



JT Statement of Requirements – Non-Statutory Draft Decision – T-068 (Doc. 22/39)

Sure (Jersey) Limited – Response – 12th August 2022

General comments

1. Sure (Jersey) Limited (“Sure”) is pleased to respond to the Jersey Competition and Regulatory Authority’s (“the Authority’s”) non-statutory Draft Decision regarding the proposed JT Statement of Requirements (“SoR”). We are grateful for the opportunity to provide feedback on the Authority’s proposals.
2. Please note that none of the contents of this response are confidential and therefore we are happy for the Authority to publish this document.
3. We would like to thank the Authority for its review of this topic. Whilst the existing SoR has been in place since 2019¹, it is evident that a more robust framework would be beneficial to the Jersey market. Prior to the existence of the 2019 framework, we encountered significant resistance from JT (Jersey) Limited (“JT”) in relation to our formal request for wholesale line rental (“WLR”), and to a lesser, but still material extent, for our more recent formal request for bitstream. In both cases, the outcome was positive, leading to thousands of Jersey customers being able to access reduced pricing and differentiated services, but JT made the development process unnecessarily difficult.
4. We believe that neither of our product development requests would have reached fruition, had it not been for the Authority’s perseverance in driving the process forward – from a regulatory perspective and, for WLR, also acting as the facilitator for many of the commercial negotiations. Of course, the Authority should not have needed to be tied up on such matters, as any valid requests (as these were) for JT to develop new wholesale services, should have been accepted and developed by JT, without any material resistance.
5. Whilst the level of trust between JT and Other Licensed Operators (“OLOs”) seems to have improved, particularly from around the time of the introduction of bitstream, in July 2020, OLOs deserve to

¹ www.jcra.je/media/598124/t1476gj-wholesale-access-statement-of-requirements-information-notice.pdf

have a high level of confidence that when a network access request² is formally submitted, JT does not display the obstructive behaviour that it has previously exhibited. In that regard, it is pertinent for us to acknowledge that JT does now better recognise OLOs as valid wholesale customers, not just competitors, so the signs are more promising.

6. Whilst it is hoped that we will no longer need to call on the Authority for its support for new wholesale access requests, we appreciate its intention to issue JT with an Information Notice, setting out the expectations in relation to the network access process. Any regulatory certainty afforded to OLOs would provide confidence that should issues arise with JT, an enhanced regulatory backstop would exist.

Responses to the Authority's questions

Q1. 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.

Yes, we fully support the Authority's proposals.

It is reassuring to note that in markets where JT holds Significant Market Power ("SMP") the Authority intends to require JT's own retail division to follow the SoR process for the development of new wholesale products, or changes to existing products³. Taken in association with paragraph 3.13 of the Authority's draft Information Note, this would enable the Authority to check that JT is following the due process for its own retail-driven proposals. For example, were JT to submit an LC37 notification⁴ on behalf of its retail arm, to introduce or change a product in an area where JT has been found to be dominant, the Authority should be able to match that with an already-notified SoR template from JT. Should the latter not have been submitted, the Authority would immediately have evidence that JT had not complied with the requirement⁵. The risk of that outcome would provide focus to JT's wholesale arm to ensure that it treats all relevant wholesale requests equally, irrespective of whether they were initiated inside or outside its business.

² As defined in Condition 40 of JT's licence.

³ A per paragraph 1.1 of [jt-statement-of-requirements-information-note-draft-for-comment.pdf \(icra.ie\)](#)

⁴ Relating to the requirement for JT to notify the market 21 days in advance, where changes are being made to any SMP related portfolios.

⁵ It may be beneficial to provide for a caveat, where expected RPI increases are to be applied, in which case we would not see a need for JT to follow the SoR process.

Paragraphs 3.7 and 3.11 of the draft Information Notice refer to a requirement for JT to develop a template for completion by a requesting operator. We do not believe that OLOs need to be involved in the drafting of that form, particularly as the Authority has been reasonably prescriptive about the key elements that it considers should be included. However, as those elements are referred to in paragraph 3.8 as ‘the minimum requirements’, we believe that it would be beneficial for the Authority to sign-off JT’s proposed template, to ensure that its contents are known to be fit for purpose, without being unnecessarily onerous. We are not suggesting that JT would set out to create a process that is more complex than is required to fulfil the underlying purpose of the template, but it may inadvertently interpret the requirements differently to how the Authority intends.

Q2. 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.

We agree with the Authority’s proposed approach and timetable.

In general relation to timing, we are pleased to see the proposed introduction of a specific timeframe during which each of the relevant SoR steps would need to be undertaken. We note that in a worst-case scenario, JT would have 75 working days (around 3½ months, based on an average of 21 working days per month) to issue a decision as to whether to accept or reject an SoR. Whilst this is longer than ideal, if it results in certainty of outcome, then we are amenable to this. In reality, unless additional information is legitimately requested by JT between Gates 1 & 2⁶ we would expect the total period (to decision) to be no more than 60 working days, which is in line with the Authority’s proposals.

⁶ As shown on page 5 of [jt-statement-of-requirements-information-note-draft-for-comment.pdf \(icra.ie\)](https://www.icra.ie/jt-statement-of-requirements-information-note-draft-for-comment.pdf)