



Proposed codeshare and handling arrangements for
scheduled air services between Guernsey and Jersey
Application for exemption by Aurigny Air Services Limited
and Blue Islands Limited

Consultation

Channel Islands Competition and Regulatory Authorities

Document No: CICRA 13/46

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1. Introduction

This consultation document has been issued by the Channel Islands Competition and Regulatory Authorities (**CICRA**) to seek comments on an application by Aurigny Air Services Limited (**Aurigny**) and Blue Islands Limited (**Blue Islands**) for an exemption in relation to proposed arrangements concerning scheduled airline services between Jersey and Guernsey.

Details of how to submit your comments to CICRA are set out in **Part 3** of this document.

The application

The Jersey Competition Regulatory Authority (**JCRA**) and the Guernsey Competition and Regulatory Authority (**GCRA**)¹ have received from Aurigny and Blue Islands an application (the **Application**) for exemption under Article 9 of the *Competition (Jersey) Law 2005* (the **Jersey Law**) and Section 6 of the Competition (Guernsey) Ordinance 2012 (the **Guernsey Ordinance**). The Application relates to proposed arrangements for codesharing on routes between Jersey and Guernsey and aircraft handling at Jersey Airport and Guernsey Airport.

The proposed arrangements

Under the proposed codeshare arrangement, Blue Islands would operate Guernsey-Jersey and Jersey-Guernsey services year round using its existing ATR42 aircraft, in accordance with a timetable agreed with Aurigny. Aurigny would cease operating its own aircraft on this route. The parties would agree an allocation of passenger, baggage, mail and cargo capacity on the flights, which would then be sold by them separately. Aurigny would sell space on the Blue Islands aircraft directly to its customers, pursuant to its commitment to purchase from Blue Islands a defined block of seats, baggage, mail and cargo capacity. Each airline would market its share of the capacity of the aircraft completely independently of the other, applying its own fares and terms and conditions. The airlines' separate schemes for frequent flyer points and corporate deals would continue to apply to seats that they each sold on the route.

¹ The JCRA and GCRA are together referred to as CICRA. Unless otherwise stated, all references to CICRA in this consultation document are to each of the JCRA and GCRA.

The agreed year round timetable would comprise 6 or 7 flights in each direction on weekdays, 4 flights in each direction on Saturdays and 3 flights in each direction on Sundays. All flights operated under the codeshare arrangement would be marketed by Blue Islands as operating carrier under its designator (code) SI and by Aurigny as marketing carrier under its designator (code) GR.

Under the proposed handling arrangement, Aurigny would provide or arrange on behalf of Blue Islands certain handling services in both Jersey and Guernsey for these services, including representation, administration and supervision, passenger services, ramp services, load control and security etc. Blue Islands would cease to use its existing handling agent in Jersey and Guernsey for services covered by the proposed arrangement.

The term of the proposed arrangements is currently two years, with the option to extend by mutual agreement.

The exemption process

Article 8(1)² of the Jersey Law and Section 5(1)³ of the Guernsey Ordinance prohibit agreements or arrangements which hinder or prevent competition in Jersey or Guernsey. However, certain types of agreements or arrangements which would otherwise be prohibited by the competition legislation as anti-competitive may be exempted by CICRA when they satisfy certain statutory conditions. The conditions which need to be satisfied before the exemption can be granted are discussed in **Part 2** of this document.

The consultation

Under Article 9(4) of the Jersey Law and Section 16(6) of the Guernsey Ordinance, CICRA is required to consult on any applications for exemptions. CICRA will consider the information provided by the applicants, together with any representations received in response to this consultation, when deciding whether an exemption would meet the four conditions discussed below.

² Article 8(1) of the Jersey Law provides that an undertaking must not make an arrangement with one or more other undertakings that has the *object* or *effect* of hindering to an appreciable extent competition in the supply of goods or services within Jersey or any part of Jersey.

³ Section 5(1) of the Guernsey Ordinance provides that agreements between undertakings which have the *object* or *effect* of preventing competition within any market in Guernsey for goods or services are prohibited.

This consultation relates only to Article 9 of the Jersey Law, since CICRA has concluded that air services between Guernsey and Jersey are already exempt from the Guernsey Ordinance under Section 56(2). To the extent competition issues are considered in relation to air transport services in Guernsey, this is done through the air licensing system, administered by the Commerce & Employment Department (**C&E**). While CICRA is not aware of any current consideration by C&E of the existing licences for services between Guernsey and Jersey, CICRA will summarise the responses to this consultation in its decision document, and provide this to C&E. It may be that C&E has regard to those responses at a future date as appropriate.

2. Exemption Conditions

An agreement or arrangement that would otherwise be prohibited under the provisions on anti-competitive agreements or arrangements can be granted an exemption by CICRA if it satisfies the conditions in Article 9(3) of the Jersey Law.

The conditions are that the agreement or arrangement:

- a) *is likely to improve the production or distribution of goods or services, or to promote technical or economic progress in the production or distribution of goods or services;***

The parties argue this condition is satisfied because (i) the proposed arrangements would create efficiency through the utilisation of one airline's aircraft, by providing sufficient capacity for the service but removing the existing over-capacity; and (ii) the joint service would operate modern ATR42 aircraft and fuel consumption would therefore decrease. The parties also note that the losses currently incurred by each airline on the route would be reduced under the proposed arrangements.

- b) *will allow consumers of those goods or services a fair share of any resulting benefit;***

The parties argue this condition is satisfied because the principal countervailing benefit to consumers would be the maintenance of some competition on the route. Given the losses made by each airline on the route, the applicants contend that the existing loss-making services are unsustainable, and so a reduction in competition would inevitably arise in the short term through the withdrawal of services.

- c) *does not impose on the businesses concerned terms that are not indispensable to attainment of the objectives mentioned in sub-paragraphs a) and b); and***

The parties argue this condition is satisfied because the proposed arrangements do not otherwise impose terms on either party not necessary for the achievement of its purpose. The airlines would continue to compete for business on the route by marketing the services independently, with separate fares, terms and conditions, frequent flyer schemes and corporate deals.

d) does not afford the businesses concerned the ability to eliminate competition in respect of a substantial part of the goods or services in question.

The parties argue this condition is satisfied because the parties will continue to compete with each other. They also submit that the proposed arrangements present the best possible chance of preserving competition on the Jersey-Guernsey route.

3. Responding to the consultation

CICRA invites any comments regarding the Application and in particular in relation to the exemption conditions.

A copy of the Application, with confidential information redacted, is available on request.

Comments should be submitted by hand delivery, post or email to one of the following addresses:

Suites B1 & B2
Hirzel Court
St Peter Port
Guernsey
GY1 2NH
Email: info@bicra.gg

2nd Floor, Salisbury House
1-9 Union Street
St Helier
Jersey
JE2 3RF
Email: info@bicra.je

All submissions should be clearly marked “Aurigny and Blue Islands – Application for Exemption - Consultation” and should arrive before **5pm on Friday, 6 December 2013**.

In line with CICRA’s consultation policy, responses to the consultation will be made available on the CICRA website. Any material that is confidential should be put in a separate annex and clearly marked as such.

CICRA will review the consultation responses and use them as appropriate in its consideration of the Application.