



Case T-068

JT Statement of Requirements

Non-statutory Final Decision

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

Web: [www.jcra.je](http://www.jcra.je)

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# 1 Executive summary

- 1.1 This document is the Jersey Competition Regulatory Authority (**the Authority**)’s non-statutory Final Decision (**Final Decision**) for a refined approach to the Statement of Requirements (**SoR**) process 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 Final Decision should be read in conjunction with the Information Note (‘JT Statement of Requirements’) which is published alongside this document.<sup>1</sup> The Authority undertook a consultation on a Draft Decision and a draft Information Note. The Authority received two responses to the consultation, which closed on 12 August 2022. Each response has been considered, and meetings were also held with each of the respondents in order to ensure all comments and issues were properly considered and addressed.
- 1.3 The refined SoR process will now be implemented through the application of the statutory process and alongside this document an Initial Notice has been issued. To allow this process to be completed, the refined SoR process is due to come into force from 1 January 2023 (see Next Steps).
- 1.4 This document is organised as follows:
  - Background (section 2);
  - Overview of the refined SoR process (section 3)
  - Summary of responses to the consultation and Authority conclusions; and
  - Next steps (section 4).

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<sup>1</sup> Note, in the interest of brevity, this Final Decision does not replicate all the background and content included in previous and related documentation, though a high level summary is provided for ease of reference, 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 and was given effect through a Direction issued to JT (CICRA 19/37).
- 2.3 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.
- 2.4 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>3</sup> This proposal was supported by respondents to that Consultation and was taken forward as a separate project to the BCMR as it applied to all products where JT has SMP, so it is wider than business connectivity.
- 2.5 In June 2022, the Authority published a Draft Decision and a draft Information Note, where the Authority set out its proposed approach to a refined SoR process. The proposals were informed by:
- feedback from the structured engagement on the BCMR noted above, which included *"dissatisfaction noted on JT's approach to new wholesale product requests"*;
  - engagement with the Office of the Telecommunications Adjudicator (**OTA2**)<sup>4</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

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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 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/>

<sup>4</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.

- 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>5</sup>
- 2.6 Two responses were received to the Draft Decision, from JT and Sure. Non-confidential versions of these responses are available on the Authority's website and the Authority's consideration of them is set out in section 3.
- 2.7 Before carrying out certain regulatory functions, following the non-statutory process the appropriate Jersey statutory process is followed. A decision to issue a 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, has to be followed and this has been issued alongside this Final Decision.
- 2.8 As set out in the Initial Notice, written representations to the exercise of this specified regulatory function may be made. If representations are received regarding the proposed exercise of such function, the Authority will consider them and will decide:
- not to exercise such function;
  - to issue a new Initial Notice; or
  - to issue a Final Notice confirming the direction.

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<sup>5</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)

### 3 Draft Decision responses and Authority consideration

- 3.1 The Authority received two responses to the Draft Decision, from JT and Sure. Non-confidential versions of the responses are available from the Authority’s website. Alongside considering the written response, a meeting was also held with each of the respondents in order to ensure all comments and issues were properly considered and addressed.
- 3.2 The two respondents to the Draft Decision broadly welcomed the Authority’s proposals and were also generally supportive of the proposed refined SoR process. That said, a number of observations made did require further consideration. These observations are captured in Figure 1 which also includes the Authority consideration and conclusion.

Figure 1: Summary of the substantive points raised in response to the Draft Decision

Respondent	Area (of the SoR)	Respondent’s comments	Authority consideration
JT	Sec.3 (Overview of the SoR process)	JT advocated a “stop the clock” mechanism (for certain requests and/or projects)	While the Authority recognises the potential for complex requests and processes, it does not support a “stop the clock” mechanism. Such an approach would undermine the purpose of the SoR and increase the level of market and regulatory uncertainty.
JT	Sec.3 (Overview of the SoR process)	JT proposed a scaling approach to SoR requests and/or projects, e.g., large, medium and small.	The Authority recognises there are likely to be differences in the nature of SoR requests in respect of complexity and scale. The Authority accepts that ‘large’ projects may sometimes require alternative timescales. This is discussed further in paragraph 3.3-3.5 below.
JT	Sec.3 (para 3.7 to 3.10)	JT’s proposed information and application template required to support OLO SoR requests.	Subject to initial Authority observations on some of the categories and requirements in JT’s proposed template <sup>6</sup> , the Authority expects JT and OLOs to engage toward further development, where necessary, of the proposed template.
Sure	Sec.3 (Overview of the SoR process)	Sure welcomed the proposed SoR timescales, commenting that it provided certainty of outcome (but envisaged a shorter period in practice, subject to information requirements etc.)	The Authority has considered the proposed SoR timescales (as well as current Jersey practice and policy in other jurisdictions). Further, we expect the SoR process to develop and become more effective over time; ongoing use of the process

<sup>6</sup> For example, to ensure consistency with the Authority’s Draft Decision, minor amendments have been suggested to JT’s draft template in respect of the timescales relating to capacity and demand forecasts.

			should help to improve the overall approach and timescales.
Sure	Sec.3 (para 3.7 to 3.10)	Sure suggested that it would be beneficial for the Authority to 'sign-off' JT's proposed information and application template.	The Authority has provided initial observations to JT on its proposed template to help ensure it is both transparent and reasonable. Going forward, it is a matter for OLOs to engage with JT to ensure the template remains transparent, reasonable and 'fit-for- purpose'.

3.3 As noted in Figure 1, the Authority has considered all of the issues arising from the Draft Decision and subsequent engagement. The key changes made relate to:

- the recognition of large SoR requests and/or projects at Gate 1; and
- relatedly, the addition of further business days between Gate 1 and 2 to allow for comprehensive consultation and information gathering for large SoR requests.

3.4 Accordingly, the final Information Note (SoR - JT's Statement of Requirements) sets out the updated final approach. This updated approach has been based on regulatory practice in other jurisdictions, notably the UK. For example, the SoR process to which Openreach (BT) is subject distinguishes between 'significant' and other projects, and adopts a set of criteria as guidance for both Openreach and industry. In addition to our review of practice in the UK, stakeholders referenced likely differences in the type and nature of SoR requests, recognising that certain projects and/or requests may require alternative timescales.

3.5 Therefore the updated approach takes account of regulatory practice elsewhere and stakeholder input, and provides for an extended timescale for 'large' SoR requests. The extended timescale - and associated criteria for large SoR requests – build on the regular SoR process. Hence, by exception, the timescale can be extended up to 60 business days subject to the project and/or SoR request meeting certain criteria. This approach provides an appropriate balance between the need for additional timescales and both process and regulatory certainty.

## 4 Final Decision

4.1 The Information Note ('JT Statement of Requirements') published alongside this Final Decision document represents the Authority's Final Decision on the refined SoR approach. It 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.

4.2 The 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 its involvement to be by exception (section 4).