



Case T-080

Regulatory Financial Reporting

Non-statutory Draft Decision

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Contents

1	Executive summary	1
2	Background	2
	Legal and licensing framework	2
	Process framework	3
	Previous practice on Jersey	3
	Small nation best practice	4
3	Overview of the draft template	6
	Market groupings	6
	Scope of outputs	7
	Explanatory note	9
4	Proposed approach to implementation	10
5	Next steps	11

1 Executive summary

- 1.1 This document is the Jersey Competition Regulatory Authority (**the Authority**)’s non-statutory Draft Decision (**Draft Decision**) for regulatory financial reporting, which will apply to JT (Jersey) Limited (**JT**). Regulatory accounting and financial information are important elements of telecoms regulation, and this Draft Decision sets out the future framework for regulatory financial reporting in Jersey.
- 1.2 This Draft Decision should be read in conjunction with the draft regulatory financial reporting template (**draft template**) published alongside this document.¹ The template has been developed with the support of Frontier Economics (**Frontier**), a consultancy with extensive experience in telecoms regulation, including regulatory reporting, across multiple jurisdictions.
- 1.3 The key objectives for implementing regulatory financial reporting are to:
 - support JT in its ongoing obligation to maintain appropriate accounting records, through providing clarity over the expectations of the Authority;
 - incorporate regulatory reporting best practice from other jurisdictions, including small nations, whilst being tailored to reflect JT’s functionality and structure; and
 - provide information that will allow the Authority to complete and implement market reviews and associated price controls more efficiently.
- 1.4 The consumer benefits arising from this project include additional regulatory and financial transparency, and greater stakeholder and consumer confidence that JT are effectively meeting their compliance requirements. In turn, more efficient regulatory practices and increased trust in the regulatory framework, will further improve consumer outcomes.
- 1.5 The Authority is seeking responses to the questions set out in chapter 5 by 15 September 2023. The responses will be considered before the approach to regulatory financial reporting is finalised. It is expected the framework will then be implemented through the application of the required statutory process, and the regulatory financial reporting measures will come into force in quarter 2 2024; in the first instance, for 2023 financial year data.
- 1.6 This Draft Decision is structured as follows:
 - Background (chapter 2);
 - Overview of the draft template (chapter 3);
 - Proposed approach to implementation (chapter 4); and
 - Next steps (chapter 5).

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

2 Background

2.1 This chapter sets out the:

- Legal and licensing framework;
- Process framework;
- Previous practice on Jersey; and
- Small nation best practice.

Legal and licensing framework

2.2 Telecommunication services are regulated in Jersey under the Telecommunications (Jersey) Law 2002 (the **Law**). The primary duty of the Authority is to perform its functions in such a manner as it considers appropriate to ensure that (so far as in its view is reasonably practicable) 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.²

2.3 The Law contains a number of specific duties imposed on the Authority³, 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;
- To promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey; and
- It considers is best calculated to further the economic interests of Jersey.

2.4 Article 9 provides that the Authority shall keep under review and gather information about the provision of telecommunications services in Jersey and elsewhere.

2.5 Part 2 of the Law establishes the requirement for a telecoms operator to hold a licence, and Part 5 sets out the powers the Authority has to grant a licence. There are four classes of telecommunications licence in Jersey. A Class III Licence is specifically for applicants which have significant market power (**SMP**) and in Jersey this is held by JT. The Class III Licence includes a Part of the Law which addresses conditions applicable to dominant operators.⁴

2.6 Among the provisions which are applicable to dominant operators is Licence Condition 33, which provides (emphasis added):

- *Within six (6) months of the Licence Commencement Date, [JT] shall confirm to the [Authority] that it maintains accounting records in a form that enable the activities specified in any direction given by the [Authority] to be separately identifiable, and which the*

² Telecommunications (Jersey) Law 2002, Article 7(1) – ‘Duties of the Minister and Authority’.

³ Telecommunications (Jersey) Law 2002, Article 7(2)(a) – (f).

⁴ Part IV of the Class III licence.

[Authority] considers to be sufficient to show and explain the transactions of each of those activities.

- *The [Authority] may require reports on the accounting record and/or activities from time to time. The [Authority] may direct [JT] as to the basis and timing of such reports as the [Authority] may require.*

2.7 Another key condition is Licence Condition 34, which provides (emphasis added):

- *The Licensee [JT] shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Telecommunication Network or Telecommunication Services.*
- *To enable the [Authority] to evaluate where any unfair cross-subsidisation or unfair subsidisation is taking place, the Licensee shall record at full cost in its accounting records any material transfer of assets, funds, costs, rights or liabilities between a part and any other part of its business, and between it and any Subsidiary or Joint Venture, and shall comply with any directions issued by the [Authority] for this purpose.*

2.8 Accordingly, the Authority intends to issue directions to JT to provide reports in accordance with the draft template in line with the process framework set out in the next section.

Process framework

2.9 The Authority's approach to consultations was set out in an Information Note in July 2018.⁵ This outlines the process to be undertaken before carrying out certain regulatory functions in accordance with the statutory process under the Law.

2.10 Initially, there is a non-statutory process. For this project, this consists of the Draft Decision (this document), which is consulted on, and a Final Decision, which will set out the final policy approach, after considering any comments received.

2.11 The Law sets out various functions of the Authority which are 'specified regulatory functions' and which must therefore be undertaken in accordance with the statutory process set out in Article 11 of the Law. The giving of the direction to JT, to implement regulatory financial reporting, would constitute a specified regulatory function. Accordingly, once the non-statutory process is completed, the Authority will issue an Initial Notice under the Law, and follow the statutory process.

Previous practice on Jersey

2.12 JT previously provided full separated, audited accounts to the Authority on an annual basis. In February 2016, a consultation was held on reporting requirements.⁶ This resulted in the adoption of a revised approach and reconsideration of the requirement for full separated accounts. Instead, it was intended that a revised framework be developed in consultation with

⁵ See: <https://www.jcra.je/media/597858/g1369gj-regulatory-consultation-process-information-note.pdf>

⁶ See: <https://www.jcra.je/cases/2016/t1202gj-telecoms-information-requirements/t1202gj-consultation-regulatory-information-requirements/>

the operators and other key stakeholders, however this was not put in place. Instead reliance was placed on ad-hoc information requests to support specific projects, such as market reviews.

- 2.13 This approach created issues with the implementation of the wholesale broadband access services price review in 2021. As a follow up to that project, in 2022 the Authority undertook an audit of JT's processes and controls with respect to its accounting and cost allocation practices. The findings and recommendations of this audit were published in November 2022.⁷ A key recommendation was to revisit the 2016 consultation on reporting requirements and to implement an appropriate form of regulatory financial reporting on a forward looking basis.
- 2.14 To help implement this recommendation, Frontier was appointed as an external resource to support the development of the template and implementation of the new approach. Frontier's work has drawn on both its own expertise and experience in working on regulatory reporting, but also direct engagement with JT, to understand the accounting systems, the structure of the data within these systems and the underlying "raw data". These two strands have been brought together, alongside considering small nation best practice (see next sub-section), in the proposals.

Small nation best practice

- 2.15 The Authority notes that it is common practice in other jurisdictions for the incumbent telecoms provider to be subject to a form of regulatory accounting and financial reporting obligation. This is particularly the case where the incumbent provider also supplies regulated wholesale products and other services, as is the case in Jersey.
- 2.16 In the UK for example, Openreach (BT) is required to prepare and report on detailed regulatory financial and accounting statements.⁸ Given the nature of the telecoms market in the UK, these are comprehensive financial statements, detailing product returns, cost components, cost allocations and attribution methods (on a series of different cost-allocation bases). In Ireland, consistent with the EU framework, Comreg has imposed a similar obligation on the incumbent provider Eircom, requiring it to submit certain regulatory financial information.⁹
- 2.17 While there is clear precedent for the implementation of some form of regulatory financial reporting obligation on incumbent providers, the Authority is also keen to ensure that any proposed measure in Jersey remains proportionate and appropriate, and consistent with the regulatory framework in Jersey.
- 2.18 Therefore, the Authority also reviewed the approach to regulatory financial reporting in smaller jurisdictions, and sought information and views from a number of participants in the Small Nations Regulatory Forum (**SNRF**). The SNRF is part of the International Institute of Communications (**ICC**). An outline summary of the results of this engagement is set out in the

⁷ See: <https://www.jcra.je/cases/2022/t-067-jt-accounting-and-cost-allocation-audit/>

⁸ For example, the 2022 regulatory financial accounts are available at: <https://www.bt.com/bt-plc/assets/documents/about-bt/policy-and-regulation/our-governance-and-strategy/regulatory-financial-statements/2022/regulatory-financial-statements-2022.pdf>

⁹ See: <https://www.eir.ie/investorrelations/about/regulatory/>

Table below. The Authority would like to thank the SNRF for its support in providing the information.

Table 1: Outline of SNRF responses to Authority questionnaire

Policy area	Country/Island/Jurisdiction			
	Barbados	Guernsey	Trinidad & Tobago	Qatar
Is the telecoms sector subject to regulation?	Yes	Yes	Yes	Yes
Are operators obliged/ required to produce financial reports or accounts?	Yes	Yes	Yes	Yes
Are these financial statements, product pricing, and/or regulatory accounts?	Some operators are required to produce financial statements (based on a % of AGTO)	Annual telecoms statistics, while licensees are also required to report on compliance against price controls	Legislation provides for the submission of information including Financial Statements, and Accounting Separation (and data requested by the regulator in pursuance of its work)	SMP operators submit top-down fully allocated cost models showing the revenues, costs and profitability and accounting separation reports
What information do the accounts contain and how frequently are the accounts produced?	Statements reviewed by the CTO (chief telecoms officer)	N/A	Requirement not yet implemented due to changes in technology and the need to amend regulations to reflect the changes (requirement relates to annual submission of separated accounts)	Separate accounts submitted annually. In addition, the full financial model including all inputs, drivers, and cost allocation

2.19 In each of the cases there is some form of regulatory financial reporting, whether in respect of compliance with ongoing price controls, or of a more comprehensive nature, like annual separate regulatory accounts. The Authority notes that it is common - and best practice - across established regulatory regimes and within less established regimes, for the sector regulator to require certain operators to compile and submit regulatory financial information.

2.20 Further, the size and scale of the market does not appear to play a significant role in determining whether such an obligation is required. The nature of the requirement is largely determined by reference to an operator's market power, regulated activities and may contain a mix of different financial information, e.g., revenues, costs, profitability, and cost allocations. Consistent with this, the scope of outputs in the draft template can be seen to be broadly consistent with wider small nation best practice.

3 Overview of the draft template

3.1 This chapter provides sets out the proposed:

- Market groupings;
- Scope of outputs; and
- Explanatory note.

Market groupings

3.2 The draft template includes proposed market groupings, which are how the Authority proposes the different services provided by JT should be grouped together. The template needs to cover all services provided by JT in Jersey, including both its wholesale and retail services and the proposed market groupings are set out in Figure 1. The groupings are split between areas where JT has SMP and non-regulated markets.

Figure 1: Proposed markets groupings

Markets where JT has SMP				Non-regulated markets		
Wholesale voice access	Wholesale broadband access	Wholesale on-island Leased Lines	Wholesale voice interconnect	Wholesale residual	Mobile	Other
<ul style="list-style-type: none"> • Wholesale Line Rental for voice only customers • Both own use and wholesale 	<ul style="list-style-type: none"> • Broadband Rental + Wholesale Line Rental for Broadband customers • One-off charges • Ancillary services • Both own use and wholesale 	<ul style="list-style-type: none"> • Both own use and wholesale • Rental and one-off charges. 	<ul style="list-style-type: none"> • Wholesale Call Origination, • Wholesale Call Transit, • Wholesale Call Termination markets (fixed and mobile) 	<ul style="list-style-type: none"> • Off-island Leased Lines • Inbound Roaming • Sponsored roaming 	<ul style="list-style-type: none"> • Included: Jersey retail mobile services • Not included: roaming in & out or anything else sold by mobile division, such as content, and handsets 	<ul style="list-style-type: none"> • All other Jersey activities, for reconciliation purposes

Source: Frontier Economics

3.3 The proposed groupings reflect a balance between the requirement for sufficiently detailed information, and proportionality.

3.4 The markets where JT has SMP draw on previous Authority decisions on market definition and SMP/remedies in market reviews. In particular:

- wholesale voice access is consistent with decision CIRCA 14/36¹⁰;
- wholesale broadband access is consistent with decision JCRA 21/22
- wholesale on-island leased lines is consistent with decision JCRA 22/35; and
- wholesale voice interconnect services (origination, transit and termination), which are grouped together as previous decisions suggest a high level view across interconnection services is proportionate. For example, mobile termination is based on cost orientated prices (as per the decision CICRA 20/11) and for fixed termination, remedies were not deemed necessary (as per decision CICRA 17/25).

¹⁰ Note the reference to ‘decision’ in this sub-section can refer to either a Final Decision (non-statutory) and/or Final Notice (statutory). All documents can be found on the Authority’s website.

3.5 For non-regulated markets, there is a group of all residual wholesale products. This is required to have a clear separation of upstream (wholesale) and downstream (retail) markets. With respect to the retail markets, mobile is split out, as many network and support costs are shared between fixed regulated products and mobile services, so it is important to have visibility of this. The final grouping of other, is included in order to be able to reconcile this information with JT's statutory accounts.

Scope of outputs

- 3.6 For each market grouping, the draft template includes the following four groups of outputs:
1. **Costs by market** - including operating costs (**OPEX**), and various forms of capital costs, i.e. annual depreciation, Net Book Value (**NBV**), Gross Book Value (**GBV**), and Mean Capital Employed (**MCE**).
 2. **Income Statement by market** - also known as P&L (profit and loss) account.
 3. **Volumes and unit costs / revenues** - average unit revenue, and average unit costs for fixed access products, with average unit costs calculated as the "Fully Allocated Cost"¹¹ divided by the relevant volumes.
 4. **Reconciliation** - for revenues, costs, returns and year-end capital employed¹² to JT's Statutory Accounts.
- 3.7 When producing the outputs above, JT should treat wholesale and retail services as standalone businesses. This is to ensure that the costs are recovered in a non-discriminatory way from access seekers, JT's own retail branch and/or JT's own use to produce other services.
- 3.8 Further detail on each of the four areas is set out under each respective heading below.

Costs by market

- 3.9 This information will provide the Authority with the base cost information needed to develop appropriate remedies in the relevant markets where required. For example, data on OPEX, depreciation, NBV and GBV will allow the Authority to develop cost-based prices in relevant markets if required as a remedy. The data on OPEX, annual depreciation, and MCE also enables the returns in each market to be estimated.
- 3.10 The costs by market are broken down into cost categories, which should help demonstrate the robustness of the data. For example, it will allow the Authority to identify if the costs in relation to particular categories appear lower or higher than expected, and to understand the key drivers of changes in costs over time.
- 3.11 These costs should include "direct costs" (i.e. costs that are incurred solely to provide the services in the given market), "joint costs" (i.e. cost that support the provision of services across multiple markets), and "common costs", which are not directly attributable to a given service,

¹¹ This is based on the actual costs incurred by the regulated operator. Under this approach joint and common costs are allocated to each service using allocation keys.

¹² JT's capital employed at the end of the financial year, rather than MCE (which is the average capital employed throughout the year), is used for reconciliation purposes, as it is year-end values that are produced within JT's statutory accounts. The MCE outputs within the template are calculated by taking the average of the year-end figures in the current and previous financial year.

but still need to be recovered by JT (such as corporate overheads). The joint and common costs will need to be attributed to services using a cost allocation methodology.¹³

Income Statement by market

3.12 This statement includes JT's returns in each market (calculated as revenues minus operating costs and annual depreciation), and its percentage Return on Capital Employed (ROCE), calculated as the return divided by MCE. The ROCE allows the Authority to directly compare returns to JT's relevant cost of capital (WACC) in each market, and to compare returns across markets in a comparable way. This will support compliance with the key Licence Conditions with respect to financial reporting, and help provide an indicative view on the effectiveness of competition/regulation in different market segments.

Volumes and unit costs / revenues

3.13 Volumes by market (along with costs by market above) are useful to inform price controls, as this is a key input into calculating cost-based prices (i.e. relevant costs are divided by volumes to calculate service unit costs, which are then used to inform these prices). Similarly, the average unit revenue and unit cost provide an indicative view on the effectiveness of competition/regulation in different market segments.

3.14 The Authority proposes that the volumes, average revenues, and average costs are only provided for JT's regulated wholesale fixed access markets (voice access, broadband access, and on-island leased line access), and only for rental services within that (i.e. not including volumes / revenues / costs associated with one off charges). This is a proportionate approach, as it is consistent with the current focus of price controls, where volume information is particularly needed.¹⁴

Reconciliation

3.15 The reconciliation statements represent a further check on the robustness of the information in the template, as this will show that the information is consistent with that in JT's audited statutory accounts. It is important to be able to trace and justify the differences between the regulatory reports and statutory accounts. The Authority proposes to allow JT to propose the appropriate granularity of adjustments explaining the differences between the accounts.

3.16 As a further aid to reconciliation, the Authority proposes that in each submission of the template, the template should include the outputs for both the current financial year and the previous year. This will again allow the Authority to test the robustness of the outputs, by investigating whether changes in outputs from one year to the next are justified. To ensure proportionality, the Authority proposes that the previous year's outputs don't need to be restated (i.e. updated to reflect any changes to the underlying development of the accounts) unless these would result in material differences in the outputs.

¹³ Note, JT's cost allocation methodology will be reviewed by the Authority and Frontier as part of this project.

¹⁴ Note, this doesn't preclude the Authority conducting specific investigations in relation to one-off charges, as information for such investigations can be gathered as part of separate information requests.

Explanatory note

- 3.17 Alongside each iteration of the template, the Authority proposes that JT submits an explanatory note. The objective of this note is to provide documentation to allow the Authority to understand the approach, systems and processes used by JT to generate the template outputs, and verify the robustness of these outputs, including why the outputs change over time.
- 3.18 In the first year in which the template is submitted, the Authority proposes that the explanatory note includes information to allow the calculation approach to be reviewed. For example, this would include:
- The source and overview of raw data, including the set of cost and revenue categories and associated description;
 - An overview / structure of calculations in the underlying accounting system, including the cost allocation process; and
 - An overview of cost allocation keys used for each cost category, and rationale for the choice of each.
- 3.19 In subsequent years, JT would then provide an update to the explanatory note, which:
- Reflects the calculation approach used for that year's submission, including the allocation approach; and
 - Includes an annex, with an explanation of key changes versus the previous financial year. This includes any changes in the set of cost / revenue categories in the outputs, changes in cost allocation keys; and material changes in "outputs" (e.g., cost for a specific service, return (ROCE)), with an associated explanation for these changes.
- 3.20 The use of an explanatory note is consistent with best practice elsewhere and will build on JT's own internal processes and reporting, which the Authority understands will require it to produce a significant proportion of the above information (before it is submitted to the Authority).

4 Proposed approach to implementation

4.1 As noted in the background section, the Authority intends to exercise a specified regulatory function by issuing a direction to JT to implement regulatory reporting. This direction will set out the:

- Relevant Licence Conditions that enable the direction to be made;
- Expectations for the year in which regulatory reporting will begin, i.e., quarter 2 2024 (on 2023 financial data);
- Relevant template and approach that should be followed; and
- Timing of submission.

The Initial Notice will be issued alongside the Final Decision.

4.2 With respect to timing, the Authority proposes that the regulatory reports should be provided on an annual basis by the end of May. This is timed to be a month after the publication of JT's statutory accounts. The Authority considers this strikes the right balance between providing JT with sufficient time to produce the reporting outputs, while ensuring that the Authority receives this information in a timely manner for use in its decision-making.

4.3 The reports will then be reviewed by the Authority, and where needed, follow-up clarification questions or additional information requested. It is expected this process would be completed by the end of June in each respective year. Particular emphasis will be placed on the first annual set of data and the Authority will carry out a detailed review to ensure there is a firm foundation for future submissions.

4.4 Note, a key requirement of the template is that it must reconcile to the statutory accounts. The statutory accounts are formally and externally audited, and this reconciliation provides assurance on the regulatory reporting data. In order to be proportionate, the Authority does not propose to require an formal external audit of the data template on a routine basis. Rather, it would expect any audit to be by exception and in response to concerns around data integrity/quality and this would be carried out consistent with the relevant provisions in JT's Licence.¹⁵

4.5 The Authority notes that while the template will contain confidential data, it is common practice in other jurisdictions for key aggregated data to be published as a matter of course. This has the benefit of both transparency and ensuring stakeholder consumer confidence that JT are effectively meeting their compliance requirements. At this point in time, the Authority does not have a firm view on what level of information should be published, if at all, and so would welcome feedback from stakeholders on this point.

¹⁵ In particular, Licence Condition 4.3 and 4.4 sets out the process that the Authority would follow.

5 Next steps

- 5.1 The Authority invites written views and comments on the questions raised in Box 1 below, to be made by 5pm on 15 September 2023. 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 you agree with proposed template and approach to regulatory financial reporting? If you do not agree you should provide all of your analysis and assessment*

Question 2. *Do you agree with the proposed approach to implementation for regulatory financial reporting? If you do not agree you should provide all of your analysis and assessment*

Question 3. *What are your views on the level of information from the template that should be published?*

- 5.2 Responses can be submitted by email to 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

- 5.3 All responses should be clearly marked: “Regulatory Financial Reporting – Draft Decision”. 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.
- 5.4 This Draft Decision 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 December 2023.
- 5.5 The non-statutory process will be followed by a statutory process, which is required when carrying out certain specified regulatory functions. A decision to give direction to JT to provide regulatory financial reporting information is the exercise of a specified regulatory function pursuant to the Law. 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 quarter 2 2024, for 2023 financial year data.