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Dear Tristen

**The future of taxis – regulatory reform**

Thank you for the opportunity to comment on the White Paper prepared by the Transport and Technical Services Department on the reform of taxi regulation in Jersey, “Taxi Regulatory Reform – Recommendations” (**the Recommendations**), published on 11 December 2013.

The desire by TTS to progress with reform of this sector is welcomed. To support this process further, the Jersey Competition Regulatory Authority (**JCRA**) wishes to highlight its remaining concerns as set out in its previous response, with the benefit of the TTS proposals as published in the White Paper.

In summary:

- 1. Quantitative restrictions and the related restriction of services provided by rank taxis and private hire vehicles should be removed as soon as possible.*
- 2. A phased approach gives too much weight to the risks of changing the status quo and in particular the impact on existing industry operators. Insufficient weight is given to the importance of addressing the disadvantages of the existing system. This is not in the best interests of all stakeholders, including new entrants.*
- 3. Qualitative restrictions should be no more than necessary to address substantive consumer protection priorities. Aspects of the service obligation standards as proposed, together with other requirements, create entry barriers beyond what is strictly needed.*

4. *There is a need for public transparency of both the procedure for setting fares and the methodology on which such fares are based. The removal of the ability of existing industry operators to further delay progress is a priority.*

## **Introduction**

It is useful to note the steps already taken in this reform process. In December 2010, following a request from TTS, the JCRA produced a report (the **Report**) suggesting changes to the current taxi regulatory regime, to help inform TTS's Sustainable Transport Policy. The Report strongly suggested that the existing system of taxi regulation in Jersey was not working in consumers' best interests. To address the concerns, the JCRA recommended changes to the way taxis are regulated in Jersey; principally, the removal of quantitative restrictions and a stipulation that any qualitative restrictions should be proportionate to the achievement of legitimate consumer protection goals. In addition, the JCRA noted there was a lack of transparency on issues such as how rank taxi fares were determined by the Minister and on the fare structures of individual private hire taxi companies. JCRA therefore advocated increased transparency in fares to facilitate greater consumer choice.

We welcomed the invitation to comment on your Department's consultation on the reform of taxi regulation in Jersey: the Green Paper entitled "The Future of Taxis" published on 28 March 2012 (the **Consultation**). In our response dated 28 May 2012, the JCRA re-iterated many of the views that we had expressed in the Report as they related to quantitative and qualitative restrictions, but also expressed support for the proposal outlined in the Consultation of moving to a unitary licensing model.

The JCRA's objective in responding to the Recommendations, as with the Consultation, is to assist TTS in implementing changes to the current system of taxi regulation in such a way as to help ensure that taxis in Jersey compete effectively, new entry and innovation in taxi services is facilitated and prices are transparent, with the overall aim that consumers receive good value taxi services. Our observations on the Recommendations focus very deliberately on measures that we believe will put consumers at the heart of any changes to the regulatory regime. We strongly believe that it is only with this focus that a system of effective regulation can be developed which in the long run would benefit all stakeholders.

The views expressed by the JCRA in the Report in relation to taxi regulation, and re-iterated in our response to the Consultation and in our specific comments below, should be read together. We believe that our approach is consistent with that taken by many expert bodies when they have reviewed taxi regulation in other jurisdictions. We have referred below to the substantial study conducted by the Organisation for Economic Cooperation and Development (OECD). In addition, we note that in July

2013, the Minister for the Department of the Environment in Northern Ireland wrote to all taxi operators advising that single-tier licensing will be introduced in September 2014.

We believe that it is crucial that there is complete clarity as to what is proposed in the Recommendations. There remain a number of areas where the intentions of TTS are not clear. For example, what is to be done with limousine licences? We note that it is acknowledged that the Recommendations give little consideration to limousine taxis, in part because it is considered that they do not generally compete with taxis i.e. they cannot be hired immediately on request, and there are no current restrictions on the number of licences issued; but it is unclear whether this remains the case?

We would also observe that a number of important conclusions are drawn without it necessarily being clear as to the evidence base for the conclusion. For example, at Section 5.1.1 of the Recommendations, it is claimed that the current system “offers a reasonable service to the public” and yet there appears to be no justification for this claim, as it does not appear to have been a question asked as part of the consultation exercise. Given the high prices paid by consumers (see our comments below on Appendix D), we are far from certain that the Jersey travelling public would agree that the current system “offers a reasonable service to the public”. The recent Jersey Consumer Council transport survey<sup>1</sup> sought views on public satisfaction with various forms of transport, including taxis. TTS could ask the Council for access to the results of its transport survey,<sup>2</sup> which we understand do not indicate general satisfaction with the existing taxi service in Jersey.

Turning to the specifics of the Recommendations, the JCRA makes the following comments:

**Quantitative restrictions and the related restriction between services that rank taxis and private hire vehicles provide should be removed as soon as possible**

We welcome the proposal to introduce a single tier of taxi licence, abolishing the distinction between rank taxis and private hire vehicles. As the Recommendations observe, this distinction currently creates significant confusion among consumers, and leads to unnecessary costs of dispute resolution.

The JCRA notes the proposal in the Recommendations for the number of taxi licences to be increased at the earliest opportunity. The JCRA’s view remains that there is no justification for continued limits on the number of taxi licences. As we have observed previously, no other industry or profession has quantitative restrictions placed on it by the States of Jersey through a licensing regime. Quantitative restrictions can only protect the interests of existing taxi operators, at the expense of taxi consumers, who are forced to pay higher fares and to endure poorer service than would be the case if licences were available to all those qualified to offer the service. The OECD notes that “*It is increasingly*

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<sup>1</sup> Summer 2013

<sup>2</sup> We understand that the report is due to be published in February/March 2014.

widely accepted that restricting taxi numbers constitutes an unjustifiable restriction on competition and reduces economic welfare.”<sup>3</sup> Moreover, the Recommendations acknowledge that “at peak times there are occasions when there are not enough taxis to meet demand.”

**A phased approach gives too much weight to the risks of changing the status quo and in particular the impact on existing industry operators. Insufficient weight is given to the importance of addressing the disadvantages of the existing system. This is not in the best interests of all stakeholders, including new entrants.**

The JCRA recognises that the Recommendations reflect a decision by TTS to adopt a gradual approach, but one argument against a gradual removal of supply restrictions versus immediate deregulation is the “tendency to underestimate substantially the equilibrium number of taxi licences in a given market.”<sup>4</sup> New entry in a fully-competitive market would be expected to decrease average fares and/or improve accessibility or the range of taxi services. Once prices decrease and/or quality improves, the quantity of services demanded will increase – many consumers who currently do not use taxis because of high fares or long queues might switch to taxis from alternative forms of transport. It is not logical to use estimated demand and waiting times as a gauge for assessing a supply/demand balance, as potential consumers who do not join or leave a queue are not captured. As such, any absence of excess demand at the current, artificially-inflated level of fares should not be used as a rationale for maintaining a cap on numbers. Another feature of gradual reform is that rates of entry will be unduly low and that meaningful progress towards an improved supply/demand balance will not be achieved.<sup>5</sup> The OECD also argues that “any staged reform program adopted in an attempt to minimise and spread the losses experienced by incumbents will necessarily involve major consumer costs, accruing over an extended period.”<sup>6</sup>

We do not advocate a phased removal of supply restrictions; if TTS were insistent on such an approach, then it is important that the phasing is short in duration and set by TTS.

**There is a need for public transparency of both the procedure for setting fares and the methodology on which such fares are based. The removal of the ability of existing industry operators to further delay progress is a priority.**

If a phased removal of supply restrictions is favoured, then in the strongest possible terms we do not support the industry being able to influence the timing of the introduction of these changes (Section 5.3.2) if that would provide opponents of the Recommendations with a means of halting the implementation of any regulatory reform. Under a phased removal of supply restrictions, then the

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<sup>3</sup> OECD (2007), *Taxi Services: Competition and Regulation*, page 8

<sup>4</sup> OECD (2007), *Taxi Services: Competition and Regulation*, page 41

<sup>5</sup> Ibid

<sup>6</sup> Ibid

measure that we understand is proposed in the Recommendations - i.e. a 10% increase in the number of licences introduced in each of the first three years of the reform<sup>7</sup> - is not acceptable in the JCRA's view. In real terms, this would involve making available 31 new licences in the first year.<sup>8</sup> Moreover, TTS should also make clear that the presumption underlying the review at the end of the three year period will be to remove quantitative restrictions entirely, and to move to a system where licences are available to any person who meets proportionate quality standards. We note that the summary of consultation responses in the Recommendations states that only one respondent was in favour of retaining the limit on the number of licences in any case.

In that context, we welcome, and strongly support, the decision in the Recommendations to reject the proposal for the trading of taxi plates. As the document recognises, trading would confer on existing drivers a windfall at the expense of future generations of drivers and consumers, since the cost of plates would lead to higher fares. Moreover, the aim of TTS should be to move as quickly as possible to a situation where taxi licences are freely available to any party who meets the quality standards – this would render trading unnecessary, since existing plates would have no exchange value.

The JCRA remains unconvinced that there is a need to adopt a phased approach “to avoid disruption” to consumers and taxi drivers. Staged reform has previously been seen as a means of making reform more politically feasible. However, according to the OECD, “*there is much doubt as to the effectiveness of this approach: producers are likely to lobby equally strongly against staged reform, while continued lobbying is likely to lead to the halting or reversal of staged reform programmes before their completion.*”<sup>9</sup>

We would support one set of maximum fare scales, but feel the Recommendations lack detail about how the maximum fare tariff and the annual increase (if implemented) would be calculated and reviewed. We believe that it would benefit the consumer and the taxi industry if the manner in which maximum fares are determined was more transparent.

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<sup>7</sup> The phrasing in section 5.3.6 of the Recommendations – that taxi driver numbers will expand by 10% “in the first of each of the three years following new regulations being introduced” – is difficult to follow, and should be clarified. We understand the intention is to issue new licences representing 10% of the existing stock of licences in each of the first three years of the reform. For the avoidance of doubt, our comment about the acceptability of this proposal is based on this understanding.

<sup>8</sup> Figures correct as at 22 March 2011, when the authors of the Recommendations held a workshop with the industry and stakeholders.

<sup>9</sup> OECD (2007), *Taxi Services: Competition and Regulation*, page 8.

**Qualitative restrictions should be no more than necessary to address substantive consumer protection priorities. Aspects of the service obligation standards as proposed, together with other requirements, create entry barriers beyond what is strictly needed.**

The Recommendations propose to require all companies/booking systems that are used by licensed taxi drivers to offer 24/7 island-wide coverage and to supply accessible taxis when requested. This requirement is motivated by a desire to ensure that there is sufficient availability of taxis in rural areas, particularly at night. We have concerns that such a requirement will constitute a substantial barrier to entry for smaller taxi firms, new drivers or those seeking to offer new services, and will in fact have the effect of reducing or preventing competition, not increasing it. For example, some of the newer entrants to the private hire sector might have as few as four or five drivers, and may be unable to arrange coverage between 1am and 6am. Such a requirement would also immediately rule out the single owner-driver, which the JCRA considers cannot be TTS's intention. In this context, it will be particularly important to ensure that entities offering booking systems are obliged to accept new cars into their system on a non-discriminatory basis. The review of taxi regulation after three years should consider whether such universal coverage obligations are a proportionate means of fulfilling this policy goal, or whether other incentive-based mechanisms (e.g. greater differentials in fare bands at different times of the day/night) would be more effective.

The JCRA accepts the need for regulation of certain aspects of the quality taxi provision, provided that such regulation is (a) proportionate and (b) directed solely to serving the interests of consumers. The Recommendations helpfully acknowledge that if wider policy objectives are to be pursued via taxi licensing regulations, the benefits to consumers must outweigh the costs. Standards in connection with vehicle safety and condition and driver training and qualifications are very likely to satisfy these criteria. However, while it might be appropriate for TTS to prescribe a minimum Euro NCAP rating for taxi vehicles, we are sceptical as to whether it would be proportionate for the States to stipulate that only one or two models of vehicle can be used for taxis, for example. Indeed, such a restrictive approach might harm consumers' interests, by reducing choice. TTS should also consider carefully whether taxi regulation is the most efficient means of achieving improvements in air quality or increases in use of hybrid vehicles, or whether such policy goals could be more effectively met through broader initiatives covering the entire car fleet.

The JCRA is also of the view that there is no justification for a single vehicle colour, in addition to regulations on what drivers can wear and the interior condition of taxis. We understand that the justification for compulsory receipts is to minimise disputes between taxi drivers and passengers, although the Recommendations do not currently set this out or explain how the costs are outweighed by the benefits. Our concern is that the substantial costs of such uniformity will restrict new entrants and are likely, at least in part, to be passed on to consumers in higher fares, greatly exceeding the

benefits for consumers. There is no evidence in the Recommendations that the lack of a single vehicle colour for taxis, for example, leads to customer confusion. Moreover, these are not requirements in the UK – taxis in London are not required to issue digital receipts. TTS should instead be looking to harness the benefits of competition in serving the interests of consumers. Taxi journeys are often a repeat purchase, in which case consumers can be trusted to make an informed decision on whether they use a company/driver again based on, for example, the cost and the level of service that they receive. In turn, competition between taxis will ensure that the demands of consumers are met in the most effective manner.

Although a requirement for clearer performance indicators and monitoring has been identified, there are no further details provided in relation to the monitoring and review of the proposed qualitative measures so as to ensure, among other things, that consumers will reap the benefits. Monitoring, enforcement and review provisions exist in other regulated sectors in Jersey and would provide opportunities for regulators and policy makers to review performance and ensure drivers remain incentivised to provide efficient, fairly-priced services, while affording the States the opportunity to review whether the services provided are meeting their objectives. In conjunction with the review of licences, after three years, and the annual review of the maximum fare, it is suggested that TTS build in periodic reviews of the regulatory system to ensure it is proportionate and achieving its goals.

If quality standards are to be regulated, then the JCRA also believes that TTS should consider publishing procedures for the revocation of licences if those standards are not met in order for TTS to have some means of monitoring and responding to poor performance, an issue which is not explicitly addressed in the Recommendations. The JCRA's experience in regulating a number of industries is that monitoring criteria must be transparent and supported by strong enforcement powers – for example, fining capabilities<sup>10</sup> - to act as an alternative to the revocation of licences, which should only ever be a last resort.

**Appendix D** – While benchmarking with Guernsey can be informative, we are unconvinced that Guernsey serves as a useful barometer in this case for an efficient and consumer-focussed taxi service, given the high fares and lack of availability highlighted in the recent consultation on transport policy by the Environment Department of the States of Guernsey.

In closing, while there may be differences in the extent of regulatory reform advocated by the JCRA in the Report and accepted by TTS in the Recommendations, it appears that both parties agree that

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<sup>10</sup> Law Commission, *Taxi and Private Hire: Interim Statement*. 9 April 2013. The Commission is provisionally recommending introducing a range of tougher powers for licensing officers, including the ability to stop licensed vehicles, impounding and fixed penalty schemes. The Final Report and draft bill are due to be published in April 2014.

regulatory changes are needed. As it is generally accepted that the two-tier system is confusing and that pricing is opaque and not at all easily understood, resolving these matters as a priority should be a clear objective of TTS.

The JCRA produced its Report in December 2010. In Spring 2011, the then Minister recognised the importance, for drivers and the travelling public alike, of settling on a long-term structure for future taxi regulation and asked that TTS's work reviewing the taxi industry be undertaken faster than originally planned. The JCRA has been particularly keen to support both the Minister and TTS to achieve meaningful reform in taxi regulation in Jersey – especially the timely removal of quantitative restrictions. In our view, the Recommendations should be adopted by TTS and presented to the States Assembly as a matter of urgency, and we welcome the sections of the Recommendations that advocate the introduction of the first phase of reforms (including an increase to licence numbers) as soon as possible.

Thank you for the opportunity to respond to the Recommendations. This response will be placed on the CICRA website and we are happy for it to be disclosed as required. As this area has an important bearing on tourism and the wider economy, I am also copying this response to the Chief Minister and to Senator Alan MacLean.

Yours sincerely

**Andrew Riseley**  
**Chief Executive**

cc. Senator Gorst - by email  
Senator MacLean – by email