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	CC	ACTION
MINISTER	✓	
CO		
EDU	✓	grace
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M&T		
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COMMENTS		

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Dear Deputy McNulty-Bauer

On 10th June, 2010, the Commerce & Employment Department, in conjunction with the Economic Development Department of the States of Jersey, published a consultation document entitled 'Competition, Licensing and Regulation in the Car and Passenger Ferry Markets'.

First, I should like to commend the Department for entering into a period of consultation with relevant parties, and for doing so in partnership with its counterpart in Jersey. The consultation paper was concise but sufficiently detailed, very well set out and extremely informative.

The content of the consultation paper confirmed that the island has generally been well-served on both 'northern' and 'southern' routes by the present operator and, by implication, the prevailing arrangements between government and the operator. I agree with the following statements in the executive summary: *'The current arrangements give reliable and robust services, which are frequent and year-round...customer satisfaction surveys show that Channel Islands residents who took part are mostly satisfied with the quality of service... [and] whilst some CI fares were high in comparison with other similar services, there is also evidence of good value for money.'*

On the matter of competition, I broadly agree with the conclusions reached in the review carried out by Oxera for Jersey's Economic Development Department, as set out on page 24 of the consultation paper: *'It is important to note the considerable caution expressed regarding competition...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.'* I was reassured that this advice reached the executive summary of the paper: *'Research has shown that unrestrained competition is unlikely to work. Hard-won stability and reliability could be undermined.'* I hope and trust that this policy position will not be diluted in any way in any proposals arising out of the consultation process. Encouraging competition in the ferry market would be futile and damaging.

As you know, I am a critic of the market and regulatory arrangements prevailing in the utilities sectors, where a poorly-conceived regulatory model was imposed, and regrettably remains in place several years later, seemingly on the basis of a flawed or incomplete vision of the local postal, electricity and, to a lesser extent, telecoms markets. It would be unforgiveable to visit such lamentable errors upon the car and passenger ferry market. To avoid that outcome, the Department will need to disregard any ideological pursuit of free market solutions, which I am sure will be favoured by some respondents; and will need to frame any licensing or regulatory arrangements in ways that are proportionate to the market model likely to prevail (which might best be described as a quasi-monopoly).

With this in mind, I am wholly opposed to delegating oversight of the ferry market to an independent or third-party regulator, either in the form of a sector-specific organisation or the Office of Utility Regulation (or the JCRA in the other island). The consultation paper indicates that such an approach could cost more than a quarter of a million pounds a year, require the drafting of not inconsiderable additional legislation, and would likely yield few, if any, benefits. Indeed, the second page of the summary states: *'If this were funded from operator licence fees, it could result in increased fares.'* At present, regulation of the ferry market is undertaken by the States of Guernsey and Jersey. It seems to me that this may be an area where there is scope to enhance co-operation between the islands, possibly with a view to establishing one pan-island regulatory model administered jointly by the islands' Departments (C&E in Guernsey; EDD in Jersey).

I agree with many of the sections of the consultation paper which address opportunities to vary fare levels, for example: *'...the Napier/Pederson study suggests that to achieve substantially lower fares the solution has often been to introduce a government subsidy... [and] 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.'* It may be that such issues will need to be confronted, but because of their importance to the community they should fall in the ambit of politics, which further confirms me in my view that responsibility for licensing and regulation should remain with democratically-elected and accountable politicians, not career regulators whose accountability to the public is essentially non-existent.

Thus far my comments amount to this: I would strongly oppose encouraging competition in the ferry market and any attempt to divest democratically-elected politicians of their responsibility to regulate the market. However, even within these parameters, the consultation paper helpfully sets out a range of options or possible models concerning the use of permits or licences, the gathering of data, and the strength of regulation.

Sound policymaking relies on theory and empirical evidence. In pursuit of the latter, I am inclined to support the gathering of further data on the ferry market, along the lines set out on page ii of the executive summary: *'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.'* I am, however, dubious about the appropriateness and benefits of undertaking an in-depth efficiency and profitability review. In that respect, I tend to agree with the final sentence on page iii of the executive summary: *'An efficiency review may...be a disproportionate measure at this stage.'*

Of the five options set out by Oxera, and proposed as realistic policy options on pages iv and v of the executive summary, and while noting Oxera's enthusiasm for option one (*non-exclusive licences, subject to obligations*), my initial view is that I would favour option three (*maintain status quo*) or possibly option four (*licensed tendered monopoly*).

Option two (which is basically option four without a tender process) is inherently unfair; and option five is likely to be unsustainable. My scepticism about option one is based on two points: first, as I explained above, I do not wish to invite an independent regulator into the ferry market to *'...advise in setting the cost of the winter service and overseeing the associated agreements'*; and second, it could, in my view, incur some of the risks which earlier in this submission I have implored the Department to avoid. Incidentally, Oxera's conclusion to favour option one appears to me somewhat inconsistent with the evidence gathered in their analysis.

The consultation paper states: *'The current joint CI 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 second clause of that sentence is extremely important: as I am sure the Department acknowledges, it is essential that robust, reliable, year-round services are maintained. I am, though, far less convinced than either (as I understand the position from the consultation paper) the Department or Oxera that actual competition or the threat of competition provides any genuinely useful purpose in the maintenance by the present operator of good levels of service and reasonable fares. That is why I have mixed views about whether I would prefer to support option three or four.

Option three (maintain status quo) is well-understood, relatively simple to extend, has operated quite effectively, and allows for a not unreasonable degree of regulation by government. Option four (licensed tendered monopoly) may well provide for more robust regulation by government, which I find an attractive proposition, and may secure greater stability of levels of service and fares. On reflection, I wonder whether I am reaching the conclusion that a hybrid of options three and four might be most appropriate: non-exclusive permits underpinned by an enhanced service level agreement arising out of slightly more robust regulatory oversight by government.

I disagree with the following words on page v of the executive summary: *'Adopting one of the new options and enhancing fare regulation would require greater input from an independent regulator and would probably require new legislation.'* I cannot see how this is the case (especially vis-à-vis the need for third-party regulation) in respect of option four.

I note with interest the section of the consultation paper which sets out the experience in the Isle of Man: *'The Manx government directly regulates this de facto monopoly through a Service Level Agreement with its Department of Transport and there is no formal competition regulator role. The SLA contains similar conditions as are applied here in the CI. 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...The Manx form of price regulation can be seen to be a little different to that in the CI and further consideration could be given to whether the current arrangements for fare regulation locally should be enhanced.'* I agree entirely that such a model might be very instructive in any reforms undertaken in Guernsey.

Before I conclude, I wish to make a couple of points in respect of process and some of the language used in the consultation paper.

Page five sets out broad policy objectives which exist in Jersey. Without wishing to comment on their content, they are an example of precisely the sort of policy objectives which I have long believed should be debated by the States of Deliberation as part of departmental policy plan debates integrated into the annual strategic planning process.

Meanwhile, throughout the consultation paper, there is reference to 'Minister' when in respect of Guernsey reference should have been made to 'Department' or 'Department Board'. For example, page 27 states: *'The involvement of the regulators would continue as now and regular fare reviews could be carried out on behalf of the relevant Minister(s).'* I should like to request that when publishing papers jointly with Jersey, the Department makes more effort to employ language which respects that while the other island very unwisely has a system of ministerial government, happily Guernsey does not.

And finally, with that in mind, I am not content with the final sentence of the consultation paper's conclusion, which reads: *'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.'* The manner in which Jersey wishes to manage its affairs is, of course, a matter for them; but in Guernsey the future of sea transport policies should not be announced by a Minister, but laid before the States of Deliberation for debate. I would appreciate confirmation as soon as possible that the Department will submit a States Report on this matter at the appropriate time.

I thank the Department for affording me the opportunity to offer these observations, and I hope they will feel able to take them into account when considering responses to the consultation paper.

Yours sincerely


Matt Fallaize