

15 January 2016

Minister of Economic Development

JERSEY HARBOUR MASTER BENCHMARKING REVIEW – REPORT

Reference:

A. The Harbour Master of Jersey and Condor Limited Operating Agreement Dated 2014.

Introduction

1. This report is the Harbour Master's Benchmarking Review to assess the Operator's performance from introduction into service of *Condor Liberation* and the end of September 2015 against that which would be expected of a Prudent Operator that was directed by Jersey's Minister for Economic Development.

Assessment

2. The Harbour Master finds that Condor Ferries can be identified as a Prudent Operator within the meaning of the Operating Agreement (Reference A). The Company's processes, procedures and decision-making is both formal and recognisable as comparable with "a Person seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions."

3. Condor's operational performance has been down on 2014 and the average achieved in recent years. This is largely based on weather (and in particular its incessant nature) although 'teething' issues with a new vessel are also attributable. The *Liberation* has still achieved nearly 90% of its scheduled arrivals and the overall schedule achievement rate of 97% is only slightly down on 2014.

4. Introduction into Service of *Condor Liberation*

a. The decision to introduce *Condor Liberation* was done with the full agreement of the governments of both Jersey and Guernsey in order to update its ageing fleet of 86m wave-piercing craft (WPC).

b. The States of Jersey decided to update its Sea Transport Policy and the joint Channel Islands Sea Transport position to coincide with the ship's introduction to service. Expectation of the new ship and service were heightened so there was a degree of inevitability that any failure of service was seen more critically than had been the case to date.

c. Condor did complete due diligence before purchasing the vessel including competent assessments of manoeuvring characteristics, the suitability of sea keeping and handling characteristics. A reasonable level of experience was gained by Condor's Masters during their 'type rating' validation and sea trials.

d. The Company reasonably sought to replace *Liberation's* manoeuvring system to bring it up to date and improve resilience and reliability. The system was properly tested and trialled although allowing more time for the Masters to become fully comfortable with the limitations of the new system's modes may have been appropriate but was not possible due the agreed need to be in service in time for Easter and within the operational and financial constraints. There is no evidence to suggest that decisions taken during introduction into service were inappropriate or that any other prudent operator would have taken any other action.

e. Condor allowed the release of *Express* only once the Board was satisfied that *Liberation* had successfully returned to service after the Guernsey accident. The Company acted as a prudent operator in assessing *Liberation's* performance in accordance with the Operating Agreement and in having no objective reason to retain either or both of the WPCs or to accept the potential of significant financial penalty in delaying the transfer to their new owner.

5. Operations / Management

a. There is nothing fundamentally wrong with *Condor Liberation* although the Company has been through a significant learning experience with the vessel and there has been a gap between high expectation and the reality of service delivery throughout the period under review.

b. Condor Ferries operates a risk-based approach to maintenance and contingencies plans to cover major maintenance works or unexpected out of service periods. The scheduling of dry dock and key maintenance periods are major, complex engineering tasks and the Company uses professionally recognised and world-class advisers, project managers and suppliers. Out of service periods are scheduled for times when passenger numbers are relatively low and weather effects can be predicted and managed in order provide a continuity of service. Plans are properly shared with the States of Guernsey and Jersey.

c. The maintenance programme in 2015 included additional dockings to fit pollution-reducing scrubbers to the conventional ferries. Extensive consideration and consultation identified that September and October were the optimal months to carry out the work and MV Arrow was chartered to maintain a seamless freight service and *Condor Liberation* scheduled to operate a daily service. Unfortunately, problems with suppliers meant that the scrubbers could not be fitted as scheduled and an additional dry dock period had to be scheduled to a date later in the year. Ministerial concerns about *Liberation's* reliability led to a re-consideration of options that were kept open right up until the time to commit to the docking. The commit decision was taken in the context of *Liberation's* improved performance throughout July and August and was risk and evidence based and there was no reason not to believe it would be effective.

6. Contingency Planning

a. Condor's contingency plans include details of how the entire fleet, and a charter ship, can be utilised when there is planned maintenance or unexpected disruption and includes options such as running extra sailings and operating a through UK-Channel Islands-France service. Contingency planning was introduced as part of the Operating Agreement and the current arrangements are far more comprehensive and formal than was the case before the Agreement.

b. In 2015 a complex matrix of issues conspired to reduce the resilience generally achieved during docking periods and the usual contingency plans were deployed much more often and for longer than is normally the case. Decisions were made for good commercial and operational reasons and Condor is determined to provide resilience in their service.

c. *Liberation's* introduction during a peak demand period over Easter included careful consideration of risks associated with interruption or failure and the need for contingency. The failure experienced put considerable pressure both on the Company and maintaining service provision tested its contingency plans to the full.

Background

7. Under the Operating Agreement, the Harbour Master may carry out a Benchmarking Review¹ to assess the performance of the Operator as against the performance that would be expected of a Prudent Operator.

8. Poor weather and technical problems with *Condor Liberation* in the middle of September 2015 caused a number of cancellations. The situation was exacerbated by the absence of the conventional Ferry, the *Commodore Clipper*, which was in dry dock to allow fitting of exhaust scrubbers to comply with EU emissions regulations having already completed its annual docking requirements earlier in the year. This Benchmarking Review covers performance from the introduction into service of the *Liberation* in March 2015 until end of September 2015.

¹ Reference A article 19.

9. **Prudent Operator.** A Prudent Operator is defined in Reference A as meaning “a prudent and competent operator of services similar to the Services, acting reasonably in good faith”. A recent definition of Prudent Operator under UK law is “a Person seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions.”² It is emphasised that this definition, and therefore this assessment, is not simply an assessment of the Company’s operational performance. In maintaining continuity of service Condor have needed to constantly balance operational matters with customer experience, legally binding crew and health and safety regulations, the schedule, the specific nature of Channel Island geography and weather and, of course, financial considerations.

10. The assessment has not used hindsight to revisit decisions made during 2015 rather has examined – in detail – the process and methodology used to make those decisions. It is also apparent that the Company is careful to expose its thinking and decisions to the States of Guernsey and the States of Jersey.

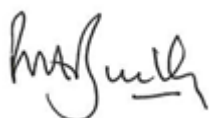
11. This review has not addressed:

a. The issue of safety, suitability and performance of *Condor Liberation*. This was addressed fully in the Houlder Report (*Condor Liberation - Safety, Suitability and Performance – Houlder Independent report dated 8 October 2015*) that concluded that the ship is “safe and stable, extremely well suited to operating in the Channel Islands, and is performing well”.

b. Specific aspects of Competition on the network of Channel Island ferry services which is understood to be only competitive as a whole and not profitable with separate passenger and freight operators on the Northern route.

c. The strategic needs of the States as regards to ferry services, the alignment of the Services offered by the Operator, and Operator performance. Terms of Reference for the first Comprehensive Service Review under the Operating Agreement are being prepared.

d. Customer Service as Condor Ferries is currently undertaking a detailed review of Customer Information and Service, the results of which will inform Condor’s improvement plan for 2016.



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² <http://www.natlawreview.com>

Bibliography

Sea Trial Report Austal Hull 270 by Germanischer Lloyd dated 22 February 2010.

Technical Due Diligence Austal Hull 270 – Vessel, Maintenance and Port Fit by Global Marine dated September 2013.

Report on Austal Hull 270 by Condor Ferries dated December 2013.

The Harbour Master of Jersey and Condor Limited Operating Agreement Dated 2014.

Condor Liberation - Safety, Suitability and Performance – Houlder Independent report dated 8 October 2015.

Condor 102 Risks and Issues log, Condor Ferries, August 2014 – March 2015.

Condor Liberation Berthing Incident – Summary Report dated 22 April 2015.

Various Minutes of the Condor Board and Executive Committee August 2014 – September 2015.

Ferry Services Steering Group minutes August 2014 – July 2015.

ANNEX TO JERSEY HARBOUR MASTER BENCHMARKING REVIEW – REPORT DATED 8 JANUARY 2016

Jersey Harbour Master Benchmarking Review – Terms of Reference

Introduction

In 2014, the States of Jersey entered into a 10-year non-exclusive Operating Agreement with Condor Ferries for the provision of Roll On/Roll Off car, passenger and freight services to inter-island and the UK and France.

Poor weather and technical problems with Condor Liberation in the middle of September 2015 caused a number of cancellations. The situation was exacerbated by the absence of the Ro-Pax conventional Ferry, the Condor Clipper, which was in dry dock to allow fitting of exhaust scrubbers to comply with EU emissions regulations.

The Minister has directed that the Harbour Master is to carry out a Benchmarking Review to assess the Operator's performance, from introduction into service of Liberation and the end of September 2015, against that which would be expected of a Prudent Operator.

Simultaneously, Terms of Reference for the first Comprehensive Service Review under the Operating Agreement are being prepared¹.

Earlier in 2015, the States of Jersey, States of Guernsey and Condor Ferries jointly commissioned an Independent Report into the safety, suitability and performance of Condor Liberation. The report was published in October and concluded that the ship is "*safe and stable, extremely well suited to operating in the Channel Islands, and is performing well*". The performance element of the Houlder report will be considered in this benchmarking work.

Background

Under the Operating Agreement, the Harbour Master may carry out a Benchmarking Review² to assess the performance of the Operator as against the performance that would be expected of a Prudent Operator. The FSSG shall use the results of any benchmarking as a tool to monitor the Operator's performance of obligations.

The Benchmarking Review will avoid specific aspects of Competition³ and will avoid becoming a Comprehensive Service Review⁴.

A **Prudent Operator** means a prudent and competent operator of services similar to the Services, acting reasonably in good faith. A **Prudent Operator Test** means a consideration of whether the Operator has acted as a Prudent Operator in any given situation. Examples given in the Agreement would expect a Prudent Operator to have an effective vessel maintenance programme and a Contingency Plan.

Scope

This Benchmarking Review will cover performance from the introduction into service of the Liberation until end of September 2015.

¹ Operating Agreement article 9.3 requires a CSR to be conducted by 31 January 2017 and by 31 January 2019.

² Article 19.

³ A competition study has concluded that the network of ferry services would struggle to sustain competition should a competitor be introduced for car and passenger services on the Northern route.

⁴ A CSR should be undertaken periodically and would consider the strategic needs of the States as regards to ferry services, the alignment of the Services offered by the Operator, and Operator performance.

The Benchmarking Review is not an opportunity to demonstrate immaculate hindsight but rather to identify opportunities to learn from experiences and make future improvements. The review will focus on three areas:

Introduction into Service. The planning undertaken to enable as smooth an introduction to service as possible for the new ship.

Operations / Management. The extent to which the general operating procedures of the company support continuity of service.

Contingency Planning. The efficacy of contingency planning before Liberation was introduced into service, the extent to which these plans were updated following the initial berthing incident, and contingency planning for period of conventional ferries' dry dock.

The level and nature of customer service is a consideration, however it is noted that Condor Ferries is currently undertaking a detailed review of Customer Information and Service, the results of which will be available to Condor early in 2016 and will be shared with the FSSG in due course.

Methodology

The Harbour Master will send Condor Ferries a list of questions and/or topics to be explored in order to benchmark the operator's performance against that which could reasonably be expected of a Prudent Operator.

These topics will be discussed jointly by the Harbour Master and Condor Ferries and, subject to agreement, Condor may supply the Harbour Master with reasonable pre-existing documentation to support the matters discussed. This material and any other evidence against which to benchmark will form the basis of the Harbour Master's assessment and is likely to be considered alongside the Houlder Report.

The Harbour Master will summarise the findings of the Benchmarking Review in his report.

Publication & Follow up

The Harbour Master shall set out to the FSSG his recommendations for improvements in service following any such benchmarking review and any such changes shall be considered pursuant to the Service Change Procedure. The FSSG should expect to see a firm draft at the end of January 2016.

The published Review will have due regard (and will therefore redact) any confidential information.