



Case T-068

JT Statement of Requirements

Non-statutory Draft Decision

Document No: JCRA 22/39

Date: 13 June 2022

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# 1 Executive summary

- 1.1 This document is the Jersey Competition Regulatory Authority (**the Authority**)’s non-statutory Draft Decision (**Draft Decision**) for a refined approach to the Statement of Requirements process (**SoR**) which applies to JT. This process is the means by which JT’s wholesale customers, Other Licensed Operators (**OLOs**) and JT’s own retail division, can request a new wholesale product, or a change to an existing JT wholesale product and/or service.
- 1.2 This Draft Decision should be read in conjunction with the draft Information Note (‘JT Statement of Requirements’) published alongside this document.<sup>1</sup> The Authority is seeking responses to the questions set out at the end of this consultation document by 12 August 2022. All responses will be considered before the draft Information Note is finalised. The refined SoR process will then be implemented through the application of the statutory process and is expected to come into force from 1 December 2022, superseding the existing CICRA Decision.
- 1.3 This document is organised as follows:
  - Background (section 2);
  - Overview of the refined SoR process (section 3); and
  - Next steps (section 4).

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<sup>1</sup> Note, in the interest of brevity, this Draft Decision does not replicate all the background and content included in the draft Information Note, though a high level summary is provided and cross-reference is made where relevant.

## 2 Background

- 2.1 JT holds Significant Market Power (**SMP**) in certain markets on Jersey, and OLOs are reliant on access to JT's network and products to be able to provide services to their own (retail) customers. JT retains effective and complete control of the access product designs and what wholesale access products are available to wholesale customers in markets where they hold SMP. In most cases these products are simply wholesale variants of JT's retail products.
- 2.2 It is best practice in other jurisdictions' regulated markets for an SMP operator to be subject to an obligation to provide a SoR process (under which OLOs can submit a requirement for a new wholesale product or a product variation). Consistent with this, an SoR process does currently exist and this is set out in Information Notice (CICRA 19/39).<sup>2</sup> This specifies, at a high-level, the SoR requirements currently applying to JT in respect of new products or product variations.
- 2.3 The Information Note was given effect through a Direction issued to JT (CICRA 19/37), which set out:
- "This process outlined in CICRA 19/39 – Statement of Requirements should be followed for all future requests for new products or product variation, including JT's own retail division. This process applies where JT has Significant Market Power (SMP)."*<sup>3</sup>
- 2.4 However, the current SoR does not appear to have been given full effect by JT and OLOs. This view was informed by structured engagement on the business connectivity market review (**BCMR**) which led up to the Draft Decision on BCMR remedies. During this engagement stakeholders expressed general dissatisfaction with JT's approach to new wholesale product requests and the current SoR process. This dissatisfaction was wider than just the process for leased lines (the focus for the BCMR) and it was clear the current SoR process requires updating, amendment and refinement.
- 2.5 Reflecting this, the refined policy package, set out in the BCMR Draft Decision on remedies, published in February 2022, included the implementation of a refined approach to the SoR process.<sup>4</sup> This proposal was supported by respondents to that Consultation and is being run as a separate project to the BCMR as it applies to all products where JT has SMP, so it is wider than business connectivity.
- 2.6 Note, for the avoidance of doubt:
- When finalised, the draft Information Note ('JT Statement of Requirements') published alongside this document, will supersede CICRA 19/39; and
  - Once this is complete, a new Direction will be made, to replace the Direction made in CICRA 19/37 set out above. It is envisaged this will adopt the same wording as the previous Direction, with an updated reference to the new Information Note.

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<sup>2</sup> See: <https://www.jcra.je/cases/2019/t1476gj-wholesale-access-statement-of-requirements/t1476gj-wholesale-access-statement-of-requirements-information-notice/>

<sup>3</sup> See Direction 2: <https://www.jcra.je/cases/2018/t1407gj-mobile-backhaul-market/t1407gj-mobile-backhaul-market-final-notice-and-direction-to-jt/>

<sup>4</sup> See paragraphs 5.21, 6.27-6.29: <https://www.jcra.je/cases/2019/t-012-business-connectivity-market-review/t-012-business-connectivity-market-review-draft-decision-remedies/>

### 3 Overview of the refined SoR process

3.1 The draft Information Note ('JT Statement of Requirements') published alongside this document aims to ensure:

- OLOs and JT's own retail division are aware of the types of information that they need to include when requesting a new or amended product: and
- JT are aware of the procedure they must follow when assessing whether a request is reasonable. Reasonable means that the request is both technically feasible and commercially viable.

3.2 The draft Information Note includes:

- The background to the SoR process, including the rationale and the legal/licensing framework (section 2);
- An overview of the SoR process, including the scope and further detail on key elements, for example, on the submission of the SoR (section 3); and
- An overview of the Authority's role in the process, noting the Authority expects it's involvement to be by exception (section 4).

3.3 The draft Information Note is focused on refining the existing framework and has been informed by:

- feedback from the structured engagement on the BCMR which included "*dissatisfaction noted on JT's approach to new wholesale product requests*";
- engagement with the Office of the Telecommunications Adjudicator (**OTA2**)<sup>5</sup>, which helped the Authority further understand the issues and current practice in the UK, and to consider the overarching framework applying to wholesale access; and
- analysis of different BEREC guidance issued in the context of the EECC, for example, common position on remedies in the context of wholesale local and broadband access.<sup>6</sup>

3.4 Figure 1 overleaf provides a summary of the proposed refinements to the SoR Information Note.

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<sup>5</sup> The OTA2 was established as a follow-on to the original OTA Scheme in the UK. The OTA is independent of the regulator (Ofcom) and industry, and exists to facilitate and coordinate the effective implementation of processes and regulated product developments in a multi-operator context.

<sup>6</sup> See: [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/download/0/1126-revised-berec-common-position-on-best-pr\\_0.pdf](https://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/1126-revised-berec-common-position-on-best-pr_0.pdf)

Figure 1: Overview of proposed refinements to the current SoR

Area	Change from previous SoR Information Note	Rationale
Structure and alignment	Restructured the document with a clearer use of sections and sub-sections (some sections in the previous SoR have also been moved or deleted)	Restructure to align with Authority house style and to help ensure stakeholders have easy access to the key information
Language and geographic scope	Removed references to Guernsey, Sure and related items	Previous SoR was introduced by CICRA (and captured Jersey and Guernsey). Object of the new SoR process is now solely JT.
Background	Additional information and guidance	Development of the background section to help inform the context and principles, and further clarify JT’s underlying obligations.
Framework and Scope	Developed and refined section on Scope	Development of the scope section to help inform on the types of SoR request and the markets in scope (and not to inadvertently preclude standard commercial agreements).
Inclusion of a section on Regulation and Licensing	New Section	To help clarify and underpin the SoR and provide additional guidance on the applicable regulatory framework and relevant Licence Condition(s).
High-level process, information requirements and applicable criteria	Additional information, guidance and criteria contained in the high-level SoR process section.	To facilitate a more transparent, robust and effective SoR process. For example, a refined and clearer process; further clarity on the types of information OLO’s are required to submit; and, an example of the types of evidence JT would be required to show in rejecting any SoR requests.
The Authority’s role	Additional information and guidance	To provide further clarity and certainty to OLOs and JT as to the Authority’s potential role in the SoR process.

## 4 Next steps

- 4.1 The Authority's approach to consultations was set out in an Information Note in July 2018.<sup>7</sup> This outlines the process to be undertaken before carrying out certain regulatory functions in accordance with the relevant statutory process.
- 4.2 Under the process there is first a non-statutory process. This Draft Decision and Consultation is the first stage in the non-statutory process and will be followed a Final Decision. The Final Decision will provide an outline of the responses to the Consultation and how the Authority has taken them into account in its decision making. Subject to the responses received, it is envisaged this will be published in September 2022.
- 4.3 The second stage of the process is the statutory process, which is required when carrying out certain specified regulatory functions. A decision to give direction to JT to follow the refined SoR process is the exercise of a specified regulatory function pursuant to the Telecommunications (Jersey) Law 2002. Therefore the statutory process, in the form of an Initial Notice, will be commenced and this will be issued alongside the Final Decision It is envisaged the Direction will come into force from 1 December 2022.
- 4.4 The Authority invites written views and comments on the questions raised below on the refined SoR Information Note, to be made by 5pm on 12 August 2022. The Authority encourages respondents to provide comments that are supported by evidence. Less weight may be given to submissions that cannot be supported by evidence.

### Box 1: Consultation questions

**Question 1.** *Do respondents agree with the Authority's refined SoR process set out in the draft Information Note published alongside this Draft Decision? If you do not agree you should provide all of your analysis and assessment*

**Question 2.** *Do respondents agree with the Authority's proposed approach and timetable for implementation of the refined SoR process? If you do not agree you should provide all of your analysis and assessment*

- 4.5 Responses can be submitted by email to [info@jcra.je](mailto:info@jcra.je) or alternatively in writing to:  
  
Jersey Competition Regulatory Authority  
2nd Floor Salisbury House  
1-9 Union Street  
St Helier  
Jersey  
JE2 3RF
- 4.6 All responses should be clearly marked: "JT Statement of Requirements". The Authority's normal practice is to publish responses to consultations on its website. It should be clearly marked if any part of a response is held to be commercially confidential and a redacted version also supplied for publication.

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<sup>7</sup> See: <https://www.jcra.je/media/597858/g1369gj-regulatory-consultation-process-information-note.pdf>