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FERRYSPEED

Response to JCRA's Consultation Paper
Freight Logistics Market Study

1 INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This document is submitted on behalf of Ferryspeed (CI) Limited ("**Ferryspeed**") in response to the Jersey Competition Regulatory Authority ("**JCRA**")'s consultation paper of 17 February 2022 concerning its preliminary analysis of the freight logistics market (the "**Consultation Paper**"), which is accompanied by a draft report "Freight Logistics Market Study Draft Report" prepared by Fisher Associates (the "**Draft Report**").
- 1.2 The JCRA is consulting on the evidence, draft finding and options for recommendations set out in its draft report and accompanying documentation. In particular, it has sought feedback on:
- (a) The JCRA's understanding of the markets in question.
 - (b) The JCRA's draft findings in relation to (i) barriers to competition; (ii) lack of diversification; (iii) understanding and driving improvement.
 - (c) The merits and challenges of the potential options for recommendations under each theme as outlined in b) above.
- 1.3 Paragraph 2.5 of the Consultation Paper describes the market study as a flexible tool to explore whether a market, or a feature of a market, is working well for consumers.
- 1.4 However, the Consultation Paper and the Draft Report do not appear to have applied a systematic framework for assessing this question in the context of this market i.e. whether the Jersey freight logistics market serves customers and consumers well (from both a demand and supply side perspective), and does not meaningfully address this question in the round. Consequently, the competitive dynamics and how they relate to outcomes have not been systematically assessed.
- 1.5 The JCRA's 2017 market study on the freight logistics market found that:
- (a) Customers and consumers in Jersey are generally satisfied with (i) the freight market as a whole; (ii) the level of service and price; (iii) alternative options in the event customers are no longer content with current providers.
 - (b) Customers have a sufficient choice. Large customers, which constitute the majority of Ferryspeed's customer base are always able to hold suppliers to account.
 - (c) The freight logistics industry could be characterised by low margins, fierce competition and relatively easy and expansion (as evidenced by history). Consequently, freight logistics providers can never operate unconstrained.
 - (d) The freight logistics business is not dissimilar to many other competitive businesses. Long term success is directly related to efficient operation.

- 1.6 The current Draft Report does not provide evidence that these circumstances have materially changed, nor has it sought to dispute the evidence put forward by Ferryspeed that in all important respects the market continues to work well for customers. Indeed, the Draft Report explicitly confirms that customers continue to be happy with the service they receive.¹ Notably, there is no evidence or coherent analysis of whether the current level of concentration in the market is driven by any barriers to entry or whether the current level of concentration is associated with any poor customer outcomes.
- 1.7 The Draft Report neither provides a coherent analysis of concerns in this market, nor of the impact the proposed recommendations could have on the challenges that might exist. Furthermore, the report fails to demonstrate an addressable competition law problem – for example, customers not being served; issues with quality of the service provided; or concerns about price. The report of KPMG, annexed to this paper, sets out what a more systematic and coherent framework should look like.
- 1.8 By failing to create the right framework to investigate issues in the market and by failing to present an adequate mechanism to consider and assess the relevant evidence, whilst relying on factually inaccurate assumptions (e.g., Ferryspeed's financial position or contingency plans), the options for recommendations presented in the Draft Report are impractical and often flawed from both a legal and factual perspective. In summary:
- (a) Theme 1: Barriers to competition. Whilst Ferryspeed agrees that there is scope to improve usable capacity in the ports (especially in relation to the warehousing space), the remedies proposed in the report would involve a significant intervention by the States with questionable results, as well as increased cost for freight operators (and ultimately customers).
 - (b) Theme 2: Lack of diversification. In this theme, the suggestions and concerns around resilience are flawed and not supported by any evidence to show a concern. The report simply assumes that a small number of suppliers implies a lack of resilience, and suggests that adding suppliers would improve the position. However, it fails to offer any analysis why this is the case either for logistics or for the other services (lo-lo or alternative routes) it considers. Indeed, as we know from high profile failures, for example in UK retail energy markets, a proliferation of suppliers does not necessarily improve resilience and may make matters worse if there are systemic challenges in a market. As far as the proposed remedies are concerned, the Draft Report does not indicate whether there is demand for the suggested services, nor it offers any evidence how these additions would contribute to the operation of the market.
 - (c) Theme 3: Understanding and driving improvement. Ferryspeed welcomes any opportunity to drive improvement and enhance customer service. This is why it has been investing consistently in improving its operations and services through

¹ Draft Report, page 9.

innovation. However, more clarity is needed to understand how the recommendations are intended to take shape. There may well be useful scope for productive cooperation on common concerns at the port through a user forum and through better data gathering exercises, but any such activity also needs to be conducted in a way that does not itself create competition concerns. Thus, it will need to be constructed with appropriate governance and safeguards.

- 1.9 There is no case for the intervention by the States of Jersey as recommended in the Draft Report and certainly no argument for significant intervention. Clearly, there are challenges that arise from the state of the available infrastructure at the port and, therefore, one has to ensure that best use is made of the common resources available. Ferryspeed is of the view that there is scope to ensure that the States of Jersey and the Harbour authorities make best use of their own assets so that freight logistics operators can work more efficiently and, therefore, service their customers in Jersey more coherently. This would involve looking at elements such as land use at ports, management of ports, port expansion alternatives. All this could maximise capacity and, if required, reduce the need for physical expansion of the port.
- 1.10 Ferryspeed also supports the idea of a holistic plan focused on freight logistics to overcome space constraints and make the most of the usable space available.
- 1.11 However, allocation and use of resources must be in line with market principles so that the resources that are available are used effectively and efficiently.

2 THE MARKET STUDY LACKS A COHERENT FRAMEWORK FOR ANALYSIS

- 2.1 As the JCRA correctly points out in the overview section of its report, a market study's aim is to assess how well a market, or features of a market, works and if any changes should be recommended to make it work better. All this has to be conducted in context – looking at the relationship between customer behaviour in that market and the businesses that operate on that market. The Draft Report focuses on exploring, albeit in a selective manner, the latter, whilst disregarding the former.
- 2.2 The Draft Report fails to indicate whether the freight logistics market works well for customers. Unlike the 2017 JCRA study which focused on customer satisfaction and choice, this Draft Report focuses narrowly on only one economic consideration for customers – choice, without analysing it properly, including in terms of the extent to which choice may be associated with good or bad outcomes for customers:
 - (a) Understandably, when choosing the freight service, quality of that service comes first for customers.
 - (b) Customers also rely on operators delivering the service at a particular standard, in relation to timeliness, accuracy and suitability. When the service standard is frequently met, customers develop a sustainable and trustworthy relationship

with the operator (which also explains Ferryspeed's growth and position on the markets in question).

- (c) Price is also a factor for customers. However, as indicated in JCRA's 2017 market study, "*customers are content with prices and service levels offered*" even in the segments where there is less choice. There is no suggestion that anything has changed in this respect since then.

2.3 Indeed, to the extent it does address the views of customers, it appears those are favourable and have not materially changed since 2017. For example, the Draft Report states that "*this market structure has served Jersey well during the pandemic and there was overwhelming agreement that freight logistics has performed well.*"²

2.4 In fact, the evidence suggests the market for freight logistics, whilst currently more concentrated than it has been in the past, works well for customers. Operators such as Ferryspeed are sufficiently constrained by the threat of current or potential competition and countervailing pressure from customers to meet the demand for high quality and good value pricing – economic factors that are valued on the island.

2.5 Further, the Draft Report chooses to focus on resilience of existing market operators, without any kind of serious assessment of the issue. It simply notes that there are limited number of providers. However, the report does not consider the extent to which resilience of individual providers (e.g., Ferryspeed) is a real concern but rather casts aspersions (to Ferryspeed's commercial detriment) without evidence. It fails to consider seriously what the causes of failure might be, whether there is any realistic prospect of such failure and what might happen in the event of a failure. There is therefore little evidence of a problem to be solved.

2.6 Indeed, as discussed further in the KPMG report, resilience can also be the outcome of a competitive process in a market such as that of freight logistics, and the fact that the market is seen as functioning well by customers and that Ferryspeed as significantly invested in the business, indicate that resilience is likely high.

2.7 On the contrary, the absence of a coherent framework means that some of the "options for recommendations" do not address any relevant concerns and do not have any assessment of their effectiveness in addressing the perceived problem. As outlined in more detail below for each theme, they are frequently impractical and in a number of cases they could be counterproductive, exacerbating some of the potential concerns expressed (e.g., resilience), or cause unintended harms to the operation of the market. In particular, this is true for the proposals pertaining to warehouse space at the port. Reallocating existing capacity without first seeking to look at how to create new (or enhance existing) capacity is both unworkable and disproportionate.

² Draft Report, page 9

- 2.8 Another significant flaw of the report is its use of "comparator" markets to draw similarities with Jersey. The Draft Report rightly points out that "*it is clearly not possible to find a mirror image of Jersey*" and that "*Jersey has a larger population than the others*". This should have been the point where one comes to realisation that one cannot compare very different economies, with different economic drivers and legislative frameworks.
- 2.9 The examples of other economies are also misleading, as they often relate to ferry operators and not freight logistics. These are two entirely different markets where the conditions of competition are fundamentally different.
- 2.10 The Draft Report nevertheless seeks to draw some parallels from these comparator islands, particularly in respect of freight logistics, observing that "*Jersey is an outlier when compared to international comparators, where multiple providers are the norm*" and that "*the situation in Jersey, in particular in freight logistics, does not reflect the economic fundamentals*".³ In fact, even on the face of information in the Draft Report, the comparisons are so slight as to be meaningless and certainly do not contribute an evidence base that could justify intervention. Furthermore, the direct comparison of freight logistics operators is limited to three heavily caveated paragraphs which observe that whilst other islands have multiple operators:⁴
- (a) "*it is difficult to identify whether these companies are focused on the comparator location, as many operate on a nationwide basis...*"
 - (b) "*We do not have information on the market shares of these companies and as with Jersey, it could be that a small number handle most of the freight.*"
 - (c) noting with respect to Shetland that "*each of the big three or four companies tends to have a specialism such as fisheries exports, higher volume/lower value goods like agricultural and building products*"
- 2.11 There is therefore no sense of scale of these different operators or whether they are indeed focused on delivery to the relevant island, or indeed whether this is in any respects a like for like comparison with Jersey in terms of the operators considered.⁵ There is also no systematic consideration over whether, as the Draft Report puts it "*the economic fundamentals*" are the same.
- 2.12 Indeed the Draft Report identifies, but ignores one fundamental that is clearly a relevant difference, that "*none of the other locations have the same restrictions on the roads as Jersey, so they have the flexibility to deliver goods straight to customer sites or to inland*

³ Draft Report, page 23.

⁴ Draft Report, page 20.

⁵ We note that the JCRA's FAQs dated 19 July 2021 specifically excluded from the study "*bulk transport and storage of fuel and related products*". It is therefore unclear whether a similarly restrictive approach of types of provider was taken into account for other islands and whether a like for like approach might suggest that Jersey has a more comparable number of suppliers to others.

*warehouses/depots, and to hold goods at site until they are sent to the port for loading"*⁶ and also that "*in the comparators, there are no restrictions on the road network, which means that refrigerated goods do not need to be split for distribution in the port, so there is not the same pressure for freight operators to have cold chain facilities on the port estate"*.⁷

3 THEME 1: BARRIERS TO COMPETITION

3.1 Ferryspeed agrees with some of the observations made in the Draft Report concerning, for example, capacity at ports and would be supportive of improvements in that respect. Having said that, classifying these issues as "barriers to competition" is inaccurate from both a legal and a factual perspective.

3.2 Further, and as set out below, the options for recommendations are flawed as they are not only selective, but they would require a significant intervention by the States with questionable results.

A. Lack of space in the port

3.3 Depot/warehousing space is an important economic factor which has to be considered in the context of the freight logistics market. All freight logistics providers require access to depot and warehousing space and, as the Draft Report has flagged, Jersey may be unusual by the standards of comparators in that most of the space needs to be at the port. Capacity is available for additional depots in the UK and Guernsey, but access to additional depot space in Jersey remains challenging, apparently as a consequence of Jersey's specific road restrictions. The available warehousing space in Jersey barely meets the demands of operators, especially in light of changes to shipping volumes in the last two years which have been marked by the COVID-19 pandemic which created pressure on operators but also long term changes to consumer habits and customer requirements.

3.4 These conditions have led Ferryspeed to undertake consistent investments in its own infrastructure, and it has been operating several depots not only on the island but also on the mainland.

3.5 Illogically, the report appears to suggest that Ferryspeed's use of warehousing space and desire for additional capacity leads (or could lead) to an adverse market outcome. Such a suggestion is wrong both as a matter of principle and by reference to the facts:

- (a) The reasons for the absence of sufficient warehousing space in Jersey appear to be (i) the necessity for space to be near the port, due to Jersey specific restrictions; (ii) lack of effective development of space at the port, owing to

⁶ Draft Report, page 29

⁷ Draft Report, page 31

planning and other similar delays; and (iii) lack of investments and careful planning by operators at the port.

- (b) Creating additional capacity and flexibility at the port are undertakings that have been under consideration by the States for some time and, to the extent they can be accelerated, or regulatory constraints to such developments removed, Ferryspeed is entirely supportive of this
- (c) Ferryspeed has been the only operator making significant investments in the harbour. For example, it built a temporary warehouse; in the process of rebuilding a shed to improve operations and throughput levels; invested in infrastructure and people. All this allows 24 hour operations with significantly optimised warehousing space. Other operators have been consistently inefficient in their warehousing planning. The draft report states that Woodside Logistics have half a warehouse which does not allow them conventional in-out vehicle flow and impacts on efficiency. Ferryspeed has operated from this space in the past and considers that Woodside Logistics could optimise its space in the same way Ferryspeed has done – for example, moving car parking space and paying for parking in the quay area to make better use of the facilities it has. The report does not address these possibilities as a more proportionate measure. Rather, it suggests effectively allowing rivals access to facilities and infrastructure that Ferryspeed has invested in developing and optimising.
- (d) The suggestion that height restrictions in the tunnel under Fort Regent⁸ is a constraint on potential use of space is not, based on Ferryspeed's experience, accurate. Ferryspeed currently moves high vehicles to Rue Des Pres using the tunnel. Ferryspeed believes that the height of the tunnel allows for the maximum height allowable on the Condor ro/ro vessels. Trailers can be built to the maximum height of the tunnel, which may require a different specification to that of the UK, but that is an adaptation that Ferryspeed has been prepared to make and others could consider.
- (e) Ferryspeed has been the only operator that secured and developed additional capacity by simply being entrepreneurial. In 2020 when Paul Davis Freight Services ceased trading Ferryspeed acquired its sheds. Similarly, when JW Huelin exited the market in 2013, Ferryspeed expanded its capacity by acquiring the sheds. That capacity (on both counts) was available in the market for as long as 12 months without other operators expressing any serious interest in its use.
- (f) Even an operator with financial limitations to build a new warehouse or acquire a shed, can optimise existing space by installing additional facilities such as mezzanines and load banks (as Ferryspeed did).

⁸ Draft Report, page 27.

(g) Ferryspeed, unlike the remaining operators, operate all its depots at extended hours. This leads to materially higher volumes and greater efficiency which in turn have allowed Ferryspeed to grow and make additional investments. Far from being a complacent operator who is not serving customers well, Ferryspeed has shown competitive drive to invest, deliver excellent service and win and retain customers on its merits.

3.6 All of this shows that with careful planning and pro-competitive investments (initiated by the operators), there are solutions which do not involve a significant States intervention. The latter could clearly lead to inefficient use of assets and potentially increased cost (ultimately for end customers).

B. Condor rate card

3.7 The Draft Report mentions the Condor Rate Card in passing and in a contradictory and inconsistent manner. Whilst the report recognises that the Rate Card was outside the scope of a market study and the accompanying terms of reference,⁹ it nevertheless appears to accept the arguments of others and presents the Rate Card as a "barrier" and a factor which has contributed to high concentration on the Jersey freight market.¹⁰

3.8 There is no basis for such a conclusion. Assessing the competitive impact of the rate card would require a much more complex consideration of the market and ferry operator costs than it has even attempted in the market study. Indeed, on its face, the Rate Card is structured as a fairly conventional means to offer a volume discount, which is usually an indication of efficiencies. Discounts are available to anyone depending on the per lane metre for commodity cargo. To the extent any comparison can be identified, there appear to be similar volume based rate cards in at least some of the comparator locations referenced in the market study.¹¹ There can certainly be no presumption that such a rate card poses a barrier or creates competitive harms.

3.9 We note on page 27 of the Draft Report that the States of Jersey are currently negotiating the operating agreement with Condor. Whilst this is presented as a good opportunity for the government to consider the outcomes it wishes to influence with regard to freight logistics, Ferryspeed would note that it has not, as yet, been consulted in relation to the ongoing negotiations.

C. Options for recommendations

3.10 The Draft Report presents two options, summarised as follows:

(a) Facilities planning and leasing strategy: The Port Masterplan should improve the working environment. It is also important to have a holistic plan focused on

⁹ Draft Report, page 28.

¹⁰ Ibid.

¹¹ Draft Report, page 30

freight logistics which could overcome space constraints and ensure flexible use of infrastructure which is responsive to the changing needs of the sector. This includes the review of all leases in the port estate.

- (b) Multi-user facilities: Ensuring access to warehousing for all, with facilities managed by a third-party provider as opposed to individual freight firms. This could increase efficiency and capacity and provide the flexibility required to meet the needs of the sector.
- 3.11 It is notable that the Draft Report does not even assess other measures that might be suggested by its analysis, such as changes to the regulatory environment in the States of Jersey, or encouragement of investment in existing facilities.
- 3.12 Ferryspeed is of the view that there is scope to ensure that the States of Jersey and the Harbour authorities make best use of their own assets so that freight logistics operators can work more efficiently and, therefore, service their customers in Jersey more coherently. This would involve looking at elements such as land use at ports, management of ports, port expansion alternatives. All this could maximise capacity and, if required, reduce the need for physical expansion of the port.
- 3.13 Ferryspeed also supports the idea of a holistic plan focused on freight logistics to overcome space constraints and make the most of the usable space available.
- 3.14 However, any optimisation of available space should be a direct consequence of new investments by existing and new operators, as well as the harbour. An attempt by the government to engineer the market by allocating space, either through its lease strategy that provided indirect state support to particular market players, or by other means, can only lead to poorer service and higher prices. Space should not be artificially allocated to pick winners, but competed for, so that it can be made best use of.
- 3.15 The second recommendation suggests even more artificial intervention that is likely to lead to unpredictable and adverse outcomes. The Draft Report suggests that "*access to warehousing for all*" should be ensured, by installing a third party logistics provider to manage the facilities (as opposed to individual freight firms). Such a "remedy" does not address any potential concerns and is fraught with risks of failure:
- (a) A third party logistics provider would not have the required experience and expertise to manage warehousing space in an economy that has unusual characteristics and is driven by its own distinct economic factors;
 - (b) Having a third party operating the facilities would not be practicable unless the same structure/figure is mirrored in Guernsey;
 - (c) The third party provider would most likely be selected following a public procurement procedure that would not involve the freight logistics operators who would be the end users of the facilities. As such, companies like Ferryspeed

would not be in a position to "test" this company's expertise and plans for the warehousing optimisation.

- (d) Historically, it is a solution that has been tried and failed. DSV managed its own warehousing space prior to sub-contracting it to a third party logistics provider. Shortly afterwards, DSV transferred business to Ferryspeed as it came to the realisation that Ferryspeed could provide a higher quality service at a lower cost, and also proved to be more resilient. The list of consultees in Annex 1 of the Draft Report does not include any of the major 3PL providers which suggests that no serious consideration has been given to their views as to their ability and appetite to deliver such a service.
- (e) Last, but not least, it is not clear from the report how the States plan for the cost associated with this third party provider to be recouped. Ferryspeed would strongly disagree with a proposal where freight operators would have to bear the cost for a service that is not needed. Moreover, such a service could introduce inefficiency in how space is configured and used as a generic 3PL warehouse will not be optimised for any provider. This would put additional pressure on the operators, and ultimately feed through to customers and ultimately consumers in Jersey.

4 THEME 2: LACK OF DIVERSIFICATION

A. Overview of the Jersey market and the resilience of its ferry operators

- 4.1 Most goods are imported into the Channel Islands from both the United Kingdom and France. Any production that originates from Jersey and Guernsey is also predominantly exported to the same two countries. Thus, relying on the service provided by ferry operators and freight logistics operators is indeed critical.
- 4.2 The Draft Report correctly points that the market is characterised by one Ro-Ro operator and trade with the UK. It is also true that the current market structure has served Jersey well during the pandemic. However, beyond these observations, the remainder of section 5 of the JRCR draft report is speculative and self-serving. It does not offer any serious discussion of the interrelationship between the resilience of the Ro-Ro operator, the freight provider and the trade originating from/to the UK.
- 4.3 At the outset it should be noted that Ferryspeed is not in a position to comment on the findings regarding Condor's resilience and the operating agreement it has in place with the States of Jersey. However, it would be difficult for any directly concerned stakeholder to comment on statements that are not supported by any quantifying evidence. Just by way of an example:

- (a) "What would happen if Condor fails?"¹² Has a cause for a concern been identified? If so, what does it relate to?
- (b) The Draft Report first points out that the capacity utilisation of freight is about 75% overall and that there is enough Ro-Ro capacity to meet demand. This is also supported by stakeholders' views who "*do not have problems with shortages of RoRo capacity when the services are operating normally*". Yet the report speculates that "*once this pattern is disrupted...there will be issues with trailers/containers being stuck in the port, exacerbating current congestion problems*", followed by the admission that "*the number of units in and out will reach equilibrium after a few days*".¹³ It therefore presents an incoherent and inconsistent picture of whether there is an issue with Ro-Ro ferry capacity.

B. Draft Report's findings in relation to Ferryspeed

- 4.4 The Draft Report notes that Ferryspeed has become the largest freight logistics provider following the exit of a number of firms (e.g., Condor Logistics, Bowmans Haulage). The report then suggests that "*[a]lthough Ferryspeed is well regarded, this exposes Jersey to the risk of being reliant on a single firm*", followed by various speculations that Ferryspeed may not have a succession plan in place, or that Ferryspeed could fail which would result in Woodside Logistics stepping in (if possible given the potential involvement of administrators¹⁴).
- 4.5 Such careless statements made without putting these questions of operational and financial resilience to Ferryspeed during the market study process are irresponsible and damaging. They unjustifiably and unreasonably harm Ferryspeed and needlessly worry customers – who assume that speculation in a government report is grounded in fact, rather than groundless casting of doubt on Ferryspeed's resilience and overall operations.
- 4.6 Ferryspeed, an entirely owner managed business, began its operations as a small business (run with a single vehicle) and has grown over a period of several decades through a commitment to understanding its customer needs, ongoing investments and efficient management. In terms of its overall resilience:
 - (a) Ferryspeed is a company in an excellent financial health, which has shown admirable resilience throughout the years (i.e., when most companies failed, Ferryspeed continued growing through various difficult economic cycles). Ferryspeed has always operated efficiently, invested consistently and delivered high levels of customer service which allowed it to remain profitable. In the last couple of years, Ferryspeed has not ceased undertaking significant investments

¹² Draft Report, page 35.

¹³ Ibid.

¹⁴ For completeness, it should be noted that the concept of "administrators" does not exist under Jersey's laws.

in its business, which include warehousing, mezzanine floors, IT systems, customer clearing systems and bonded facilities. Importantly, these investments have been built up largely from retained profit and not outside capital or borrowing, which makes Ferryspeed one of the least leveraged and most successful companies on the Jersey market.

- (b) To suggest that Ferryspeed could fail is flawed from a legal, financial and factual perspective. It is a company that survived events such as (i) Sealink British Ferries cessation of operations to the island 1986; (ii) the 1990 recession; (iii) British Channel Island Ferries ceasing operations to the islands in 1994; (iv) the 2008 recession; and (v) the recession caused by the pandemic in 2020 and 2021. Even if it failed, the freight logistics market is an open market characterised with low regulatory barriers to entry and, thus, another operator (new or existing) could step in and take over the assets and the service – as Ferryspeed did in the past when other companies failed.
- (c) If, as suggested by the Draft Report, the key limitation is access to facilities at the port, in the event of Ferryspeed's failure, the assets (currently very effectively used by it) could become available to others who can step in. In the past, the outcome of such situations was not a lapse in customer service, but adoption of assets and contracts, and growth of smaller players (e.g., Ferryspeed).
- (d) Ferryspeed has traded successfully for several decades. During the COVID-19 pandemic Ferryspeed was eligible for the "co-funding scheme" which it claimed initially, but it quickly ceased to claim funds it was eligible for and promptly repaid those sums. To imply that administrators could be involved is naïve in the extreme.

4.7 Secondly, to assume that a market player like Ferryspeed does not have any succession plans in case its management team retires is erroneous (i.e., page 37 of the Draft Report indicates that "*..several stakeholders have raised concerns about Ferryspeed's succession planning, i.e., what will happen when the current leadership team retire*"). To elaborate:

- (a) Ferryspeed is a business with over 500 employees and a sizeable managerial team. The majority of the executive management team have been with the company for over 20 years.
- (b) The retirement, or untimely death, of either or both of the two controlling shareholders would not impede the day to day management or lead to Ferryspeed ceasing its operations.
- (c) Ferryspeed has been building a succession plan over a number of years, which would ensure undisturbed continuation of the business.

4.8 Finally, in more general terms, the implicit assumption in the Draft Report that a single operator automatically implies less resilience is misguided:

- (a) Specific potential concerns that the Draft Report has identified owing to a failure of assets such as a fire or other failure at a Ferryspeed warehouse¹⁵ are not a concern that arise from having a single operator – as with Condor (and indeed as with Ferryspeed's multiple warehouses in Jersey) they are addressable by diversification of assets. The suggestion that Ferryspeed has a single UK warehouse in Portsmouth which could be "put out of action" is incorrect.¹⁶ In fact, Ferryspeed operates multiple warehouses in the UK (the Portsmouth is 23 acres housing multiple warehouses) and has sufficient resilience to operate its business even if part of its physical infrastructure were affected by a highly unusual event such as a fire;
- (b) Financial failure (for which there is no basis for concern) would not mean cessation of the service for customers. There would be various options under the applicable Companies (Jersey) Law 1991 and under the Bankruptcy (Désastre) (Jersey) Law 1990. For example, as a first step a distressed company would be able to enter into a company voluntary arrangement which would result in a composition or an arrangement with the creditors in satisfaction of some, or all, of its debts. Also, in the circumstances of a financial failure and in case the company voluntary arrangement failing, there would be no need to "wind up" the company. The laws in Jersey allow for liquidators, immediately after their appointment, to enter into an agreement for the sale of much of the business and assets of the companies to a pre-designated purchaser (the so called a "pre-packaged sale") who could then could secure the assets and "save" the business.
- (c) As has become clear in the UK, "more operators" is not necessarily a better solution, if in creating diversification operators are individually weakened and are therefore collectively at risk of market changes. That has been seen very recently in markets for energy retailing in the UK, where multiple operators have failed, in part because a number have been sub-scale to hedge well. Similarly, in markets such as the operation of residential care homes, market conditions led to unsustainable business models. Indeed, as discussed further in the KPMG report, resilience can also be the outcome of a competitive process in a market such as that of freight logistics, and the fact that the market is seen as functioning well by customers and that Ferryspeed as significantly invested in the business, indicate that resilience is likely high.
- (d) There is no attempt at assessing the reasons for past failures in Jersey or the impact of proposed diversification. In markets that inherently depend on

¹⁵ Draft Report, page 38

¹⁶ Draft Report.

efficiency of full utilisation of assets, measures that create inefficiencies are unlikely to improve resilience.

C. Options for recommendations

- 4.9 The options for recommendations presented in the Draft Report, that are said to be capable of addressing alleged lack of diversification, can be summarised as follows:
- (a) Support lift-on, lift-off (Lo-Lo) services: Address any infrastructure requirements to support Lo-Lo e.g., for refrigerated cargo, and thereby strengthen resilience by offering alternative to Condor Ro-Ro services.
 - (b) Support the development of French routes: Welcome and encourage initiatives to develop French trading links, for example providing Government stimulus support as appropriate. This could also include the development of customs skills and dissemination of market information.
- 4.10 The basis of these candidate recommendations is wholly unclear. The Draft Report does not indicate, or provides any evidence whether demand for these services exists or how the addition of a Lo-Lo service or French routes would contribute to the operation of the market, certainly to the extent they relate to diversification of the freight logistics market.
- 4.11 Whilst Ferryspeed does not object to these ideas, a key concern for these recommendations is that by implementing them, the issues identified elsewhere in the Draft Report could intensify, notably the limited availability of warehouse space at the port. If that space is diverted from services for which there is clear, proven demand to those for which there is less demand, it is ultimately customers that would suffer as they will be less well served.
- 4.12 The Draft Report does not seem to have assessed any of the economic factors relevant to the introduction of new French routes, including:
- (a) Purchasing power of, for example, UK supermarkets, which they may not be able to replicate in France;
 - (b) Freight cost;
 - (c) Grocery prices. According to sources in the public domain, grocery prices in France are approximately 4.16% higher compared to the UK¹⁷.
 - (d) Brexit. Whilst Guernsey and Jersey did not benefit from the UK's membership of the European Union other than in a limited fashion via Protocol 3 of the United Kingdom Treaty of Accession to the European Community of 1973 and

¹⁷ See Axis Finance's report on "Cost of living in France compared to the UK" available [here](#).

confirmed in Article 355(5)(c) of the Treaty on the Functioning of the European Union (“**Protocol 3**”), Protocol 3 brought the Channel Islands within the EU Single Market for the purposes of trade in goods (but not services). Protocol 3 ceased to have any effect after the UK had left the EU.

- (e) Environmental impact. Introducing new routes could lead to supporting a significant carbon deficit which would be at odds with Ports of Jersey's ambitious sustainability which specifically aims to reduce port related carbon emissions by 30% by its customers by 2030 and by its business partners by 2035.

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- 4.13 Should the States of Jersey decide to, nevertheless, take this recommendation forward and initiate the provision of government stimulus funding to support these services,¹⁹ such stimulus should be made available in a transparent and non-discriminatory manner, consistent with subsidy control principles. In these circumstances, it is likely that Ferryspeed would like to be considered.

5 THEME 3: UNDERSTANDING AND DRIVING IMPROVEMENT

A. The importance of innovation

- 5.1 The freight logistics sector is undergoing significant change arising from the use of IT and other technology, which is increasingly also driven by customers, who are implementing similar change in their own businesses.
- 5.2 This is why Ferryspeed has sought to improve efficiency, enhance customer service and better understand how well its services are performing. It has invested significantly in IT to improve the customer experience (including a new track and trace system), digitised load lists and defect report systems. It also has several projects in the pipeline.

B. Options for recommendations

- 5.3 Ferryspeed welcomes the recommendations for driving improvement, which are important for the industry as a whole. It further notes the desire to remediate "*the barriers to understanding and driving improvement*" by promoting collaboration and sharing of information²⁰. This would involve work and support by a wide pool of stakeholders in order to be successfully implemented.

Data reporting

¹⁸ <https://www.ports.je/news/ports-of-jersey-publishes-ambitious-sustainability-strategy/>

¹⁹ Draft Report, page 40.

²⁰ Draft Report, page 49.

- 5.4 This recommendation entails the creation of a new code of practice on "*expectations for data reporting*" which could then assist to provide meaningful monitoring of freight logistics services.
- 5.5 Ferryspeed would need additional information and clarity around this proposal in order to be in a position to form a meaningful view as to its merits. More specifically:
- (a) Who is going to lead on the creation of this new code?
 - (b) How will the consultation process be organised?
 - (c) Who will gather the data and how will the data be disseminated?
 - (d) How will the authority ensure that the data collected has the same value and metrics? Different operators may have different means of collecting data which could overburden the data collector.
 - (e) What will be the frequency of the data collection?
 - (f) What will be the end-product provided to operators?
 - (g) Whilst it is recognised that this exercise "*should not be a burden and metrics should not be easily gamed*", the recommendation fails to present a mechanism through which this could be achieved.
 - (h) How will confidentiality be preserved? Moreover, what kind of competition law safeguards will be put in place to ensure that this data reporting exercise is not used as a vehicle for exchange of competitively-sensitive information?

User forum

- 5.6 The suggestion to establish a user forum or freight logistics cluster to "*encourage the sharing of ideas; greater communication and collaboration between all players in the supply chain; and to drive improvements and innovation*" is intriguing. It is expected that this forum will provide "*a safe place for members to talk about what is not going so well, manage expectations and make suggestions for improvement in a constructive manner*".
- 5.7 There are two immediate questions that are associated with this option for recommendation that need to be carefully considered.
- 5.8 First, if members are expected to share what is not going so well, then these meetings would also have to be attended by government representatives and other stakeholders that have power to initiate legislative or other operational changes. Otherwise, this forum simply becomes another trade association with no actual influence.

5.9 Secondly, given the concentrated nature of the market and the small scale in Jersey, the establishment and operation of this user forum would have to be entirely compliant from a competition law perspective. More specifically:

- (a) The user forum should be governed by a set of specific (legal and operational) rules which would need to be agreed and published in advance.
- (b) A competition law protocol would have to be agreed and presented by an independent chair in advance of each meeting.
- (c) Each meeting would have to follow a pre-agreed agenda.
- (d) Meetings will have to be minuted.

Encouraging Innovation

5.10 The third option for recommendation under this theme contains no detailed proposal that can meaningfully be commented on.

5.11 Nevertheless, Ferryspeed welcomes the suggestion that the government should have a role in "*stimulating enterprise and encouraging greater innovation and R&D*", followed by the idea of a "*pilot funding for projects that advance improved efficiency and environmental gains in the freight logistics market*". Again, any such projects should be promoted in a transparent, non-discriminatory matter, consistent with subsidy control principles.

6 CONCLUSION

6.1 In the entirety the Draft Report fails to explore the fundamental questions that should be posed by a market study, i.e., it has not systematically assessed competitive dynamics and how they relate to outcomes, and therefore whether the Jersey freight logistics market serves customers and ultimately consumers well (from both a demand and supply side perspectives).

6.2 Rather, the Draft Report - not having systematically assessed competitive dynamics and outcomes - has chosen to focus on issues which are outside the remit of freight logistics operators and which the Draft Report has chosen to call "barriers to competition" – namely, lack of sufficient warehousing capacity and lack of sufficient "diversification" on the market. In doing so, the Draft Report has managed to unreasonably and unfoundedly cast doubt on Ferryspeed's resilience through speculative hypotheses at complete odds with the facts, concerning its warehousing space, financial viability and succession plans.

6.3 The options for recommendations, which would supposedly remedy the concerns, would either require a significant intervention by the States (which should be a measure of last resort in a market economy), and/or their concept and anticipated implementation are entirely unclear.

- 6.4 Consequently, there is no case for JCRA's intervention and certainly no argument for significant intervention. The freight logistics market serves customers well. There are no concerns (or at least none have been expressed) around the two main economic drivers for customers' choice - price and quality of a given service.
- 6.5 Consumer welfare is and should be the linchpin of a modern, successful antitrust framework, and market studies are a useful tool to guarantee this. However, interventions by competition authorities should be approached with a caution and they should only come into play when there is sufficient evidence to suggest that customers are not served well (either from the perspective of quality or price). None of this applies in this case.
- 6.6 All this poses the question: why would the JCRA want to fix something that is not broken?

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