, research shows that some Channel Island fares were high in direct comparison with services provided in other jurisdictions. However, many of the comparator services were not subject to a requirement to provide specified levels of service and/or they benefitted from a subsidy on fares.

Fare levels might be lowered in the long term by reducing the minimum level of services required from operators if this was acceptable to the community.

The existing regulatory arrangements, appropriately enhanced, may provide adequate tools to regulate fares at a low administrative cost. A greater degree of regulation in order to influence fares, either because there is a single operator or to manage competition, would incur greater costs and may or may not result in lower fares.

It will be important to look at differences in the consultation responses from Jersey and Guernsey. The current sea transport policies will be reviewed in light of the findings.

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Further information

The executive summary, the Green Paper and questionnaire can be downloaded from:

www.gov.gg/ccm/navigation/commerce---employment/published-reports and www.gov.je/Government/Consultations/Current .

If you have any questions, please contact:

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Jersey (01534) 448138

Please send your comments, marked “Ferry Fare Regulation” to:

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Closing Date

2 September 2010

This consultation paper has been sent to:

Chairman, Jersey Economic Affairs Scrutiny Panel
Condor Ferries
Chambers of Commerce
Confederation of Guernsey Industries
French Home Owners Association
Guernsey International Businesses Association
Guernsey Transport Users Committee
Institute of Directors
Jersey Competition Regulatory Authority
Jersey Commercial Port Users Association
Jersey Consumer Council
Jersey Harbours
Jersey Hospitality Association
Jersey Tourism
Office of Utility Regulation (Guernsey)
Parish Halls (Jersey)
States Members
States Departments / Chief Officers

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EXECUTIVE SUMMARY

States of Jersey Economic Development Department &
States of Guernsey Commerce and Employment Department

GREEN PAPER - Channel Island Ferry Services

Competition, Licensing and Regulation in the Car and Passenger Ferry Market

Executive Summary

Exec 1. Introduction

This paper reviews Competition, Licensing and Regulation in the Car and Passenger Ferry Market and in particular:

- The current level, quality and prices of services being provided;
- The levels and quality of services required in today's circumstances and whether or not it would be acceptable to reduce these in order to achieve lower prices;
- The security of services desired and how this may best be achieved through competition and/or licensing;
- The possible benefits and costs of increasing the degree of regulation of services involving the Jersey Competition Regulatory Authority (JCRA), the Guernsey Office of Utility Regulation (OUR) or other similar body.

Sea transport links are strategically important for the islands. We need reliable and reasonably-priced services of sufficient quality and frequency to meet the needs of residents, the business community and tourists.

It is also vital to have year-round and robust sea links. We recognise this is less profitable for operators and that the extra cost has an impact on the low fares passengers would like.

Recent experience of competition on the St Malo route, together with the findings of a new report by OXERA, make it timely to review the current arrangements and whether they are sustainable.

We hope many Islanders will respond to this Green Paper. It is not a statement of a firm government view but a review of options. This means your participation really does count and will influence the outcome.

Senator Alan Maclean



Minister for Economic Development in Jersey

Deputy Carla McNulty Bauer



Minister for Commerce and Employment in Guernsey

EXECUTIVE SUMMARY

Exec 2. Current Regulation and Service Provision

2.1 Policy and Regulation

The current joint Channel Island policy leaves the door open for applications from new operators at any time. However, it does expect operators to offer a robust, reliable service which is sustained year round. This is seen as quite a high barrier to entry to the market.

2.2 Current Carryings

The majority (55%) of ferry users are *non-resident*. As unit costs are significantly influenced by *total demand*, this means that any change in policy must recognise and safeguard the tourism (i.e. non-resident) business as much as it tries to assist the resident population.

Jersey has far greater passenger travel to and from France than Guernsey so it can be expected that there will be a difference in the way the two islands see the route network as a whole.

2.3 Condor Fare Statistics

Condor provided some excellent information on fares. Points to be noted are:

- Price Rises - When maximum and minimum fares on each route are looked at in isolation then *over time* there appears to be little or no evidence of unfair price *rises*. In comparison with the Jersey retail price index the trend appears very reasonable.
- Turn up and Go - Residents who make the decision to go away only a day or two before travelling are more likely to pay near or at the maximum fares, whereas others may benefit from special deals. If a higher proportion of residents do this than non-residents then the average price of a fare will be higher for them than for the non-resident.
- Winter services and back-up vessels - Peak prices are high but the operator is required to provide a year-round service and runs both a conventional ship and fast ferries on the northern route. This commitment raises operating costs and skews the comparison with other markets because it might not be a factor elsewhere. In addition, the ferries serving Jersey are relatively small compared to, say, other cross-channel routes and unit costs tend to fall with vessel size.
- Frequent Traveller Club – This offers discounts to regular users. 89% of members are Channel Island residents. Whilst these people have to pay to join the Club, they clearly benefit in a way that will not be shown in peak fare data.
- Local research – Independent local research shows that the average prices paid by local residents can differ from that paid by non-resident travellers. The difference is in some cases to the benefit of the local resident but in others it is the non-resident traveller who benefited. So, at least from this research there is no clear indication that local people pay more than non-locals.

Up-to-date, externally verified statistics could provide comparisons on peak fares, average fares by origin of booking, the rate of return on investment and the proportion of local residents who pay peak fares compared with non-residents.

EXECUTIVE SUMMARY

2.4 Reliability

Condor measures its reliability. Typically over 95% of scheduled services do actually run and for the conventional ferry this is close to 100%. Punctuality is good too and between 72% and 85% of sailings are on time or within 15 minutes of schedule. The current arrangements give reliable and robust services, which are frequent and year-round.

Exec 3. Customer Views

Condor's customer satisfaction surveys show that Channel Island residents who took part are mostly satisfied with the quality of service.

The 2008 Jersey Annual Social Survey (JASS) looked at the UK routes. It showed that the conventional service is seen as vital by 99% of respondents and the fast ferries as important for 61%. Winter services and reliability were also seen as very important but cost remained a prime consideration.

The 2009 JASS looked at the St Malo route. It showed winter services and reliability to be important. 66% thought foot passenger fares were good value but private vehicle fares were felt to be too high by 61% of respondents.

Exec 4. Fare comparisons with other routes

Research compared peak and off-peak fares against 34 routes worldwide. This shows that some Channel Island fares were high in comparison with other similar services. However, such comparison does not take account of the fact that the islands get expensive back-up and winter services from a commercial non-subsidised operator.

The United Kingdom's Office of Fair Trading warns that fare comparisons are extremely difficult, with a large number of factors to consider. Per-mile costs may be misleading, since on short crossings the cost of port facilities and the time taken to load and unload are significant parts of the overall cost.

Nevertheless, this research shows whilst some Channel Island fares were high in comparison with other similar services, there is also evidence of good value for money.

Exec 5. Operator Efficiency and Profitability

These are key factors that are directly linked to the current fare levels and structure.

An in-depth efficiency and profitability review would be necessary to understand the true situation. Such a review would also provide insights into the possible scope of future regulation of the profitability and pricing structure of the services. However, such a review could be costly and intrusive and would be easier to conduct with the full cooperation of the operator. Otherwise the review would need to be conducted with mandatory information gathering powers such as those available to the JCRA and due to be made available in Guernsey. An efficiency review may therefore be a disproportionate measure at this stage.

EXECUTIVE SUMMARY

Exec 6. Experience in other Jurisdictions

6.1 Isle of Wight Study

The UK's Office of Fair Trading (OFT) looked at whether there were grounds to mount a formal investigation into Isle of Wight ferry services. They concluded there was *no* need for further investigation. They warn against imposed competition solutions (such as tendering of routes) that could be very intrusive and against regulatory solutions (fare regulation) that could have an adverse impact on future levels of investment by the ferry operators. One positive outcome is that the ferry operators have agreed to publish more information that will help passengers hold them to account.

The comparison with the Channel Islands is instructive but a number of aspects are quite different. It is therefore possible that more competition or further regulation could assist.

6.2 Isle of Man Experience

The Manx government regulates the single operator in a similar way to how things are done here in the Channel Islands. An additional element is the requirement for 'offer' fares and the company offers some 80% of fares at considerably less than their agreed maximum levels in order to increase the volume of traffic.

Fare control for standard or maximum fares may thus be less important than this volume based approach. Further work might be worthwhile to see if what is achieved there could work here.

Exec 7. Future Competition, Licensing and Regulation in the Channel Islands

7.1 The Supply of Ferry Services – OXERA Research and Policy Options

OXERA was commissioned to give advice on options in the best overall interest of the Islands. Some key conclusions are:

- Winter competition does *not* appear to be financially viable in the long term.
- Summer competition also appears not to be viable because operators have to provide extra capacity to remain competitive but then have to offer discounted fares to attract enough passengers. However, competition cannot be ruled out, particularly on the southern route.
- There are important interactions between the freight and passenger markets: Fast passenger vessels carry some light freight, while the conventional ferry carrying freight on the northern route provides back-up capacity for passenger services.

There are a number of policy options. In practical terms these offer the following choice:

- **Option 1: non-exclusive licences, subject to obligations.** There would be an obligation to operate a winter service backed by a performance bond, or a summer only service but paying towards the cost of winter services. An independent regulator would advise in setting the cost of the winter service and overseeing the associated agreements.
- **Option 2: licensed monopoly, with obligations.** As this would involve an exclusive agreement, it is felt that this would have to be implemented through a tender process as described in Option 4.

EXECUTIVE SUMMARY

- **Option 3: maintain status quo.** Permits would be non-exclusive and continue to be awarded on the basis of financial and operational capability to operate a year-round service.
- **Option 4: licensed tendered monopoly.** A contract to run the CI-UK and CI-France routes would be awarded to a single operator through a competitive tender for a specified duration (e.g. 10–15 years). The successful bidder would agree minimum standards including quality, back-up capacity, fares policy and financial resources.
- **Option 5: separate licensed monopolies for the northern and southern routes.** Two *separate* permits, one each for the northern and southern routes, to be held by different companies. This could only be considered if the routes were separately sustainable and if by separating the routes we might enhance the prospects for competition. The OXERA evidence is that this is *not* currently the case.

Adopting one of the new options and enhancing fare regulation would require greater input from an independent regulator and would probably require new legislation.

7.2 Channel Island Options

A Sector-specific regulatory regime

If there is a real case for it, a regulator appointed to oversee the ferry services in both islands could assume responsibility for price regulation. Even with the minimum ‘light touch’, the JCRA advise that there would be a need for robust information gathering powers, the power to impose price controls and the ability to impose fines for regulatory infringements.

The JCRA estimates that this type of regulation would cost, in current terms, around £250,000 a year and that this could be funded by operator licence fees. There is a risk that the operator might seek to cover this extra expense by increasing fares.

Increased regulation by the States of Guernsey and Jersey

The existing joint Channel Island Policy Statement could be revised to include formal agreement between the Islands to manage the oversight of permits together. Permit conditions could include an absolute requirement to publish externally audited fare comparisons and performance data. This evidence would then be taken into account when permits were due for renewal. Volume targets and a commitment to sell a minimum proportion of ‘offer’ fares, as has been developed in the Isle of Man, could also be considered.

The involvement of the regulators would continue as now and regular fare reviews could be carried out on behalf of the relevant Minister(s). Comparisons would be published as a way of indicating the possible existence of any unfair pricing. Occasional reassessments of whether a dominant market position existed and how that affected consumers could take place. This would be done within the existing legal frameworks¹. If reviews then showed that fares were not commercially justifiable the operator could be asked to introduce lower average and maximum fares.

The presence of a summer only operator or more formal price regulation would not be suited to this form of regulation. These matters could be kept under review as options to be developed if there is evidence of significant detriment to travellers in the future.

¹ In Jersey this would mean using article 6(4) of the Competition Regulatory Authority (Jersey) Law 2001 and, where relevant, Part 5 of the Competition (Jersey) Law 2005.

EXECUTIVE SUMMARY

Exec 8. Conclusions

Research has shown that unrestrained competition is unlikely to work. Hard-won stability and reliability could be undermined. There are a number of other options to consider but they vary in complexity and cost.

Overall, fares may not be unreasonable but more comparative statistical research, published on a regular basis along with greater price transparency could help to establish whether they are too high or genuinely competitive.

The existing arrangements, appropriately enhanced, may provide adequate tools to regulate fares and at a low administrative cost. However, as long as there is only one car ferry operator, legislation and independent oversight might appear to be a better option. If there are other interested operators, then a mechanism under which operators either deliver a winter service, or pay towards the costs of the winter service provider, is essential. This will require independent regulatory support.

It will be important to look at differences in the consultation responses from Jersey and Guernsey. If appropriate, the current sea transport policies will be reviewed.

Consultation

Please do take part in this consultation: The Ministers invite views from interested parties given, among other matters, the high level of public interest and engagement in this case among residents of the Islands. In particular views are invited regarding

- The current level, quality and prices of services being provided;
- Whether or not it would be acceptable to reduce the level or quality of services in order to achieve lower fares;
- The security of services desired and how this may best be achieved through competition or licensing or a combination of both;
- The option to make a formal request to the JCRA to carry out an operator efficiency review using existing powers.
- The possible benefits and costs of increasing the degree of regulation of services involving the Jersey Competition Regulatory Authority (JCRA), the Guernsey Office of Utility Regulation (OUR) or other similar body;

A **questionnaire** can be downloaded directly from <https://www.surveymonkey.com/s/ChannellIslandFerries>

Your submission Please note that consultation responses may be made public (sent to other interested parties on request, quoted in a published report, reported in the media, published on www.gov.gg www.gov.je listed on a consultation summary etc.).

States of Jersey Economic Development Department &
States of Guernsey Commerce and Employment Department

GREEN PAPER - Channel Island Ferry Services

**Competition, Licensing and Regulation in the Car and Passenger
Ferry Market**

Contents

		Page
	Executive Summary	i
	Contents	1
1	Introduction by the Ministers - Purpose of Paper	2
2	Background History	3
3	Current Regulation and Service Provision	5
4	Customer Views	15
5	Fare Comparisons with other routes	16
6	Operator Efficiency and Profitability	20
7	Experience in other Jurisdictions	21
8	Future Competition, Licensing and Regulation in the Channel Islands	23
9	Conclusions	29
10	References	30
	Appendix – Questionnaire	

1. Introduction by the Ministers - Purpose of Paper

The Economic Development Department in Jersey and the Commerce and Employment Department in Guernsey have been working together on sea transport issues and in early 2008 agreed a Joint Policy Statement on Sea Links².

With Jersey taking the lead both Departments have undertaken a process to:

- Set out the requirements in the current permits and agreements, the levels of services provided and the trends in passengers numbers carried on the services to and from both islands;
- As far as is possible provide a comparison of fare levels and the approach to regulation of services provided in other jurisdictions ;
- Examine the possible benefits, cost and other implications of increasing the degree of regulation applicable to car and passenger services and who might undertake such regulation in the islands;
- Provide an assessment of the viability of the northern and southern routes, the degree to which each route might be able to sustain competition and options for future licensing and regulation regimes.

This consultation paper (Green Paper) is the outcome of that process and the Departments in both islands are seeking the views of the community on:

- The current level, quality and prices of services being provided;
- Whether or not it would be acceptable to reduce the level or quality of services in order to achieve lower fares;
- The security of services desired and how this may best be achieved through competition or licensing or a combination of both;
- The possible benefits and costs of increasing the degree of regulation of services;
- The proposal to make a formal request to the JCRA to carry out an operator efficiency review using existing powers.

² Joint Channel Islands Sea Transport Policy

2. Background History

Since the late 1990s the two islands have adopted similar (but not identical) approaches to the licensing of services (i.e. who can operate services) and to the regulation of services (i.e. influencing the level and standards of services and fares).

Prior to the 1990s, regulation of ferry services was purely a matter for the Harbour Masters in each island and concerned such issues as berth or ramp access times, pilotage, crew qualifications, safety certification and payment of harbour dues.

However, during the late 1990s a number of factors led to a growing belief in both islands that some form of market intervention was needed. The initial unreliability of high speed ferries on the northern route was one contributory factor but there were also concerns about general levels of customer service. At the same time, the ease and popularity of taking one's own car away for short breaks to St Malo led to increased demand for that service.

Following a joint tender process in 1998 each island entered into Service Level Agreements (SLA) with Condor to provide services on the northern route to the UK³. The tender process reflected the expectations of the islands for regular year round services including a degree of excess capacity being provided to "weather proof" the islands against a sustained interruption of air services due to adverse weather conditions. The granting of an SLA was also intended to give the operators some confidence in maintaining their investment in the vessels and other infrastructure needed to provide the required services. As well as specifying schedule and customer service standards the SLAs required prior notification and discussion of fare levels with provision to go to arbitration if agreement could not be reached.

In Jersey the amended 1961 Harbours (Administration) Law allowed for the licensing of services through the granting of permits which can be subject to conditions. In effect this was a form a regulation where the SLAs were re-enforced by a Ramp Permit with conditions.

The Guernsey Harbour Ordinance deals with safety and other harbour operational issues and does not include provisions for licensing or regulation.

The original SLAs were due to lapse at the end of 2001 but were extended by Jersey to the end of 2007 and by Guernsey to the end of 2008.

Whilst the SLAs for the northern route did not guarantee exclusivity for car and passenger services, Condor has in effect been, and remains the sole operator (the sole licence holder).

Services on the southern route to France have been subject to intermittent competition involving Emeraude, Condor and HD Ferries. These services were granted the necessary Ramp Permits by Jersey and some were subject to SLAs. Guernsey did not enter into SLAs for the southern route. Condor is currently the sole operator on the southern route.

In Jersey the need for an SLA as a separate agreement was removed by amendments to Regulations and the introduction of Directions that can be made by the Minister and which cover permits granted for the use of harbour facilities, now referred to as Ferry Permits. The Directions reproduce and reflect the joint Policy Statement. The Ferry Permits are valid until the end of 2013.

In Guernsey when the SLA for the northern route lapsed it was replaced by a Memorandum of Understanding (MOU) with Condor which replicated the principal provisions of the SLA but in a streamlined form. Subsequently Guernsey entered into a similar MOU with Condor covering services on the southern route. The MOUs are valid to the end of 2013.

³ In the context of this paper services to and from the main UK south coast ports serving the islands (Weymouth, Poole and Portsmouth) are referred to as the "northern route" and those to and from the main French port (St Malo) are referred to as the "southern route".

The Commerce and Employment Department has agreed in principle to bring forward proposals to the States of Guernsey for the enactment of legislation to enable the licensing and regulation of car and passenger services to put the island into an equivalent position to that of Jersey.

On a related matter, Jersey has in place general competition legislation which can be used to address anti-competitive behaviour or abuse of market dominance in any business activity not specifically excluded. Guernsey has received Royal Assent for the enactment of similar legislation which should be in force by the end of 2010.

The remainder of this paper is drafted on the basis that Guernsey will be in a position equivalent to the current Jersey position in respect of legislation for the licensing and regulation of car and passenger services and general competition legislation. Whether or not both islands should go further on the licensing and regulation of car and passenger services is the subject of this consultation process.

In drafting this paper both Departments have also borne in mind that the vessels carrying cars and passengers also carry a significant proportion of the total general freight to and from the islands, in particular from the UK.

The current position may therefore be summarised as being:

- The current Permits and agreements for services on both northern and southern route do not guarantee exclusivity for any operator but currently Condor is the sole operator on both routes. The current Permits and agreements expire at the end of 2013;
- The vessels operated and level of services provided on the northern route are by and large those that resulted from the 1998 tender process and reflect the expectations of the islands and the market conditions pertaining at that time, some ten years ago;
- The vessels operated and level of services provided on the southern route are those that have resulted from intermittent periods of competition whilst seeking to meet year round requirements of the islands;
- The current Permits and agreements enable the licensing of services (i.e. who can operate services) and a certain amount of regulation of services by way of conditions attached to those Permits and agreements but not to the extent of regulation applicable to postal and telecoms services in both islands.

The expectations of a community for the provision of an essential service will often not match the realities of the costs of providing that service in prevailing market conditions. Where there is competition for the provision of that service the community at least has the comfort of knowing that service standards and prices are influenced by the desire of each operator to gain as bigger market share as possible. Having a sole operator providing the service does not provide that comfort and concerns have been expressed in both islands about the levels of fares for car and passenger services.

If both islands do go for more comprehensive licensing and/or full economic regulation of car and passenger services, similar to that which applies in both islands to postal and telecoms services, it would be necessary to introduce new legislation covering each island. It would be logical to draw on and supplement the existing competition and regulatory expertise and resources in the JCRA and the office of the Director General of Utility Regulation (OUR) to implement such legislation.

Rather than merely extending the remit of either or both of these bodies to cover car and passenger services the opportunity could be taken to introduce a unified pan channel Island regulatory regime.

3. Current Regulation and Service Provision

3.1 Policy and Regulation

The current joint Channel Island policy ensures no exclusivity and the door is open for applications from new operators at any time. However, it does expect operators to offer a robust, reliable service which is sustained year round. This is seen as quite a high barrier to entry to the market but has provided the security of provision the Islands have believed necessary.

The overarching policy for passenger and private vehicle car ferry services is best summarised in the Directions to the Jersey Harbour Master as follows:

“As far as is practicable, in granting or refusing permits or imposing terms, conditions and limitations, the Harbour Master shall aim to maintain and develop year round, long-term, reliable and robust passenger car ferry services. These services, (which must include a reasonable winter service) should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.⁴”

Further to this, the Harbour Master in Jersey is under a legal obligation to meet as far as possible the following broad policy objectives:

- a. to protect and further the long-term interests of end-users of the services and facilities;
- b. to satisfy all current and prospective demands for the services and facilities;
- c. to promote competition, efficiency, economy and effectiveness in commercial activities connected with port and shipping services;
- d. to impose a minimum of restriction on persons engaged in commercial activities connected with port and shipping services;
- e. to ensure that persons engaged in commercial activities connected with port and shipping services have sufficient expertise and financial and other resources to conduct the activities⁵.

Specific fare considerations listed in the published policy are:

- To ensure that the operator's public fare pricing policy does not discriminate on the basis of origin of customer booking. This means, for example, that two passengers from different locations and travelling on the same vessel, who had booked at the same time for the same journey, will pay the same price. However, where a passenger books a package involving other services or via a tour operator then there may be a price difference;
- The operator submits any proposed increase in maximum public fare levels to the Minister for approval and provides commercial reasoning for such increases until such time as stable competition has emerged or it is proven that other effective constraints on pricing exist⁶. The Guernsey MOU places a similar requirement on the operator in respect increases in fares.

Periods of competition on the southern route in recent years had rendered the need for price approval less important for that route. Indeed the OXERA review (referred to below) found revenues generated on the southern route to be unsustainably low at certain periods. When

⁴ As stated in Sea Transport Policy: Direction to the Harbour Master presented to the States of Jersey on 27 May 2008 and in the joint Channel Islands understanding, published 25 January 2008.

⁵ Harbours (Jersey) Regulations 1962 as amended at Schedule 1.

⁶ As stated in Sea Transport Policy: Direction to the Harbour Master (referred to above).

the market moved back to a single operator at the end of 2008, prices were benchmarked and this provides a basis against which future increases can be judged.

3.2 Service Requirements

The Jersey Ferry Permits require, as a minimum, that there are at least three return journeys per week between the Island and the UK and between the Island and France during the winter with a daily service from April to September.

The Guernsey MOU for the UK is based on maintaining the current levels of service which “include a year round service with a minimum of five sailings in each direction per week with extra sailings at peak periods operated by a combination of fast ferries and the ro-pax vessel. The service will increase for the shoulder months between winter and summer, at times to be agreed in the annual schedules. The schedules will also include a summer service with, during the peak (school holiday) period, a minimum of two fast ferry sailings in each direction per day.”

Similarly for France the Guernsey MOU refers to “a service two days per week via Jersey during the winter period increasing to 3 days per week in the shoulder months as demand increases. During the peak summer months (school holidays) there will be a daily direct service plus additional services via Jersey on a minimum of 3 days per week.”

Enhancing provision, Condor has recently⁷ announced that it will replace its Condor 10 on the St Malo route with a larger Incat 86m fast ferry. This also has higher weight carrying capacity and could be valuable for exporting local produce.

The conventional service from Portsmouth operates all year round, 6 days a week, calling on a triangular basis to Guernsey, then to Jersey before returning to Portsmouth. Fast ferries run from the islands to Weymouth throughout the year and to Poole between April and October. At the peak of the season, there can be up to three sailings a day.

For inter-island services the fast ferry service varies seasonally and is daily in August. At the current scheduled service level, these minimum requirements are easily satisfied.

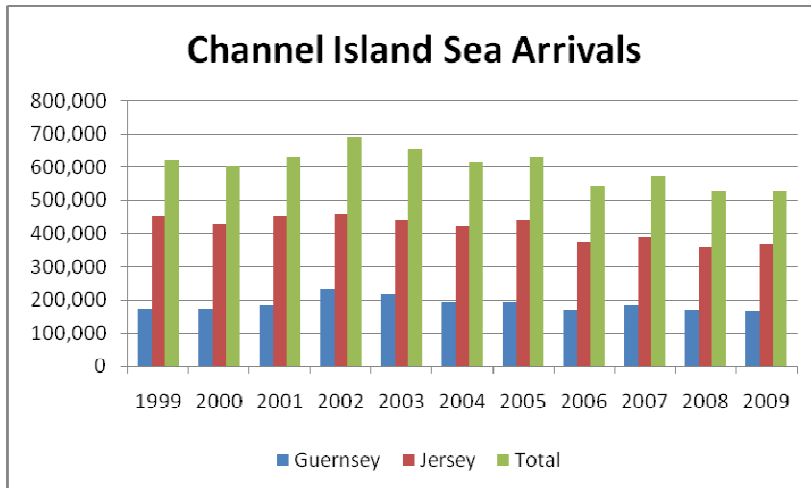
3.3 Current Carryings

The aims of the joint policy on sea routes are to secure robust, reliable, year round and reasonably priced services of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.

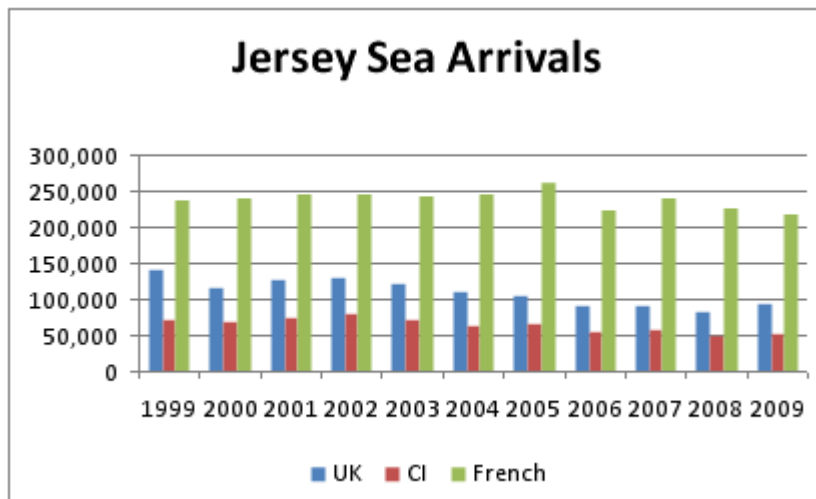
It can be seen from the table and chart below that in 1999, the date from which the original SLAs applied, total CI sea arrivals were 624,298, reached a peak of 691,265 in 2002 and in 2009 stood at 528,684 (some 15% down on the 1999 level). The trend line for each island is similar and in 2008 the split of arrivals between Guernsey and Jersey is roughly 1:2.

Total Sea Arrivals											
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Guernsey	172,798	172,962	182,263	231,765	216,066	192,094	194,743	171,038	181,990	166,933	163,000
Jersey	451,500	429,000	451,000	459,500	440,500	423,000	438,000	374,000	391,000	360,417	365,684
Total	624,298	601,962	633,263	691,265	656,566	615,094	632,743	545,038	572,990	527,350	528,684

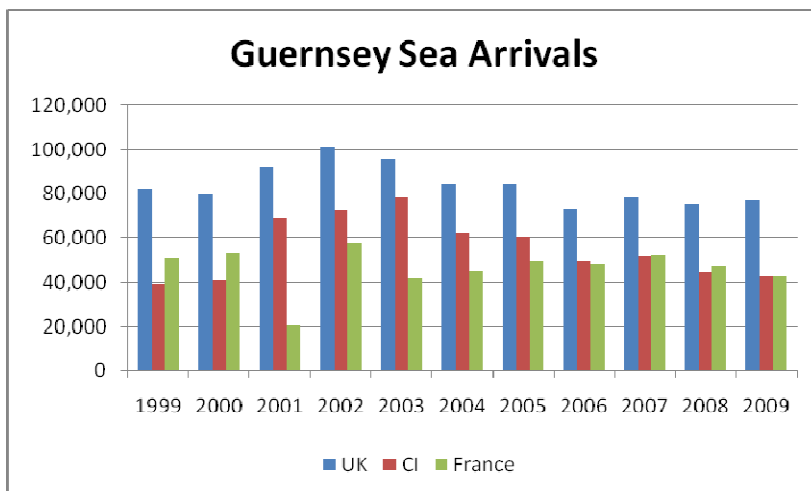
⁷ Condor Media Release 26 March 2010



The breakdown of origin of Jersey sea arrivals is shown below.



The breakdown of origin of Guernsey sea arrivals is shown below.

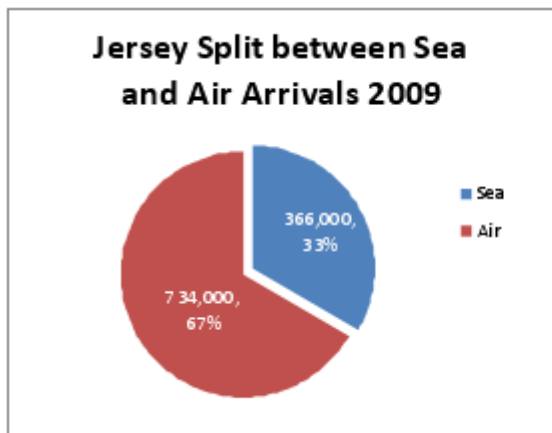


As well as Jersey arrivals being roughly twice that of Guernsey, the make up of origin of arrivals to each island varies as do the trends in each market.

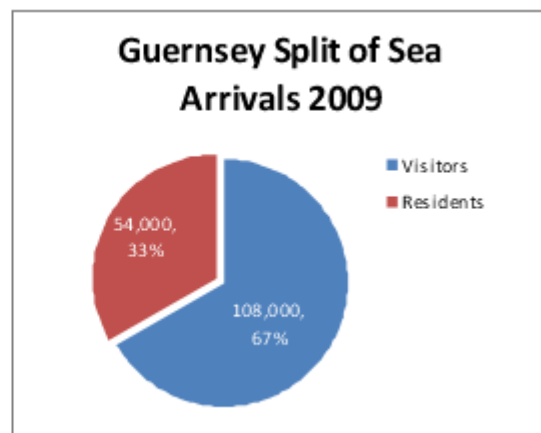
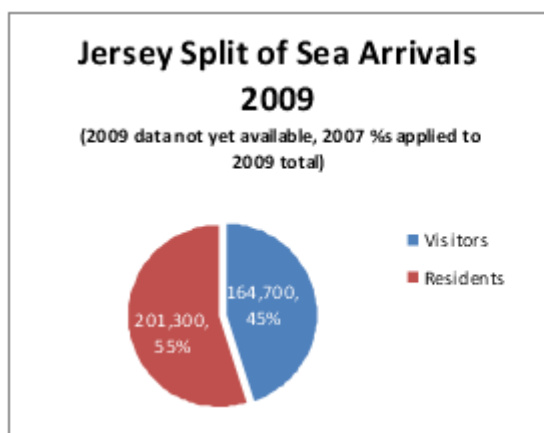
France generates by far the greater proportion of Jersey sea arrivals (60% in 2009) followed by the UK (25%) and inter-island (14%). Compared with 1999 and using 2007 as a comparator (to avoid the impact of the recent global downturn) French arrivals have held up, UK arrivals have reduced by 34% and inter-island by 19%.

The UK generates the greater proportion of Guernsey sea arrivals (47% in 2009) with the remainder split roughly equally between inter-island and France. Compared with 1999 and using 2007 as a comparator French arrivals have held up, UK arrivals have reduced by 5% and inter-island has increased by 32%.

It can be seen from the diagrams below that in 2009, the 366,000 arrivals by sea to Jersey accounted for 33% of the total air and sea arrivals. Of those sea arrivals, based on 2007 data it is estimated 45% were local residents. (For air arrivals the estimate is that 36% were local residents).



For Guernsey in 2009 the 162,000 arrivals by sea accounted for 26% of total air and sea arrivals, of those sea arrivals 33% were local residents (57% of air arrivals were local residents)⁸.



⁸ It should be noted that Guernsey data on the breakdown of visitor and resident travel comes from a different source to that for sea travel so some figures do not reconcile with each other exactly.

Thus whilst sea travel may be considered to be a single Channel Island market served by the network of a single operator, the relative size of each segment of the market varies for each island as summarised below:

2008	Jersey	Guernsey
Total Passenger Arrivals	1,161,000	620,000
Sea Arrivals	360,000	170,000
Sea Arrival as proportion of Total Arrivals	31%	27%
Proportion of residents in Sea Arrivals	45%	44%
Point of Origin of Sea Arrivals:		
Inter-Island	85,000	44,000
Continental	227,000	47,000
UK	49,000	75,000

Across the total CI market the split between resident and visitor arrivals is roughly 50:50, thus 50% of the capacity provided by Condor is to meet visitor demand. This demand has a significant influence on the frequency of services which in turn impacts on the availability and provision of services to residents. This interaction between resident and visitor demand is important to bear in mind as any change in policy must recognise and safeguard visitor and the business traveller as much as it tries to assist the resident population of the two islands. If it does not, there may be a negative impact on the services provided to residents.

A further point shown above is that Jersey has far greater passenger travel to and from France (60%) than Guernsey. Meanwhile, Guernsey’s arrival figures from the UK represent 47% of its total sea arrivals whereas Jersey’s UK proportion is just 25%. So, a difference can perhaps be expected in the way the two islands see the route network as a whole.

3.4 The relationship between passenger carryings and bed-stock

It has been suggested that trends in the visitor element of both air and passenger arrivals is a result of policies which have allowed the total tourist bed stock in both islands to reduce. Were this to be the case, it would be expected that very high occupancy rates of accommodation would be experienced at peak times, which in turn would indicate that some potential demand from the UK (or other places) was being excluded from Jersey or Guernsey as a result of lack of suitable accommodation. This in turn would indicate that, if such accommodation were available, this would result in more visitors and hence more passengers (on either air or ferry routes).

This is not borne out by the bed occupancy figures. Bed occupancy is a function of the number of beds available (which varies seasonally), the number of “staying” visitors and the length of stay of those visitors. There is little, if any, indication of a significant bed shortage at peak periods.

In Guernsey, Hotel and Guest House occupancy rates in the peak month of August 2008 was 73% and for Self-Catering 94%. Self-catering constitutes some 10% of total bed stock and the number of beds in this sector has remained substantially static over the last decade but with a turnover of units entering and leaving the market.

In Jersey average occupancy across all types of accommodation in 2008 was just below 60% and in August there were some 75,000 bed-nights un-filled i.e. an average of 2,500 spare beds per night.

Both islands therefore have spare bed capacity in the peak months. Trends in the numbers of visitors, as reflected in passenger numbers together with the number of bed-nights sold, do not appear to be caused by a capacity shortage in available accommodation. Trends in both passenger numbers and accommodation capacity are much more likely to be reflecting the internationally competitive market in which the tourism sectors in both islands operate. Both ferry and accommodation capacity are likely to reflect, rather than be the cause, of these changes.

3.5 History of Maximum and Minimum Fares

The following fare data has been supplied by Condor then adjusted to show each fare inclusive of the fuel surcharge. Regardless of whether the journey is to or from Guernsey or Jersey, the fares are the same so the information applies to both islands. The prices are quoted as they prevailed at the time and have not been adjusted for inflation and to compensate for that, the change in the Jersey retail price index (RPI) over the period is given as a comparator.

Maximum Fares to/from UK (£)

	2005	2006	2007	2008	2009	Current*
Car (up to 4.5m)	148.00	155.50	107.50	117.50	120.00	125.00
Adult car passenger	55.50	59.50	52.50	62.50	51.00	44.50
Adult foot passenger	55.50	59.50	47.50	58.50	51.00	57.50
Car plus 2	259.00	274.50	212.50	242.50	222.00	214.00
'Car Plus 2' Change	n/a	+6%	-23%	14%	-8%	-4%
March RPI Change (Jersey)	n/a	+2.4%	+4.4%	+3.2%	+2.1%	n/a

Minimum Fares to/from UK (£)

	2005	2006	2007	2008	2009	Current*
Car (up to 4.5m)	84.50	85.50	58.50	68.50	49.50	55.00
Adult car passenger	26.50	39.00	32.50	42.50	38.00	30.50
Adult foot passenger	33.00	39.00	40.50	55.50	38.00	30.00
Car plus 2	137.50	163.50	123.50	153.50	125.50	116.00
'Car Plus 2' Change	n/a	+19%	-24%	+24%	-18%	-8%
March RPI Change (Jersey)	n/a	+2.4%	+4.4%	+3.2%	+2.1%	n/a

Maximum Fares to/from St Malo (£)

	2005	2006	2007	2008	2009	Current*
Car (up to 4.5m)	100.25	91.25	100.75	105.75	126.00	126.00
Adult car passenger	26.25	28.75	25.75	30.75	12.00	12.00
Adult foot passenger	26.25	28.75	23.75	30.75	26.00	26.00
Car plus 2	152.75	148.75	152.25	167.25	150.00	150.00
'Car Plus 2' Change	n/a	-3%	+2%	+10%	-10%	0%
March RPI Change (Jersey)	n/a	+2.4%	+4.4%	+3.2%	+2.1%	n/a

Minimum Fares to/from St Malo (£)

	2005 ⁹	2006	2007	2008	2009	Current*
Car (up to 4.5m)	100.25	33.75	51.75	39.75	47.00	47.00
Adult car passenger	26.25	18.75	23.75	23.75	15.75	15.75
Adult foot passenger	26.25	18.75	23.75	18.75	19.75	19.75
Car plus 2	152.75	71.25	99.25	67.25	78.50	78.50
'Car Plus 2' Change	n/a	-53%	+39%	-32%	+17%	0%
March RPI Change (Jersey)	n/a	+2.4%	+4.4%	+3.2%	+2.1%	n/a

* Condor consolidated the fuel surcharge into the total fare in January 2009 for the St Malo route and in July 2009 for the UK routes.

It should be noted that -

- The statistics *do not* reveal how many seats or vehicle places were available at the minimum fares or what proportion were taken up by local residents. Both these factors, and how they varied over the last few years, will affect people's perception as to whether or not they are now getting a better or worse deal than in the past.
- The 'Car plus 2' is a key indicator for many people. When each route is looked at in isolation then as a comparator *over time* there appears to be no evidence of unfair price rises. In comparison with the Jersey retail price index the trend in fact appears very reasonable.
- There have been a number of fairly significant changes in Condor's pricing strategy over the last five years due to the introduction of the fluid pricing model, swingeing changes

⁹ These figures are intentionally the same as the 2005 maximum fares for the route. Condor explained that for 2005 they had a flat rate price structure for period returns and single sector traffic. They did introduce a range of duration-limited fares in response to Emeraude's own pricing tactics and these varied from £100 to approx £180.

in fuel prices and perhaps in part to the unpredictable and fluid competitive situation over that period. These changes have resulted in what may appear to be quite erratic movements in individual fares and may well have exacerbated the public perception of whether they were getting value for money.

- Many passengers will be price sensitive and will make a decision whether or not to travel at all depending on the fare. On that basis, Condor argues strongly that the sufficiently attractively low fares do exist and that indeed maximum and minimum fares have come down in real terms.
- Average revenue yield per fare type provides a cross-check with the costs of operation. Such information has been provided and shows that fares have generally fallen over the period.

3.6 Other Fares

Yield Management/Fluid Pricing/Turn up and Go – Condor operate a pricing policy whereby tickets are made available in price bands. A simple explanation of “fluid pricing”, as adopted by many airlines, is that tickets in the lowest price band are taken up first so the earlier a booking is made the more the likelihood that a ticket in a lower price band will be available. Often it is much more sophisticated than this. In essence, airlines make a prediction of how many seats they can sell at what price between now and the flight date/time. If demand is lower than expected to date, there will be a tendency to make more cheap seats available going forward, and if demand is high, fewer of the cheaper seats will be made available. It is, therefore, possible for the availability of cheap seats to go up as well as down as the departure date/time approaches. So we can expect there to be more tickets available in the lower price bands on a sailing at a less popular day of the week/part of the season than on a more popular sailing. Visitors and local residents who like to ‘turn up and go’, or at least make a decision to go away only a day or two before travelling, are more likely to be paying near or at the maximum fares, whereas many others will be benefiting from special deals that do not appear in the tables. If a higher proportion of residents do this than non-residents then the average price of a fare will be higher for them than for the non-resident and this may fuel a perception of high fare levels.

Non-discrimination on the basis of origin of booking – This policy was designed to provide comfort for local residents that they were getting a fair deal in comparison with non-residents. It only applies to normal public fares booked at the same time for the same journey. However, some residents have reported what they perceive as unfair pricing, especially when they may have travelled on the same ferry as a non-resident who has paid less than them. The following points make an attempt to explain how matters work in practice.

- Different economic and competitive conditions in the UK and Europe can result in some very good offers or packages being made available by Condor to non-residents or those travelling between the UK and St Malo via Jersey. These are outside the non-discrimination policy.
- If the policy of non-discrimination were imposed and enforced without any special offers or packages the result could be less attractive fares for non-residents and fewer people choosing to come to the Islands. This is unlikely to be in the interests of the Islands, which rely on visitors to support the local tourism industry and other businesses. This in turn could lead to higher fares for local residents, because a loss in business from UK and European markets would mean that an operator’s costs and profit element would have to be recovered from fewer travellers.

- Promotional fares are offered for day trips from the UK and there are promotions exclusively in the Channel Islands. The recently introduced durational fares (for stays of 2 or 5 days to or from the UK) are available in both directions.

Frequent Traveller Club - Condor currently has frequent traveller arrangements that offer a 15% discount to members as well as other ancillary benefits. Currently the cost is £80 per annum per person with significant discounts for husband and wife joint membership, family membership and for those over 60. 89% of the members are Channel Island residents. Members clearly benefit in a way that will not be shown in peak fare data. The JCRA note that some ferry operators offer loyalty schemes with no joining costs, and some of these schemes give specific benefits to island residents. Notwithstanding this comment, close analysis of each scheme is needed before assuming one is better than another.

Fares Available to Package Tour Operators - In addition to the fares charged direct to travellers, residents and visitors, Condor also has a fare structure for tour operators offering package holidays to the islands. Whilst local residents may feel lower or discounted fares should be available to them, if this was achieved by maintaining overall yields through increasing fares to tour operators or visitors it would have the effect of making the islands less competitive in this market. This could result in a downward spiral of less visitors using the services placing more pressure on maintaining overall yields and having a detrimental effect on the economy.

Other evidence - Whilst maximum and minimum fares do give some indication of trends in fare levels the availability of tickets in intermediate price bands, discounts, short break and package tour fares will all contribute to determining the “average” fare paid on routes and the experience of individual customers. Independent surveys carried out for Jersey Tourism suggest a very mixed picture concerning average fares and in 2007 it appears that Jersey residents paid 10% more for car and foot passenger fares to the UK than their non-resident counterparts whilst on the inter-island route they paid 20% less. On the St Malo route, foot passengers paid 9% more but for cars fares were 4% less.

This mixed picture where sometimes local residents actually get better fare prices than non-residents is not unexpected and may provide some comfort to those living in the islands who have on occasions felt they were getting a worse deal. Guernsey and Jersey have agreed with Condor that average fare information will in future be provided on an annual basis as part of the current regulatory arrangements.

3.7 Reliability and Punctuality

As part of its quality system Condor also measure and report on reliability and punctuality. The results for 2009, summarised below, are quite typical of other years:

Guernsey Performance Summary 2009	Fast Ferry UK-Gu-UK	Conventional UK-Gu-UK	Condor 10 St Malo*
Scheduled sailings	1079	628	191
Cancelled sailings	28	0	16
Additional Sailings	5	6	2
Reliability	97%	100%	92%

A further 380 sailings used either the UK ship or Condor Vitesse. Reliability and punctuality stats for the UK ship are included in the UK-GU-UK tables.

Guernsey Punctuality 2009	Fast Ferry UK-Gu-UK	Conventional UK-Gu-UK	Condor 10 St Malo
On time or within 15 minutes of schedule	67%	83%	84%
Between 16 and 30 minutes of schedule	15%	7%	9%
Between 31 and 60 minutes of schedule	15%	6%	5%
More than 1 hour from schedule	3%	4%	2%

Jersey Performance Summary 2009	Fast Ferry UK-JY-UK	Conventional UK-JY-UK	Condor 10 St Malo*
Scheduled sailings	908	607	1090
Cancelled sailings	34	0	41
Additional Sailings	6	2	22
Reliability	96%	100%	96%

A further 270 sailings used either the UK ship or Condor Vitesse. Reliability and punctuality stats for the UK ship are included in the UK-JY-UK tables.

Jersey Punctuality 2009	Fast Ferry UK-JY-UK	Conventional UK-JY-UK	Condor 10 St Malo
On time or within 15 minutes of schedule	67%	77%	84%
Between 16 and 30 minutes of schedule	15%	8%	10%
Between 31 and 60 minutes of schedule	14%	10%	4%
More than 1 hour from schedule	4%	5%	2%

4. Customer Views

4.1 Condor Customer Satisfaction Surveys

Condor has a sophisticated Customer Services quality model which meets ISO 9001:2000 standards. Extracts from comprehensive Customer Satisfaction surveys in 2007 and 2008 are as follows:

% recording a score of 7 or above on a range 0-10	All passengers surveyed on line		CI resident passengers surveyed on line	
	<u>Dec 2007</u>	<u>Sept 2008</u>	<u>Dec 2007</u>	<u>Sept 2008</u>
Value for money	67%	77%	37%	55%
Overall satisfaction	45%	60%	62%	76%

These data show that those CI residents who took part in the surveys are mostly satisfied with the overall service quality. Indeed they appear to be more satisfied than the sample as a whole. However, value for money was clearly an issue for Channel Islanders surveyed in December 2007. Condor can be commended for undertaking and publishing the research and it is understood that they intend to continue these studies.

4.2 Jersey Annual Social Surveys

The 2008 survey¹⁰ specifically sought public opinion on the value to local residents of the northern route passenger and car ferry services. The results showed that just a quarter (26%) of the Island adult population actually used the ferry in the previous twelve months. A much higher proportion (89%) expressed an opinion on how important the service was to them and virtually all of them wanted a year-round and reasonably frequent car-carrying service. However, on the matter of prioritising various factors, the cost of the service stood out as the most important, with reliability second. Whether the ferry was a fast or conventional one or even whether or not the service ran all year were less important factors.

The 2009 survey¹¹ looked at the St Malo route. It showed winter services were important or very important for 46% of respondents and summer services were important or very important for 60%. Reliability was either the most important or second most important factor for 59%. Regarding fares, 66% of foot passenger thought fares were good value. However, private vehicle fares were seen as poor value or very poor value for 61% of respondents. Overall, 67% of respondents thought that fares were the most important factor when booking a trip to France.

Condor surveys show that travellers are mostly satisfied with the quality of service and value for money.

Jersey surveys have reinforced the view that the conventional service to the UK is vital to passengers whilst winter services and reliability are also very important.

Private vehicle fares to St Malo were felt to be too high.

¹⁰ JASS 2008

¹¹ JASS 2009

5. Fare Comparisons with other Routes

Research work done Napier University and Pedersen in 2004¹² compared high end¹³ fares against distances for 43 different routes worldwide. This has been up-dated for 2009 and extended to include low end¹⁴ fares and specifically to include Condor's five Channel Island routes. Other adjustments were also made to ensure that only appropriate open water routes were compared, as explained in the new report¹⁵.

Comments applicable to all four graphs:

- (i) The data represent a snap shot based on availability enquiries made in the first week of October 2009. As explained in the footnotes, the figures do not equate to absolute maximum or minimum fares. Condor-supplied maximum and minimum fare data shown above will not therefore necessarily be the same.
- (ii) Caution needs to be exercised as out of the 34 data sets, 15 (shown by the yellow triangular markers) are from government subsidised operations and 14 (shown by the blue diamond) are considered commercial. Condor operates 5 services (shown by the pink squares) without subsidy but at a level specified in permits or other agreements that may be considered to be above that justified on purely commercial considerations. It would be reasonable to expect that fares would be at the higher end or even above those for 'normal' commercial routes.
- (iii) The study is subject to a material simplifying assumption that distance travelled is a key determinant of price. In contrast, a more complex study would also consider factors such as vessel speed (i.e. conventional vessel or high speed craft) as this has a material impact on fuel usage and annual maintenance costs, harbour dues, vessel capacity and utilisation, product quality and whether service level obligations exist and the nature of any subsidy.
- (iv) The commercial trend line is calculated using all the commercial data sets including Condor's five routes.
- (v) The comparisons do not take account of the level of harbour dues paid by Condor to the Jersey and Guernsey harbour authorities and which Condor considers are higher than at other comparable ports.

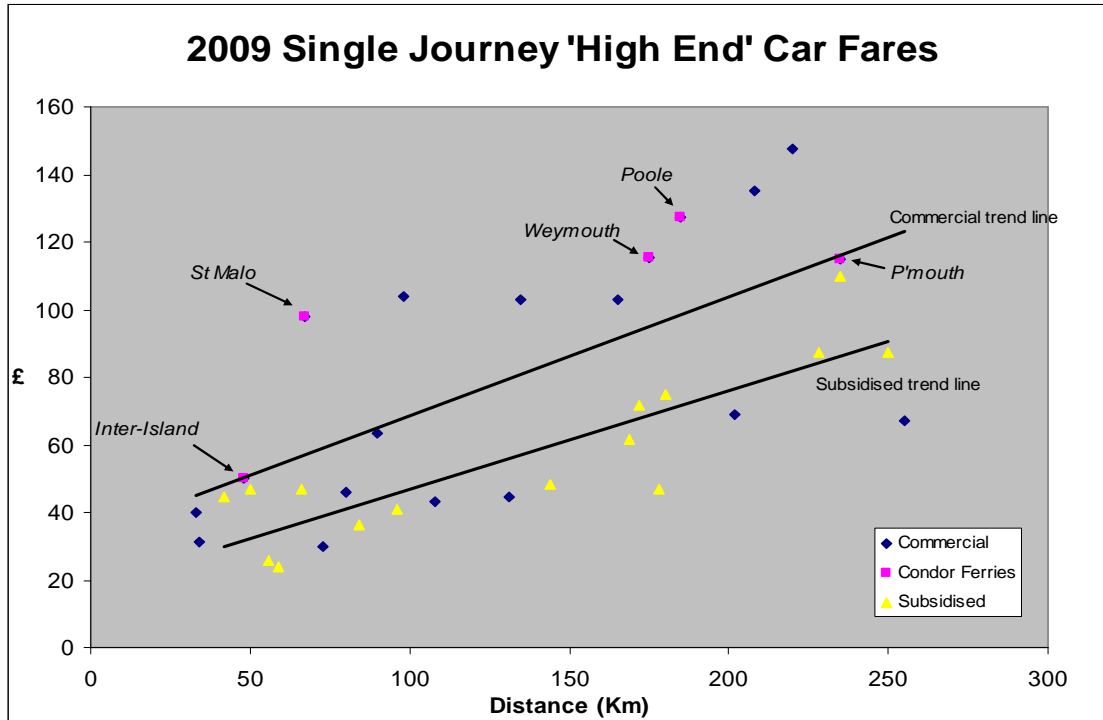
¹² McQuaid, Greig, Baird and Pedersen (2006)

¹³ High end fares being the normal maximum single fare charged rather than discounted or special offer fares.

¹⁴ Low end fares being the cheapest advertised single fare or half a saver-return fare.

¹⁵ Pedersen (2009)

Chart 1 – High end car fares (Driver component removed)



Condor's fast ferry services to the UK and St Malo (the three middle distance pink marker positions) appear well above the commercial trend line and thus quite expensive when compared with most other commercial operators. Meanwhile, the inter-island and Portsmouth fares are right on the mean for the whole commercial data set.

Chart 2 - Low end car fares (Driver component removed)

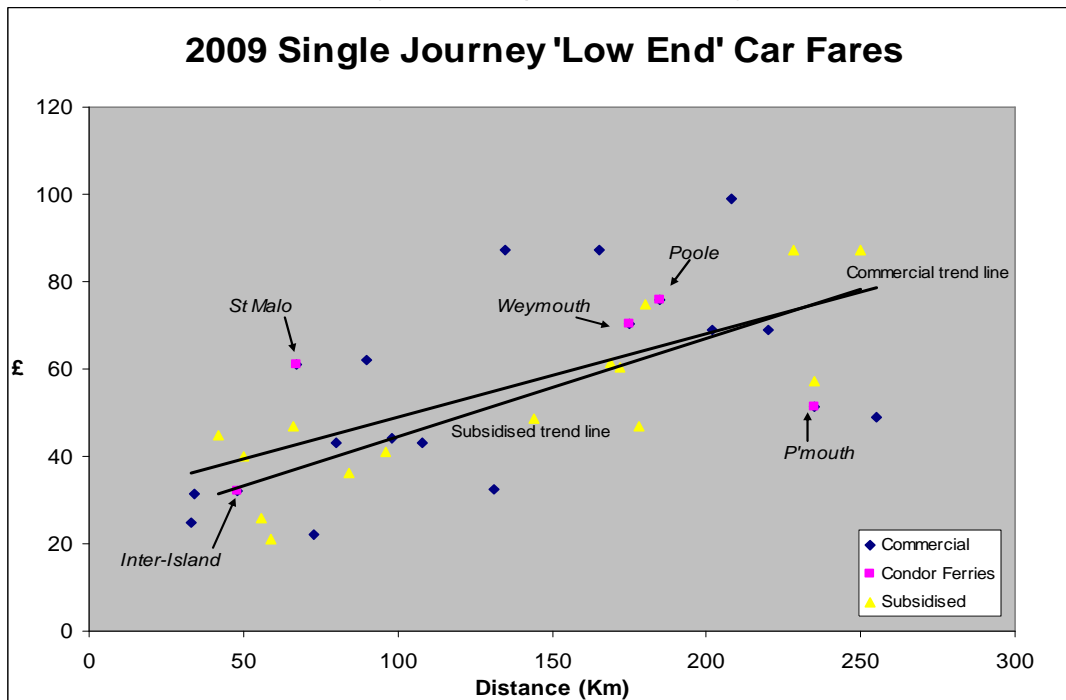
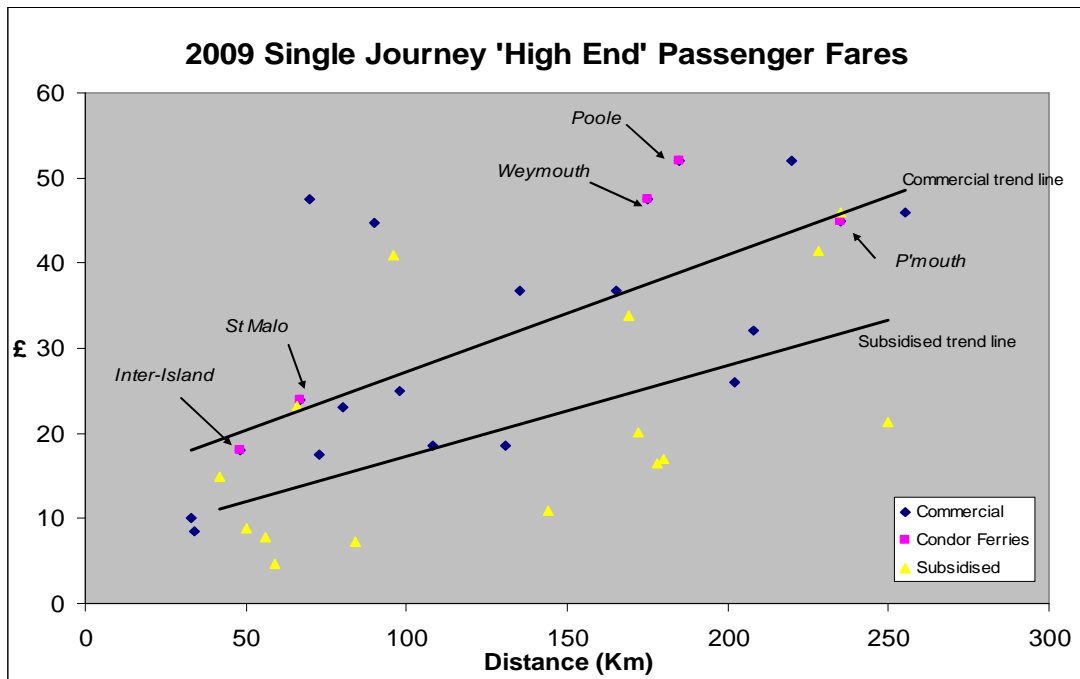


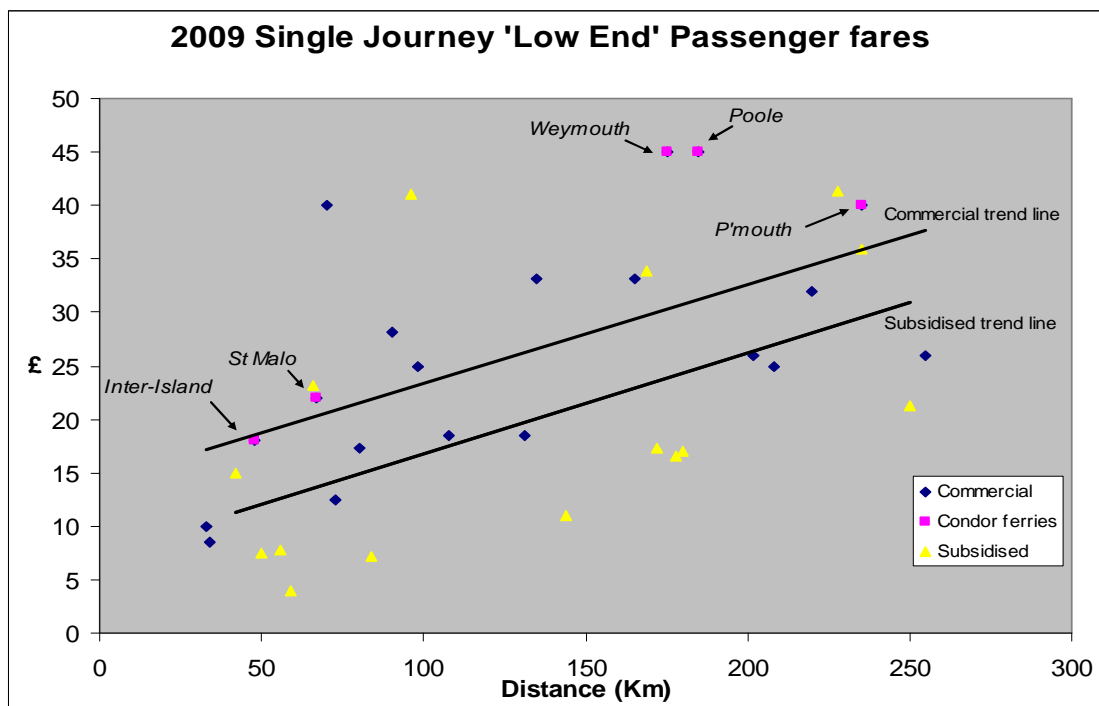
Chart 2 shows a much more mixed picture and in particular the inter-Island and Portsmouth fares compare well with other operators. These are shown on the graph by the furthest left and right pink markers respectively. However, once again, the St Malo fare appears high for the distance involved.

Chart 3 – High end passenger fares



This graph shows that the inter-Island, St Malo and Portsmouth fares were very similar to what one might be offered by other operators on other commercially operated routes. However, the fast ferry fares to and from the UK were clearly significantly higher than most others.

Chart 4 – Low end passenger fares



This graph (chart 4) also provides mixed evidence. Fares on the inter-Island and St Malo routes do not seem unreasonable in comparison with other operators whilst fares on the Weymouth and Poole routes are well above the trend lines.

Some of Condor's prices are high but it has to be remembered that they have to provide a year-round service and that they run both a conventional ship and fast ferries on the northern route. This commitment raises operating costs and skews the comparison with other markets because it might not be a factor elsewhere. In addition, the ferries serving Jersey are relatively small compared to, say, other cross-channel routes and unit costs tend to fall with vessel size.

Overall and notwithstanding the limitations of this sort of comparison, these graphs suggest that the public may be paying more than on other routes by the use of a high-speed ferry to the UK or to St Malo. However, they appear to be getting quite good value for money on the inter-island and Portsmouth routes.

Additionally, the Napier/Pedersen study suggests that to achieve substantially lower fares the solution has often been to introduce a government subsidy. At the moment, ferry service operations are *not* subsidised by the tax payer yet they deliver certain non-commercial aspects such as a conventional ferry as back-up and guaranteed winter services. Lower fares for travellers might be expected to encourage more travel and in specific experiments in the Scottish Highlands and Islands region, this has resulted in a marked increase in traveller numbers¹⁶. For such an experiment to work locally, funding could mean higher Goods and Services or Income taxes and is not thought realistic.

Fare comparisons are extremely difficult, with a large number of factors to consider.

Nevertheless, this research shows whilst some Channel Island fares were high in comparison with other similar services, there is also evidence of good value for money.

Such comparisons also highlight the difference between subsidised and non-subsidised services: The islands get reliable services with expensive back-up and frequent winter sailings from a commercial non-subsidised operator.

¹⁶ Scottish Road Equivalent Pricing scheme.

6. Operator Efficiency and Profitability

Key issues concerning fares are (a) whether or not an operator is efficient and (b) whether or not its profitability levels are excessive. Clearly an efficient operator may be able to pass benefits on in the form of lower fares or enhanced services whereas an operator which is inefficient may not. At the same time an efficient operator with little competitive constraints could achieve unreasonably high profits in the long run.

In most markets, competition is the tool that drives efficiency and avoids excessive profits. If a company is inefficient compared with its rivals, the goods or services it offers will be higher in price and/or of lower quality, and that company will suffer as a result by consumers “voting with their feet.” In a monopoly situation, however, that same competitive dynamic does not occur. There is then less pressure to be efficient compared with a firm facing competition. Thus, in many monopoly industries, a regulatory body sets efficiency targets which act as a proxy to competition, as well as regulating the company’s profitability.

An important related issue is whether one business unit is able or needs to cross-subsidise another less profitable business unit. Cross subsidisation is not necessarily bad, if it is short-term and leads to greater efficiency in the longer run. However, cross subsidies might create inefficiencies by charging higher prices in markets where demand for services is stronger (less price elastic) or face little competition, but at the same time keep fares down in a less profitable or non-profitable but strategically important areas. Tour operator fares might be underpinned by higher fares charged to individuals or freight profits could be helping other usage of the conventional ferry service. Having said that, such suppositions are just that – we cannot be certain.

To fully understand such critical issues in monopoly industries, regulators are often called in to conduct so-called “efficiency reviews”. Such reviews require an in-depth study of normally confidential company accounts. Taken together the Competition Regulatory Authority (Jersey) Law 2001 and the Competition (Jersey) Law 2005 provide the *vires* to seek full access to detailed accounts and other related information. Guernsey will have similar legislation in force by the end of 2010. However, the work could be costly and intrusive and could be seen as disproportionate based on the current evidence.

At this stage, it is believed that the results of such work could be very valuable. If the results show that the current situation is reasonable and beneficial then there would be no need to change. If not, then they would help develop future sea transport policy.

The operator’s efficiency and profitability are factors that are directly linked to the current fare levels and structure.

An in-depth efficiency and profitability review might help to understand the true situation in this market. Additionally, such a review would provide insights into the possible scope of any regulation on the profitability and pricing structure of Channel Island ferry services. On the other hand, however, such a review could be costly and intrusive and could be seen as disproportionate.

The Ministers will need to consider the outcome of this consultation exercise before agreeing to take this matter forward.

7. Experience in other Jurisdictions

7.1 Isle of Wight Study

Background The Isle of Wight has a similar population (140,000) to the Channel Islands (157,000)¹⁷. It is a popular tourist destination and tourism plays a major part in its economy. However, unlike Jersey and Guernsey, there is no airport and the island is dependent on ferry services for all passenger transport as well as its vehicle and freight movements. There are three competing carriers, operating on a total of six routes. Services run on the mainland side from Portsmouth, Southsea, Southampton and Lymington and serve Ryde, Fishbourne, Cowes and Yarmouth. Depending on the port of departure, a mix of fast catamarans, hovercraft and car carrying through-deck ferries is available. The operators must comply with general competition law but there is no sector-specific regulatory regime.

The Study In response to public concerns about the ferry services and the fares charged, the UK's Office of Fair Trading (OFT) carried out a market study¹⁸ and after public consultation decided¹⁹ on 14 October 2009 that it *does not* think grounds exist for a formal investigation by the Competition Commission. A précis of the final findings of the study include:

- Average prices have mostly risen at the same rate as the Retail Price Index and fares are not obviously out of line with other commercial ferry services across Europe.
- However, better fares are available to passengers who book in advance. Passengers who use the ferry services on a 'turn up and go' basis are likely to have experienced higher than average price increases in recent years.
- Set against this, one operator offers a range of discounts to Island residents, which may off-set the possible negative effects of yield management pricing.
- Overall, the service is reasonably frequent, comprehensive and reliable.
- There are some barriers to entry for new competitors. These barriers are primarily physical, such as limited room on the island for berthing and marshalling facilities for car ferries.
- There is some competition between operators running alternative routes.
- However, there is little same-route competition. Same-route competition is unusual in ferry markets and typically sustainable only on busy routes, such as those across the Channel.

Regarding the usefulness of fare comparison as a tool to assess whether the public are getting a reasonable deal, this always generates public interest but the OFT warn, "Fare comparisons are extremely difficult, with a large number of factors affecting the cost of a crossing including crossing length, the type of water and the frequency of the service and the average utilisation. Absolute costs do not reflect the length of journey, yet per-mile costs may also be misleading, since on a short crossing the cost of port facilities and the time taken to load and unload is a significant part of the overall cost"²⁰.

In terms of ensuring appropriate competitive pressures the OFT point out whilst devising some form of competition for the market (such as tendering for services) would probably be effective, "given the investment made by the ferry companies in specific and long-lived assets, this type of remedy is potentially extremely intrusive and the OFT does not believe it would be justified in response to the level of detriment observed"²¹.

¹⁷ Figures taken from OFT study (below) for Isle of Wight and local government statistics for Channel Islands

¹⁸ OFT (2009)

¹⁹ OFT (2009) (2) Press Release 124/09

²⁰ *Ibid* at 6.41

²¹ *Op cit* at 7.28

Regulatory solutions also exist that could involve the control of fares or quality or both, but once again the OFT is cautious and has this warning, “this type of remedy would not be proportionate or appropriate in this case. We note also the risk that this kind of intervention could have an adverse impact on future levels of investment by the ferry operators.”²²

The comparison between the Isle of Wight and Channel Island is instructive. However, a number of aspects are quite different. It is therefore quite possible that more competition or further regulation could assist.

7.2 Isle of Man Experience

Background The Isle of Man has a population of 76,000 and tourism is a major economic feature. It has a mix of air and sea services but only a single operator for its passenger and car ferry services to and from the United Kingdom and Ireland. There are four routes which all operate from Douglas and run to Liverpool, Heysham, Belfast and Dublin. Both fast catamarans and conventional ferries are used and crossing times vary from 2½ to 4¾ hours.

The Regulatory Environment The Manx government directly regulates this *de facto* monopoly through a Service Level Agreement (SLA) with its Department of Transport and there is no formal competition regulator role. The SLA contains similar conditions as are applied here in the Channel Islands. A weighted ‘basket’ of fares, taking into account different traffic volumes, are controlled in that they cannot rise at a rate greater than RPI minus half of one percent without formal approval. From 2010 the maximum increase changes to no more than RPI. To date the company has not exceeded RPI less half of one percent.

These controls only apply to standard fares, leaving the company free to offer some 80% of fares at considerably less than their agreed levels. The present operator’s long-standing decision to have ‘offer’ fares was based initially on a commercial decision to obtain benefit from higher passenger and vehicle volumes rather than maximising the yield. The initial User Agreement encouraged and facilitated such a decision and the 2002 extension secured the requirement for ‘offer’ fares. The requirement for ‘offer’ fares was further increased in the 2004 extension of the User Agreement.

The Manx form of price regulation can be seen to be a little different to that in the Channel Islands and further consideration could be given to whether the current arrangements for fare regulation locally should be enhanced.

²² *Op cit* at 7.29

8. Future Competition, Licensing and Regulation in the Channel Islands

8.1 The Supply of Ferry Services – OXERA Research and Policy Options

This piece of research was commissioned by the Jersey Economic Development Department but was not restricted to the Jersey market for car and passenger service. OXERA's remit was to provide advice on the future options that might be available to ensure that the ferry service market can function in the best overall interest of the Islands as a whole.

The options were measured against key objectives such as:

- security of supply in the provision of passenger and freight services;
- scope for competition in the market;
- the net welfare impact on consumers;
- the impact on the Islands' public sector finances;
- practical implementation.

Market analysis included the extent that freight operations and route networks (rather than different operators on different routes) help to sustain profitability for an operator in the car ferry market. In the past this has not been easy to determine.

Modelling looked separately at summer and winter profitability on both northern and southern routes. Such profitability had to take account of capital and depreciation if it were to be sustainable. These are key issues because if profitability were strong for the passenger and car ferry markets then there would be a clear possibility that competition could survive.

A summary of OXERA's conclusions from this market analysis as follows²³:

- Winter competition *does not* appear likely to be financially viable in the long term due to the limited demand for services during this period of the year.
- Summer competition also appears unlikely to be viable due to the costs of additional capacity and the price reductions that are likely to arise as operators attempt to fill capacity. However, given the higher underlying demand, summer competition cannot be fully discounted as a possible market outcome, particularly on the southern route.
- The available evidence suggests that the northern route can cover costs on a year-round basis. This route is served by two fast ferries as well as a conventional boat primarily carrying freight, but also providing back-up passenger capacity. The evidence on the southern route is less clear based on 2008 data, but this might be affected by yields having been depressed by competition. Earlier data indicates that the route could be sustainable if operated as a monopoly.
- There are important interactions between the freight and passenger markets. In particular, fast passenger vessels can carry some light freight, while the conventional ferry used to carry freight on the northern route provides back-up capacity for the passenger services. These interactions should be taken into account when considering the application of policy options.
- Although a formal assessment of the wider market for passenger and freight services has not been carried out as part of this exercise, it would appear that the ability of

²³ OXERA (2009) at page iii

passenger ferry operators to increase prices is constrained by the potential for consumers to switch to flights (and hiring a car).

- A similar issue applies in relation to constraints on freight pricing. Although detailed freight yields were not available for analysis for this study, it is likely that, for some types of freight (particularly lower-value and non-time-sensitive materials), alternatives to roll-on, roll-off services would act to constrain prices to some extent. It is less clear, however, to what extent this applies across other freight categories.

It is important to note the considerable caution expressed regarding competition as stated in the first two of these conclusions. It appears that both actual experience and the financial data lead to the same conclusion – ***Unrestrained competition does not appear viable and can serve to destabilise the service.*** However, the history of competition in the market (both in sea and air transport) suggests that some competition or at least the threat of it may act as a restraint on prices.

OXERA list five policy options. In practical terms it is suggested that these offer the following choice:

- **Option 1: non-exclusive licences, subject to obligations.** Operators would have specific obligations which would include a winter service backed by a performance bond, or a summer only service but paying towards the cost of winter services. An independent regulator would advise in setting the cost of the winter service and overseeing the associated agreements.
- **Option 2: licensed monopoly, with obligations.** As this would involve an exclusive agreement, it is felt that this would have to be implemented through a tender process as described in Option 4.
- **Option 3: maintain status quo.** Permits would be non-exclusive and continue to be awarded on the basis of financial and operational capability to run year-round services.
- **Option 4: licensed tendered monopoly.** A contract to run both the CI-UK and CI-France routes would be awarded to a single operator through a competitive tender for a specified duration (e.g. 10–15 years). The successful bidder would agree minimum standards including quality, back-up capacity, fares policy and financial resources.
- **Option 5: separate licensed monopolies for the northern and southern routes.** Two *separate* permits, one each for the northern and southern routes, to be held by different companies. This could only be considered if the routes were separately sustainable and if by separating the routes we might enhance the prospects for competition. The OXERA evidence is that this is *not* currently the case.

Considerations

- (i) To be effective each monopoly option (options 2, 4 and 5) should ideally involve the full participation of both Jersey and Guernsey as the two Islands cannot operate two separate and profitable monopolies. Monopoly options will also take time to put into place and they do tie the hands of the Islands for many years.

Furthermore, a tender process would be needed and this presents some, but not insurmountable, difficulties: Condor's current Jersey Ferry Permit and Guernsey MOUs run until the end of 2013 and the Islands might find at that point few interested parties willing to compete. There is then a risk of fixing high prices for a long time and this could mean that more formal price regulation is still needed.

In respect of the Isle of Wight and in the context of actual competition between ferry companies – albeit not on a route by route basis – the OFT²⁴ took the view that the tendering of routes would be a disproportionate remedy given the level of investment put into services by operators and the long investment periods that are necessary in the industry.

- (ii) Separate monopolies for the northern and southern routes (option 5) would remove the benefit of running a full network of routes and reduce profitability.
- (iii) OXERA recommend option 1 and this could be valuable in the context of fare regulation in that it leaves open the possibility for genuine competition yet provides some important safeguards in the form of universal service obligations. However, calculating the cost of the winter service would not be an easy task. The mechanism would need to take account of short-term annual costs, long-term structural and asset costs and longer-term effects on the profitability of the incumbent all-year provider.
- (iv) OXERA make the point that if non-exclusive permits continue to be the norm then new or enhanced regulatory structures are less important. Actual or potential competition helps to keep existing operators competitive. Exclusive permits will necessitate increased regulation and there are associated costs to be borne by the operator, user, regulator and ultimately the taxpayer.
- (v) If it is decided that no substantive change is sought (Option 3) it is likely that Condor would have its current non-exclusive permits renewed (should they so wish) for a further reasonable period (possibly 5 to 7 years) when that expires on 31 December 2013.
- (vi) Regulatory oversight of each of these options ranges from a light-touch focus on ensuring compliance with permit conditions which themselves could include information-providing requirements and approval of price changes through to detailed bottom-up analysis of costs and establishing / enforcing fare levels consistent with those costs.
- (vii) Who should take on that regulatory oversight is open to debate. All options, except maintaining the *status quo*, require an increase in oversight and enforcement and this may best sit with a dedicated regulatory body such as the JCRA in Jersey, the Guernsey OUR or some other body. As was stated earlier, rather than merely extending the remit of either or both of these existing bodies to cover car and passenger services the opportunity could be taken to introduce a pan Channel Island regime whilst still drawing on existing expertise and resources of the JCRA and OUR. It should be noted that since 1998 the relevant States departments, in Jersey also involving the Harbour Master, have acted in a regulatory capacity ensuring that compliance with the SLAs and permits have been maintained.
- (viii) Greater regulation will inevitably lead to greater compliance and licence costs. The JCRA has advised that a minimum “light touch” approach to licensing and regulation would cost the regulatory body of the order of £250,000 per annum to administer, including the appointment of an additional regulatory officer, but it would cost still more if regulation required efficiency reviews and the imposition of caps on prices as already is in place with Telecommunication and Postal services. Given that OXERA’s findings indicate that profitability is marginal these

²⁴ At 6.1 above

costs may well be passed on to transport users as higher fares. In contrast, the JCRA advise that increased fares are not an automatic outcome, if regulation forces the incumbent operator to increase its efficiency and pass on these benefits to consumers.

- (ix) Regulatory oversight might follow the standards already established in Guernsey and Jersey with respect to the regulation of telecommunications and postal services. This is certainly possible but the Jersey Economic Development Department estimates that this will require thirty to forty law drafting days and a re-prioritising of other items in the law drafting programme. Depending on how much “cut and pasting” can be done for laws covering both islands drafting resources will also be required for Guernsey. It is important that we do not head down a path that could be costly, bureaucratic and ultimately perhaps no more effective.

8.2 Practical Channel Island Options

Competition Law

The Competition (Jersey) Law 2005 contains a prohibition on abuse of dominance. Such abuse can arise from a dominant undertaking charging excessive or discriminatory prices. However, it has been recognised in an independent review of the JCRA’s powers as a telecommunications regulator that use of competition law powers is not necessarily the best way to tackle such pricing issues²⁵. Indeed, experience in other jurisdictions shows that those regulators who have both competition law and sector-specific powers would normally use the latter to control the ability of a dominant firm to charge excessive prices. It is true that under the Competition Law, the JCRA can impose fines for infringements including for excessive pricing. However, excessive pricing cases under Competition Law have been quite rare within the European Union.²⁶ The ability to impose fines could instead be incorporated into a sector-specific regulatory regime and indeed that is what the LECG review (*ibid*) has recommended in the field of telecommunications law.

A sector-specific regulatory regime

If the case is proven that it is needed, then in Jersey a sector-specific regulatory regime for ferries could be established similar to that which exists in the telecommunications and postal sectors under the Telecommunications (Jersey) Law 2002 and the Postal Services (Jersey) Law 2004. This allows the JCRA to grant Licences to operators. The Licences contain various conditions (some concerning prices) which may be enforced under the legislation. Similar legislation exists in Guernsey for the regulation of the telecommunication, postal and electricity sectors by the OUR. Such legislation might provide a useful blueprint for the regulation of ferry prices.

Rather than merely extending the remit of either or both of these bodies to cover car and passenger services the opportunity could be taken to introduce a unified pan channel Island regulatory regime for passenger car ferry services whilst still utilising and sharing existing regulatory expertise and resources in the islands.

A regulator appointed to oversee the regime in both Islands could assume responsibility for ferry price regulation under the approach such as that described in OXERA’s Option One.

²⁵ LECG Report of March 2009 *Review of the regulatory powers, resources and functions of the JCRA as a telecommunications regulator*.

²⁶ Article 60 of the Competition Law requires that, so far as possible, matters arising under competition law in Jersey are treated in a manner that is consistent with the treatment of corresponding questions arising under competition law in the European Union.

The JCRA recommends that this approach should have “teeth” in the form of robust information gathering powers, the power to impose price controls if necessary and the ability to impose fines for regulatory infringements²⁷. However, the existing regime operated by the Jersey Harbour Master and the Economic Development Department already requires the operator to seek Ministerial approval for maximum price increases and it may be possible to enhance this further in relation to average fares and minimum fares, This represents a lighter touch approach than the powers recommended by the JCRA.

A sector-specific regime would come at a cost: A new compliance officer role is likely and ferry operators might also have additional staff to ensure they could meet the legislative and licensing requirements. Initial estimates indicate this could cost £250,000 and this, in being paid for through operator licences, might result in increased fares or reduced profitability. In addition, the ferry operator would also incur incremental regulatory costs in terms of communicating and providing data to the regulator. As mentioned earlier, an increase in fares may not be inevitable but as the risk is there it does have to be borne in mind.

In addition, enacting new regulatory laws will require the allocation of law drafting time which could mean a re-prioritising of other draft legislation. As a result, it is important to realise that legislation of this sort does have some unattractive consequences and will not necessarily reduce fares.

Increased Regulatory oversight by the States of Guernsey and Jersey

The relevant Departments would take on an increased and more proactive regulatory role. The existing joint Channel Island Policy Statement could be revised to include formal agreement between the Islands for officers to meet and manage the oversight of permits together.

Under this regime, permit conditions will be more closely monitored and could be enhanced to make it an absolute requirement to publish externally audited fare comparisons and performance data. This evidence would then be taken into account when permits were due for renewal. Volume targets and a commitment to sell a minimum proportion of ‘offer’ fares, as has been developed in the Isle of Man, could also be considered.

The involvement of the regulators would continue as now and regular fare reviews could be carried out on behalf of the relevant Minister(s). Comparisons (such as those published here) would be published as a way of indicating the possible existence of any unfair pricing. Occasional reassessments of whether a dominant market position existed could take place. This would be done within the existing legal frameworks²⁸. If reviews then showed that fares were not commercially justifiable the operator could be asked to introduce lower average and maximum fares. The regulators would of course also be used to provide the appropriate expertise and advice if summer-only operators entered the market and were required to provide funding towards the winter services.

Additionally, carrying out an efficiency review can be taken forward if this is seen as justified at the present time and likely to prove valuable. In that context, it must also be a proportionate response to legitimate concerns.

²⁷ JCRA (2009).

²⁸ In Jersey this would mean using article 6(4) of the Competition Regulatory Authority (Jersey) Law 2001 and, where relevant, Part 5 of the Competition (Jersey) Law 2005.

Fare comparisons provide useful discussion data but there are difficulties in achieving like-for-like facts. Per-mile costs may be particularly misleading.

Competition solutions (including tendering for services) may be destabilising for investors and risky for small island communities.

Regulatory solutions must be proportionate and must avoid adverse impacts on fares and future levels of investment by the ferry operators. In that context, an efficiency review must also be a proportionate response to legitimate concerns.

In the context of the Channel Islands year-round competition is believed to be unsustainable and summer-only competition also may not be viable. It may be that improved pan CI regulation of the incumbent operator by the respective States departments is the best solution. These conclusions do not mean however that the States should assume a monopoly situation as this does not prevent future tendering for the routes and such regulation would continue to require the support of relevant competition regulators.

Whatever the outcome, the relevant Ministers will retain the right to set broad policy parameters and the Harbour Masters would still oversee maritime safety parameters and day-to-day operational issues.

9. Conclusions

At the heart of this Paper, the issue is whether we need greater fare regulation, whilst maintaining and improving other service standards.

Whilst fares generally do not appear unreasonably high, some of the evidence does point to specific fares being above those to be found on other routes. More comparative statistical research, published on a regular basis, might well help along with greater price transparency. However, the problem of comparison is explicitly recognised by the Office of Fair Trading as highlighted above.

The OXERA work has made it plain that open competition is very unlikely to be sustainable on a long term basis. Hard-won stability and reliability could be undermined by such competition. If it is thought worthwhile, the alternative to greater competition could be more regulation. The Islands have a number of valuable options to consider but some of the options are more complex and expensive than others.

An enhanced version of the existing arrangements may well provide adequate tools to make an impact on fare regulation. However, as long as there is only a single car ferry operator serving all major routes, it may well be that sector-specific legislation and independent oversight might be the preferred option. Likewise if there is a desire to move towards mechanisms under which operators either deliver a winter service or make a payment to the costs of the winter service provider, then independent regulatory support will be needed.

If an efficiency review of the ferry operator is considered to be necessary it could help decide what level of regulation is really necessary.

It will be important to look at whether the consultation produces different results in the two different Island communities. Taking account of such possible differences and depending on the overall public response, the current Sea Transport Policies will be reviewed and the Ministers will make the appropriate statements in the respective Assemblies in due course.

Consultation

Please do take part in this consultation: The Ministers invite views from interested parties given, among other matters, the high level of public interest and engagement in this case among residents of the Islands. In particular views are invited regarding

- The current level, quality and prices of services being provided;
- Whether or not it would be acceptable to reduce the level or quality of services in order to achieve lower fares;
- The security of services desired and how this may best be achieved through competition or licensing or a combination of both;
- The option to make a formal request to the JCRA to carry out an operator efficiency review using existing powers.
- The possible benefits and costs of increasing the degree of regulation of services involving the Jersey Competition Regulatory Authority (JCRA), the Guernsey Office of Utility Regulation (OUR) or other similar body;

A **questionnaire** can be downloaded: <https://www.surveymonkey.com/s/ChannellIslandFerries>

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Appendix – Questionnaire

<https://www.surveymonkey.com/s/ChannellIslandFerries>

