



# Telecommunications (Jersey) Law 2002

## Case T-080: Regulatory Financial Reporting

### Initial Notice of proposed Directions to JT (Jersey) Limited

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## 1. Executive summary

- 1.1 The Jersey Competition Regulatory Authority (**the Authority**), is issuing this Initial Notice of its intention to exercise a specified regulatory function to direct JT (Jersey) Ltd (**JT**) to implement regulatory financial reporting. This marks the next stage of the Regulatory Financial Reporting case and this document should be read alongside the Final Decision (JCRA 24/12).<sup>1</sup>
- 1.2 Regulatory accounting and financial information are important elements of telecoms regulation, and this Initial Notice defines the future framework for regulatory financial reporting in Jersey.
- 1.3 This document summarises the process the Authority has undertaken so far, and sets out the background to the proposed Direction that the Authority proposes to issue to JT under the Class III licence issued to JT by the Authority under Article 14(1) of Telecommunications (Jersey) Law 2002 (**the Law**). This is set out in chapter 4 of this document.
- 1.4 This Initial Notice sets out the intention of the Authority to exercise a specified regulatory function. In due course, the Authority may issue a Final Notice, or a revised Initial Notice (subject to responses) and following the process outlined in Article 11 of the Law. This is set out in more detail in chapter 5 of this document.

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<sup>1</sup> All case documents are available at: [T-080 - Regulatory Financial Reporting](#)

## 2. Background

2.1 This chapter is split into three sections, which cover in turn:

- Statutory background;
- The licence granted to JT; and
- The approach to the case.

### Statutory background

2.2 The Law provides that no person may run a telecommunications system without a licence and establishes the regime under which telecoms operators may be licensed by the Authority, the basis of such licensing and the various powers and duties of the Authority and the Minister.

2.3 Article 7 of the Law sets out the duties of the Minister and the Authority, and in particular obliges them, in the performance of their functions, to:

- (a) protect and further the interests of telecommunications users within Jersey by, wherever appropriate, promoting competition amongst telecoms operators;<sup>2</sup>
- (b) promote efficiency, economy and effectiveness in commercial activities connected with telecommunications;<sup>3</sup> and
- (c) further the economic interests of Jersey.<sup>4</sup>

2.4 Article 15(1) of the Law states that a licence will be '*subject to such conditions as are contained in it*' and Article 16 sets out what such conditions may relate to or impose conditions in relation to and various powers of the Authority.

2.5 Article 16 specifically provides that the Authority may include in any licence, conditions that are:

- (a) intended to prevent or reduce anti-competitive behaviour<sup>5</sup>; or
- (b) relate to, or imposing requirements about, competition in relation to telecommunications services, telecommunication systems, apparatus and telecommunication equipment.<sup>6</sup>

2.6 Article 16(2) provides that conditions can, amongst other things, require the licensee:

- (a) '*to refer for determination by the Authority and specified question ... and to act on such a determination*': and
- (b) '*to comply with any direction given by the Authority in respect of anything to which the licence relates*'.

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<sup>2</sup> Article 7(2)(a)

<sup>3</sup> Article 7(2)(b)

<sup>4</sup> Article 7(2)(c)

<sup>5</sup> Article 16(1)(i)

<sup>6</sup> Part 5, Article 16 (2) (4) (a)

2.7 Article 16 confers powers on the Authority, amongst other things, to make such determinations, pursuant to Article 16(3)(b), and to issue such directions, pursuant to Article 16(3)(c). Exercising either of those powers is a *'specified regulatory function'* for the purposes of Article 11, which prescribes the process which the Authority must follow in order to exercising such function.

#### The licence granted to JT

2.8 The Licence contains, in Part IV, certain provisions only applicable to Class III licences<sup>7</sup>, which, pursuant to Condition 28.1 apply:

- (a) *'where the [Authority] has decided that a Licensee possesses Significant Market Power<sup>8</sup> in a relevant market'*; and
- (b) the Authority *'determine[s] that the provisions of this Part IV shall apply'*

2.9 Where the conditions described in paragraph 2.8 are both satisfied in relation to a relevant market, Part IV provides, amongst other things, measures which, in summary:

- (a) under Condition 33.1, require JT to maintain accounting records in relation to activities specified by the Authority in such a way as to be separately identifiable;
- (b) under Condition 33.2, entitles the Authority to require reports on such records and activities and to direct JT as to the basis and timing of such reports; and
- (c) under Condition 34.2, entitles the Authority to direct JT in relation to material transfers between parts of its business or between JT and any subsidiary or joint venture.

2.10 Chapter 3 of this Initial Notice sets out the basis on which the Authority is giving effect to Conditions 33.1, 33.2 and 34.2 to issue the proposed Direction to JT.

#### The approach to the case

2.11 The Authority's approach to consultations was set out in an Information Note in July 2018.<sup>9</sup> The Information Note outlines the process to be undertaken before carrying out certain regulatory functions in accordance with the relevant statutory process.

2.12 Under the process there is first a non-statutory process. For this review, the Draft Decision was issued on 18 July 2023, taking account of stakeholder input and the recommendations arising from the JT accounting and cost allocation audit carried out in 2022.<sup>10</sup> The conclusion of this consultation process can be found in the non-statutory Final Decision (JCRA 24/12) which has been published alongside this Initial Notice. The Final Decision provides an outline of the responses to the Draft Decision and how the Authority has taken them into account in its decision making.

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<sup>7</sup> The only Class III licence in issue is JT's licence.

<sup>8</sup> The definition of a position of SMP / dominance and the abuse of a position of SMP / dominance is not explicit in the Telecoms Law. However, the Competition (Jersey) Law 2005 sets out the States' approach to defining abuse of a dominant position and anti-competitive practice.

<sup>9</sup> See: [Regulatory Consultation Process, Information Note](#)

<sup>10</sup> See: [T-067 - JT Accounting and Cost Allocation Audit](#)

2.13 Following the non-statutory process, the Authority intends to make a decision as to the approach JT should take to regulatory financial reporting. As noted at paragraph 2.7 and set out more fully in Chapter 3, this is a specified regulatory function for the purposes of Article 11 of the Law. Further detail on the statutory process is included in Chapter 5 (Next steps).

### 3. Framework for the Directions

- 3.1 Among the provisions which are applicable to dominant operators is Licence Condition 33 (Separation of Accounts), which provides (emphasis added):

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

*33.2 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.'*

- 3.2 Licence Condition 34 (Cross Subsidisation) also applies, which provides (emphasis added):

*'34.2 To enable the [Authority] to evaluate where any unfair cross-subsidisation or unfair subsidisation is taking place, [JT] 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.'*

- 3.3 The Authority has determined that JT shall provide regulatory financial reporting on an annual basis in accordance with the framework set out in the Final Decision, and the template report annexed to the Final Decision. The next chapter sets out the proposed Directions to implement this, by reference to these Licence Conditions.

## 4. The proposed Directions

### 4.1 The Authority intends to issue Directions to JT as follows:

#### **DIRECTIONS**

The Jersey Competition Regulatory Authority (**Authority**) in accordance with its powers under the Telecommunications (Jersey) Law 2002 (**Telecoms Law**) and the provisions of the licence granted to JT under the Telecoms Law and dated 3 August 2021 (**Licence**), has determined that the provisions of Part IV of the Licence apply as follows.

#### **Direction 1 – pursuant to Condition 33.1 and 34.2 of the Licence**

The following market and/or product groupings currently constitute a specified ‘activity’ for the purposes of Condition 33.1 and 34.2 of the Licence:

- Wholesale voice access
- Wholesale broadband access
- Wholesale on-island leased lines
- Wholesale voice interconnect
- Retail Voice
- Wholesale residual
- Mobile
- Other

In respect of each such activity, JT will report to the Authority in accordance with the framework set out in the Final Decision (JCRA 24/12) consistent with the outputs identified in the template report annexed to these directions, specifically:

1. Costs by market - including operating costs (**Opex**), internal transfer charges, 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 – in the form of a P&L (profit and loss) account.
3. Volumes and unit costs / revenues - average unit revenue, and average unit costs for wholesale fixed access products, with average unit costs calculated as the ‘Fully Allocated Cost’ divided by the relevant volumes.
4. Reconciliation - for revenues, costs, returns and year-end capital employed to JT’s Statutory Accounts.

#### **Direction 2 – pursuant to Condition 33.2 of the Licence**

Each template report to be submitted pursuant to Direction 1 shall relate to a financial year (from 1 January to 31 December) and shall be submitted by 31 May in the subsequent year in accordance with the framework set out in the Final Decision (JCRA 24/12). The first template report to be prepared by JT under Direction 1 shall relate to the 2023 financial year and shall be delivered to the Authority by 31 May 2024.

#### **Direction 3 – pursuant to Condition 33.2 of the Licence**

In relation to each template report to be submitted pursuant to Direction 1, JT shall additionally submit on the same day an explanatory note in accordance with the framework set out in the Final Decision (JCRA 24/12). The explanatory note should enable a clear understanding of the approach, data, systems and processes used by JT to generate the template report outputs, while also verifying



the robustness of the outputs, including an explanation of material year-on-year changes in the outputs.

In addition to the full template report and explanatory note submitted to the Authority, JT shall provide publishable versions to the Authority and publish these on its Wholesale Portal. These will be prepared in line with the framework, and description of each, as set out in the Final Decision.

The template report and requirements on the contents of the explanatory note may be subject to change to reflect market, policy and other relevant developments. It is expected that minor changes to the template report or explanatory note requirements would be subject to agreement between JT and the Authority, while substantive adjustments will be subject to a revised Initial Notice.

**[Annex – final reporting template]**

## 5. Next steps

- 5.1 This Initial Notice is in exercise of a specified regulatory function by the Authority to direct JT on the approach to regulatory financial reporting. Written representations on this Initial Notice may be made by e-mail to [info@jcra.je](mailto:info@jcra.je) on or before 5pm on 22 March 2024.
- 5.2 If representations are received before the deadline 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 Directions to JT.
- 5.3 If no responses are received before such time, the Final Notice of Directions will be made on or about 27 March 2024.