



Case T-068

JT Statement of Requirements: Information Note

DRAFT FOR COMMENT

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Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF
Tel 01534 514990

Web: www.jcra.je

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1 Overview

- 1.1 This document sets out the Jersey Competition Regulatory Authority (**the Authority**)’s expectations for JT’s Statement of Requirements (**SoR**) process.¹ 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 The SoR process (and associated documentation) applies to the markets in which JT holds Significant Market Power (**SMP**), and the related products and services. It is best practice in other jurisdictions and regulated markets for the SMP operator to be subject to an obligation to provide a SoR process (under which OLOs formally submit a requirement for a new wholesale product or product variation).
- 1.3 The purpose of setting out this process is to ensure that:
 - 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 is aware of the procedure it must follow when assessing whether a request is reasonable. Reasonable means that the request is both technically feasible and commercially viable.
- 1.4 This document is designed to ensure that there is a defined and well understood process governing requests for a new product or service, product variation and the framework and process to be applied by JT.

¹ This document supersedes the previous SoR process set out in Information Note (CICRA 19/39).

2 Background

2.1 This section is split into two subsections, which cover in turn:

- Rationale for an SoR process; and
- Legal and licensing framework.

Rationale for an SoR process

- 2.2 JT holds SMP in certain markets on Jersey, and OLOs are reliant on access to the SMP operator's network and products to be able to provide services to their own (retail) customers.
- 2.3 JT retains effective and complete control of the access product designs and what wholesale access products are available to wholesale customers in markets where it is dominant. In most cases these products are simply wholesale variants of JT's retail products.
- 2.4 A SoR process is the primary means by which JT's wholesale customers can request a new wholesale product, or a change to an existing JT wholesale product and/or service. An obligation on JT to meet the requirements of an SoR process provides greater clarity and certainty for JT and OLOs, and is consistent with the application of a transparent and proportionate regulatory framework.
- 2.5 It is common and best practice in other jurisdictions and regulated markets for the SMP operator to be subject to an obligation to provide a SoR process (under which requirements for a new wholesale product or product variation are submitted). Consistent with this, an SoR process has been in place in Jersey since 2019, and this document builds on the experience of the previous process and supersedes it.

Legal and licensing framework

- 2.6 Telecommunications services are regulated in Jersey by way of the Telecommunications (Jersey) Law 2002 (**the Telecoms Law**).² The primary duty of the Authority with such regulation is to ensure that telecommunications services are provided both within Jersey and between Jersey and the rest of the world, so as to ensure that all current and prospective demands for such services are satisfied, so far as is reasonably practicable.
- 2.7 The Telecoms Law, Article 7, contains a number of specific duties imposed on the Authority, including the requirement to perform its functions in such a manner as to protect and further the short-term and long-term interests of users within Jersey and perform them by promoting competition among those engaged in commercial activities connected with telecommunications in Jersey.
- 2.8 Further, Article 7(3), requires the Authority shall have regard to whether services are accessible to and affordable by the maximum number of businesses and domestic users, innovation in services, and the provision of high quality and reliable services.

² See: <https://www.jerseylaw.je/laws/current/Pages/06.288.aspx>

- 2.9 Article 16(2) and (3) provide that the Authority has the power to give, and the licensee may be required to comply with, any direction given by the Authority in respect of anything to which the licence relates. These functions are 'specified regulatory functions, and therefore the exercise of such power requires the Authority to follow the procedure set out in Article 11 of the Telecoms Law.
- 2.10 JT (Jersey) Limited holds a Class III telecommunications licence in Jersey. The latest version of this licence was issued on 4 August 2021.³
- 2.11 Licence Condition 40 refers to 'Network Access', which states:
- 40.1 The Licensee shall, to the extent requested by another OLO, negotiate with that OLO with a view to concluding an agreement (or an amendment to an existing agreement) for Network Access.*
- 40.2 Where an OLO reasonably requests in writing Network Access, the Licensee shall provide that Network Access. The Licensee shall also provide such Network Access as the JCRA may from time to time direct.*
- 40.3 The provision of Network Access shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the JCRA may from time to time direct."*
- 2.12 This Condition establishes a framework and overarching obligation(s) on JT to consider, negotiate and conclude Network Access agreements. The same Condition also provides for the Authority to issue Directions in respect of Network Access, and where necessary, the terms and conditions applicable to Network Access.
- 2.13 Reflecting the above framework, to give effect to this Information Note, the Authority has decided to issue a Direction to JT.

³ See: <https://www.jcra.ie/media/598369/2021-08-04-jt-modified-class-iii-licence-redacted-signed.pdf>

3 The SoR process

3.1 This section sets out the:

- Scope of the SoR process;
- Overview of the process;
- Further detail: Submission of an SoR;
- Further detail: Assessment of an SoR; and
- Further detail: Acceptance or rejection of an SoR.

The scope of the SoR process

3.2 This SoR Guidance is framed in the context of the licensing and regulatory framework generally applicable to JT and applies to markets in which JT holds SMP.

3.3 It does not preclude wholesale product innovation and development through commercial negotiation or otherwise, whether in respect of non-SMP product and services, or indeed, SMP product and services. It should be noted that JT is in any event subject to specific requirements and obligations where it holds SMP, e.g. non-discrimination.

3.4 In terms of the broad scope, the following, non-exhaustive list, of types of requests would be considered appropriate for the SoR process:

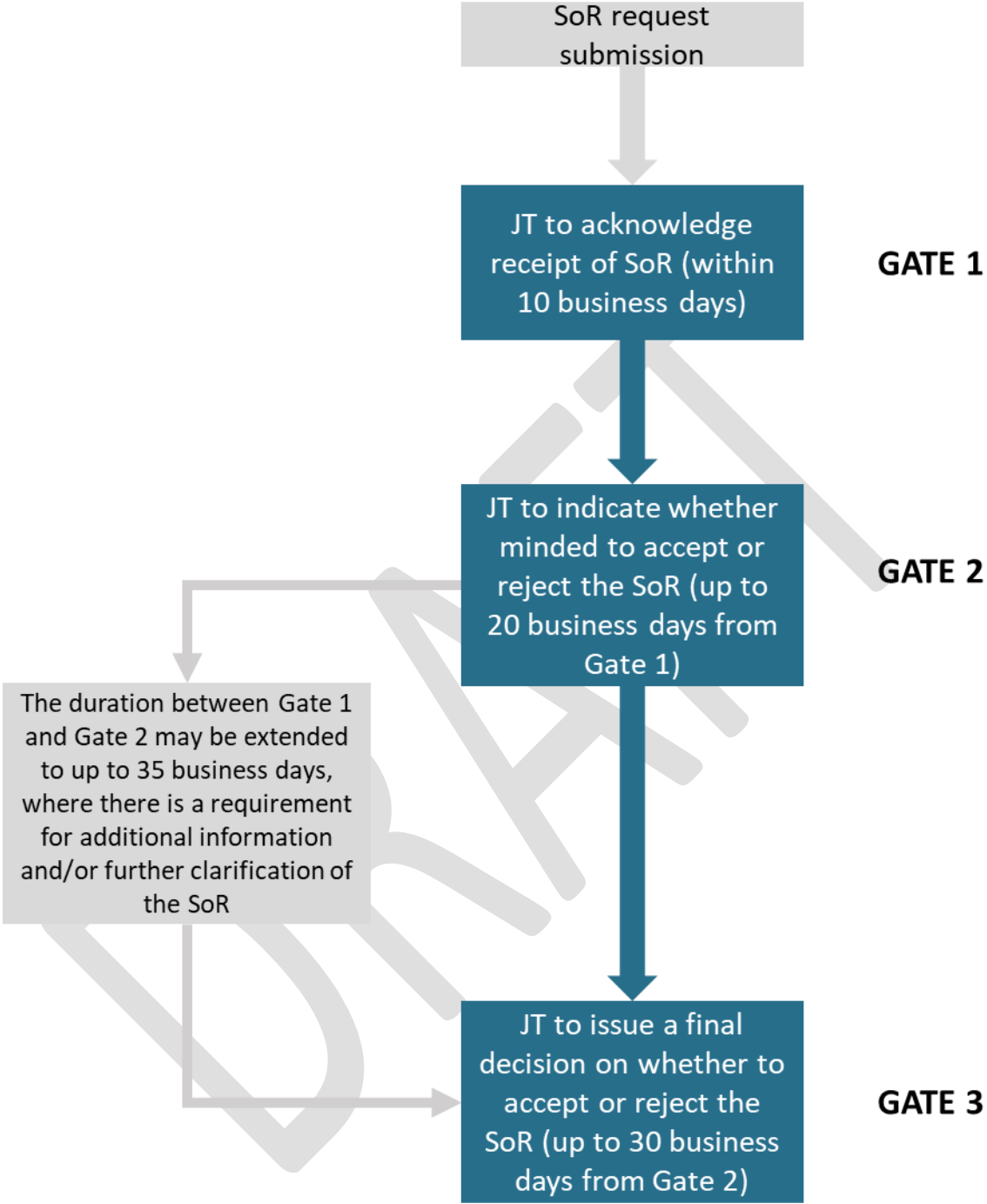
- Infrastructure and other testing requirements;
- New wholesale products;
- Non-confidential and/or significant changes;
- Product or pricing amendments;
- System and/or process changes; and
- Trials and/or proof of concepts.

3.5 A pricing change request that requires a new wholesale product or enhancement, and/or a request to change pricing that might also change the structure of the product would also be considered via the SoR process, for example, a request for “fractional” wholesale leased line services.

Overview of the SoR process

3.6 An diagrammatic overview of the SoR process is provided in Figure 1 overleaf. Further detail on the different parts of the process, including respective responsibilities and the Gates, is provided in the following sub-sections.

Figure 1: Overview of the SoR process and timings



Further detail: Submission of an SoR

OLO responsibilities

3.7 In the first instance, the OLO should submit an SoR to JT as appropriate. JT is required to develop a template to be completed for each request and ensure this template is both accessible to OLOs and readily understandable. This template should be developed such that it includes the

information necessary for JT to properly consider the request and come to a decision whether the SoR is reasonable.

- 3.8 The Authority considers that the minimum requirements to be included in the template are:
- The wholesale product or service to which the SoR request relates, and a technical description of the requirement and wholesale products affected.
 - If the request relates to a new type or form of wholesale access (albeit within the general scope of the SoR process and relating to markets in which JT has been found to have SMP), the OLO should supply a technical description of the product and the wholesale products affected.
 - Commercial and/or non-commercial reasons for the requirement. This could, for example, describe a requirement that the OLO has from its own customers, technological and market developments or otherwise, and why existing wholesale products do not meet these requirements.
 - An estimate of expected demand (volumes) for the new/revised product over a reasonable period. This should provide JT with a demand forecast for the requested product over the short to medium term, e.g., 1 to 3 years.
 - The OLO should outline the potential benefits, where relevant and/or possible, to JT. Potential benefits may include the scope for greater competition, innovation or process efficiencies, greater customer satisfaction, cost reductions, increased revenues etc.
 - Where the requested product or product variant replaces an existing wholesale product, the OLO should provide information on the implications, if any, for the existing product by the new product.
- 3.9 Where necessary, the SoR request should provide information on the OLO's understanding of any regulatory and/or legal impacts.
- 3.10 It is the responsibility of the OLO to complete the SoR template with sufficient information for JT to understand the requirement and consider its viability, with only a minimal need to seek further information or clarification from the requesting operator.

JT's responsibilities

- 3.11 As set out above JT is responsible for developing the template for the SoR process. To implement the process JT is required to nominate an individual within their organisation (as being responsible for the management of the request from receipt through to acceptance or rejection). JT must nominate a substitute in the event of the absence of the nominated contact/individual.
- 3.12 The nominated individual or his/her substitute must acknowledge receipt of the SoR no later than 10 business days following the date of submission of the SoR.
- 3.13 JT is also required to notify the Authority of SoRs received and acknowledged, and maintain an appropriate and accurate record of all SoRs (including, but not limited to, information on the total number of SoRs, the requesting operator, the numbers of SoRs accepted and rejected etc.). This type of information collation is consistent with the SoR process described below and JT's obligations under Condition 4 of the Licence.

Acknowledgement of receipt of the SoR is referred to as Gate 1

- 3.14 It shall be the responsibility of JT to manage the request consistent with its regulatory and other legal obligations, and where necessary, maintain the confidentiality of the SoR, ensuring:
- The SoR is only circulated to the relevant functions and minimum number of people within the organisation (required to consider the reasonableness of the SoR);
 - The SoR is not shared in any way with the downstream and/or retail divisions of JT; and
 - Information contained in the SoR shall not be used for JT's own commercial gain.
- 3.15 The relevant wholesale department of JT, and in particular the nominated individual, shall be responsible for ensuring confidentiality is respected, and that the information submitted by the OLO is used only for the purposes of assessing the SoR request.

Further detail: Assessment of an SoR

JT's responsibilities

- 3.16 It is envisaged that JT will use some form of internal committee (e.g., an SoR assessment committee) whose responsibility it is to assess all SoRs. For the avoidance of doubt, any committee concerned with the assessment of SoRs should not comprise any members of staff responsible for any retail activities. That committee should consider each incoming SoR within a reasonable timeframe, and in any event, within 20 business days after acknowledgement of receipt of the SoR.
- 3.17 JT must provide a response to the requesting OLO as to whether it is minded to accept or reject, the SoR in the same timescale (within 20 business days).

Response setting out whether JT is minded to accept, or reject, the SoR is referred to as Gate 2

- 3.18 If, at Gate 2, JT is "minded to reject" the SoR, and this is for reasons of incomplete or insufficient information, or that the SoR requires further minor clarification(s), JT should seek to inform the OLO of this within the above 20 business days.
- 3.19 In the event it has not been possible to notify the OLO within the above 20 business days, JT should notify the OLO as soon as possible, specifying the additional information requirements and/or clarification(s), in any event, no later than 5 business days from what would have been Gate 2.
- 3.20 Following receipt of the additional information and/or clarifications, JT must then provide a response to the requesting OLO as to whether it is minded to accept or reject the SoR, within a maximum of 35 business days from Gate 1. To note, a final decision to reject an SoR should not therefore be made on the basis of incomplete or insufficient information.

Further detail: Acceptance or rejection of an SoR

- 3.21 A final decision to accept or reject the SoR should be made by JT at the earliest opportunity, and in any event, no more than 30 business days from the date of the response provided at Gate 2.

- 3.22 JT must provide a response to the requesting OLO as to whether it is minded to accept or reject, the SoR in the same timescale (within 20 business days).

Final decision to accept or reject the SoR is referred to as Gate 3

Acceptance of an SoR

- 3.23 Following acceptance of an SoR, JT should produce a project plan showing the timescales in which the requested change will be delivered and communicate this to the requesting operator. The timescale in the project plan must be reasonable. For example, where the SoR relates to a new wholesale service or requires a material change to an existing service, the proposed timescales must be consistent with reasonable expectations of the standard timescales involved in any necessary design, development, testing and implementation work.

Rejection of an SoR

- 3.24 JT may reject an SoR request in the following circumstances:

- Technical non-feasibility; and/or
- Commercial non-viability.

- 3.25 Any rejection based on technical non-feasibility must, for example:

- clearly and unambiguously demonstrate that the request is incompatible with JT's core technical capabilities and competence; and/or
- represents a significant and material change to network configuration, technical standards or other related factors; and/or
- represents unmitigable risks in respect of security, resilience and other matters.

- 3.26 Any rejection based on commercial non-viability must, for example:

- clearly and unambiguously demonstrate that there is no current or likely future demand for the product or service (being requested under the SoR); and/or
- the costs incurred in development, launch and related activities would outweigh the potential benefits (over a reasonable timeframe); and/or
- there is no reasonable prospect of the product or service being requested, delivering or generating efficiencies, innovation or other factors generally consistent with a competitive market.

- 3.27 If the SoR is rejected, JT must provide detailed reasoning for its decision to the requesting OLO.

4 The Authority's role

- 4.1 Condition 40 of JT's Class III Licence enables the Authority to issue Directions with respect to Network Access. However, while the Authority may be required to consider and/or adjudicate on matters relating to an SoR, the Authority expects this to be by exception. The refined SoR process provides a transparent and effective framework for engagement between JT and its wholesale customers, and industry is strongly encouraged to process and resolve matters with the SoR framework.
- 4.2 If an SoR is rejected, the OLO may, at its sole discretion, request that the Authority consider and review JT's decision to reject the SoR. The OLO must inform the Authority of any such request within 20 business days of receiving the SoR rejection, providing detailed reasoning to support its request for the Authority consider and review JT's decision.
- 4.3 The Authority may require further information and data from the requesting operator and JT, as appropriate. Subject to receipt of all required information and data, the Authority will, within 30 business days - after receiving all required information and data - notify all relevant parties as to whether it intends to uphold or refuse the OLO's request to review JT's decision.
- 4.4 To note, where appropriate, officers of the Authority may hold hearings during this period (or later) at which each party will be asked to submit and present its analysis and reasons and be questioned by the Authority.
- 4.5 Where officers of the Authority have decided to uphold an OLO's request to review JT's decision a final decision will be made by the Authority within 40 business days of the earlier notification to all relevant parties that it intends to uphold the OLO's request.
- 4.6 Where an SoR has been accepted, JT should also notify the Authority of its plans and confirm the implementation date and be responsible for notifying and justifying any material change to the plan to the requesting operator and the Authority. The Authority may require JT to develop a revised timescale, in the event that the original timescale is deemed unreasonably long.