

THE JERSEY ASSOCIATION OF BOAT OWNERS ASSOCIATIONS

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Jersey Competition Regulatory Authority

Salisbury House

1-9 Union Street

SENT BY EMAIL

St Helier

Jersey JE2 3RF

22 December 2023

Dear Sir

Ports of Jersey

We represent the members of a number of formally-constituted boat owners associations for the various harbours in Jersey. These boat owners associations have banded together to tackle an oppressive abuse of a market-dominant position by Ports of Jersey (PoJ) in respect of marina berthing and outlying harbour mooring.

Jersey is an island state, and owning a boat and using it to go fishing, head to the Minquiers or Les Ecrehous, another bay, or to one of the sister islands, or even across to France, has always been an integral part of Jersey life.

A significant proportion of the population own or have access to a private boat. It is estimated that there are around 1,800 boats in the marinas in St Helier, and the various moorings across a number of bays and St Aubins harbour. The boat owners are a captive audience, locked into the situation, as there is no other option but to keep our boats on a berth or mooring controlled by PoJ.

The harbours and mooring fields are an amenity of the island, which were owned by the people of Jersey as a department of the States of Jersey, before the 'corporatisation' of PoJ. The legal framework for this, Air and Sea Ports (Incorporation) (Jersey) Law 2015, clearly specifies that PoJ has public service obligations in respect of acting as custodian of Jersey harbours.

We write today to lodge a formal complaint about what we believe are breaches of competition law by Ports of Jersey (PoJ), and/or their licence from JCRA.

PoJ stated on 24 November they will increase fees for the marinas and harbours by 11.1% w.e.f. 1 January 2024. This is the maximum allowed under the pricing framework, being RPI (September) plus 1%.

Their stated justification for doing so is that their revenues have suffered due to the pandemic and they need to generate revenue to fund the redevelopment of the commercial port and airport.

It is our view that using RPI (Sept) of 10.1% is unreasonable as it includes a significant element due to housing costs, which have no relevance to their operating costs. In our view, RPI(X), underlying inflation, of 5.3% is a more appropriate measure to use. We note that UK inflation is now below 4%. We believe the timing of an increase of this order of magnitude in a time of falling inflation is a blatant attempt to load the fee base ahead of the next pricing review.

However, we acknowledge that PoJ do have the power to use this number under the pricing framework, though we believe they are abusing this power to exploit a statistical anomaly that was never envisaged when the pricing framework was put in place in 2019.

We are not making any formal complaint about this aspect of the increase, as we recognise it complies with the letter if not the spirit of the pricing framework.

There are three matters about which we are raising complaints:

1. January 2023 to 2024 increase of nearly 23%

PoJ increased fees by 10.4% w.e.f. 1 March 2023, and by 11.1% w.e.f. 1 January 2024

PoJ say the deferral in 2023 was a dispensation to soften the blow of a sharp increase. The lack of any dispensation for 2024 means that the compounding effect results in January 2024 fees increasing by nearly 23%. We submit PoJ chose to implement the fee increase in March 2023, and that a fee increase of this order of magnitude is a breach of the pricing framework.

2. Cross-subsidisation by boat owners of redevelopment costs of commercial port and airport

PoJ financial statements in the annual report through to 2022 show that marinas revenues grew over the period 2019 through 2022. Given the swingeing fee increases imposed in March 2023 there is no doubt that marinas revenues will be even further ahead for 2023 when the results are published. The stated reason that fees need to increase by 11.1% to cover revenues lost over the pandemic and the need to fund the redevelopment of the port and airport clearly means that PoJ are looking to private boat-owners to cross-subsidise revenue shortfalls across the commercial port and airport business lines.

We also note that the communication from the CEO about the fee increase on 24 November states that this increase does not apply to 'customers with pre-existing business arrangements'. We contend that much of PoJ revenue, in £ terms, comes from 'customers with pre-existing business arrangements', who will be corporate customers of the airport or commercial port. As such they are not being charged the same level of increased fees to cover the claimed shortfalls from the pandemic, or the funding needed to redevelop the airport or port, despite being the major users of these facilities. Instead, the boat-owners are being exploited because we have no other solutions open to us. We believe this represents a breach of Guideline 5, Abuse of a Dominant Position. We also contend that this may be a contravention of the public service obligations in respect of Jersey harbours.

There is no information in the public domain as to which customers of PoJ have such an arrangement, nor how much of their revenue is under contracts with provisions that limit increases, but we are confident you can investigate this under your powers.

3. Under reporting of complaints

Part of the regulatory framework under which PoJ operate requires the reporting of complaints. The complaints policy for PoJ sets out that a complaint is any 'expression of dissatisfaction' and complaints may be received by phone, email, in person or in writing. The quarterly report filed by PoJ to JCRA shows 3 complaints in 2022 and 3 so far in 2023. Our members are aware of many more complaints about a range of aspects of marinas services, which have not been reported to JCRA.

Many of these complaints were not raised through the on-line complaint logging process, but face-to-face or by phone, but they are still complaints, and required to be recorded and managed by PoJ under their documented process as complaints. Our constituent member associations are reviewing their records and contacting their members to get a full tally of matters they believe they have raised as complaints in the past,

to highlight the extent of the under-reporting. This is in our view a much more serious matter than simply an administrative oversight. The significant under-reporting of complaints has allowed PoJ to misrepresent to JCRA that its customers are satisfied with the proposition, service and pricing, when the opposite is the case.

Each of our boat owner associations and yacht clubs have written to PoJ on 8 December (specimen copy attached) requesting :

- (a) they limit the increase to RPI(X) of 5.3% ; and
- (b) defer the implementation till 1 March 2024

Regrettably they have rejected this (see letter attached), so we have no choice but to refer the matter to you as a formal complaint under the Competition Regulations.

Given the very short notice given of this increase, and the proximity to the extended holiday period, there are only a matter of days before this fee increase is imposed. We have marshalled a group of interested parties very quickly, and sought to engage swiftly with PoJ to encourage them to rethink these unreasonable fee increases. Under these circumstances, we request that you direct PoJ to defer any fee increase until you have completed your review of our complaints and PoJ response.

We await your response.

Yours sincerely

Bonne Nuit Boat Owners Association

La Rocque Boat Owners Association

Bouley Bay Boat Owners Association

Rozel Boat Owners Association

Gorey Boat Owners Association

St Aubin Boat Owners Association

Greve de Lecq Boat Owners Association

St Helier Boat Owners Association