



# Telecommunications (Jersey) Law 2002

## Case T-080: Regulatory Financial Reporting

## Final Notice of Directions to JT (Jersey) Limited

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## Contents

1.	Executive summary	1
2.	Matters contained in the Initial Notice	2
3.	Representations	3
	Airtel representation	3
	JT representation	5
	Sure representation	6
4.	Final Notice and Directions	8

## 1. Executive summary

- 1.1 The Jersey Competition Regulatory Authority (**the Authority**), is issuing this Final Notice of its intention to exercise a specified regulatory function to direct JT (Jersey) Ltd (**JT**) to implement regulatory financial reporting. Regulatory accounting and financial information are important elements of telecoms regulation, and this Final Notice sets out the framework for regulatory financial reporting in Jersey.
- 1.2 This Final Notice follows the Initial Notice (JCRA 24/13) published on 20 February 2024, which set out the proposed Directions on JT to implement regulatory financial reporting.<sup>1</sup> The Authority received three representations on the Initial Notice.
- 1.3 This Final Notice sets out the final Directions of the Authority, under the Class III licence issued to JT by the Authority under Article 14(1) of Telecommunications (Jersey) Law 2002 (**the Law**), having taken full account of representations received to the Initial Notice. It is structured as follows:
  - Matters contained in the Initial Notice (see chapter 2);
  - Representations (see chapter 3); and
  - Final Notice and Directions (see chapter 4).
- 1.4 Note, for brevity, this document does not repeat all the background material set out in the Initial Notice, though a high level summary is provided in chapter 2.

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

## 2. Matters contained in the Initial Notice

2.1 Chapter 2 of the Initial Notice set out the background to the proposed Directions, including an overview of:

- The Statutory background - the Law and relevant Articles, and the duties placed on the Authority in the performance of its functions;
- The licence granted to JT – JT holds a Class III licence. The Licence contains certain Conditions, which enable the Authority to issue the Directions to JT with respect to regulatory financial reporting, namely Licence Conditions 33.1, 33.2 and 34.2; and
- The approach to the case – the non-statutory process that the Authority undertook, culminating in the Final Decision (JCRA 24/12). The statutory process was also explained.

2.2 Chapter 3 of the Initial Notice set out the framework for the issuing of the proposed Directions; Chapter 4 then set out the proposed Directions, and Chapter 5 then set out the next steps, including the process relating to representations on the Initial Notice. The proposed template, to be used in the implementation of financial regulatory reporting, was published alongside the Final Decision.

### 3. Representations

- 3.1 The deadline for representations to the Initial Notice was 22 March 2024. Three representations were received, from Jersey Airtel Limited (**Airtel**), JT and Sure (Jersey) Limited (**Sure**).
- 3.2 Article 11(4) of the Telecoms Law requires that the Authority consider any representations to an Initial Notice within the given period and then decide:
- (a) Not to exercise such function;
  - (b) To issue a new Initial Notice; or
  - (c) To issue a Final Notice confirming the direction.
- 3.3 The Authority has considered the representations in detail. For the reasons set out in this chapter, the Authority has decided to issue this document as the Final Notice, confirming the Directions. Note, for brevity, the Authority's response in this section does not repeat all the points and issues set out in the representations and Final Decision, though a summary is provided and the relevant sections of the Final Decision are identified.

#### Airtel representation

##### Points raised by Airtel

- 3.4 Airtel's response sets out that the Authority should carry out further work to make regulatory financial reporting more 'transparent, comprehensive, granular, and detailed' to provide transparency to end users of the wholesale service(s).
- 3.5 A concern for Airtel was the grouping of Wholesale Residual. Airtel considered that services such as 'SP interconnect, ISP / IP feed, Off-Island leased lines, Inter-Island leased line between Jersey & Guernsey' should be separately identified and listed. Further, Airtel noted that, regardless of Significant Market Power (**SMP**), there is a commonality of infrastructure and expense, and that this could lead to an inaccurate representation of costs and revenues associated with these services.
- 3.6 Airtel's representation also explained the criticality of JT wholesale inputs to its business and said that it was surprised that the Authority did not consider it appropriate to look at the granular costs and incomes associated with the wholesale inputs within Wholesale Residual.
- 3.7 Linked to the arguments above, Airtel suggest that as a result of absent granular reporting of costs and incomes associated with the full suite of JT wholesale services, the Authority will not have sufficient visibility to validate that JT is not operating with an unfair advantage. Airtel noted that with shared infrastructure, there is a risk of regulated prices being higher than they should be and potential scope for cross-subsidisation, or for costs to be inappropriately allocated, again resulting in higher prices.
- 3.8 Airtel argued that to prevent any unfair advantage, due to ownership of wholesale access products grouped under the residual category, the Authority should split the – Wholesale Residual - grouping as follows:
- a) SP Interconnect;
  - b) ISP / IP Internet feed;

- c) Off-Island leased lines; and
- d) Inter-Island leased line between Jersey & Guernsey.

3.9 In respect of each of above, Airtel suggested that JT should be instructed to supply detailed reports on income and costs.

#### Authority response

3.10 The concerns raised by Airtel in its representation are focused on a request for financial reporting on specific products within non-regulated markets. The Authority notes this is the same point Airtel made in response to the Draft Decision to which the Authority responded:

*'With respect to the comments raised by Airtel, the Authority notes Airtel's concerns around the non-regulated markets. However, absent SMP designations, the Authority is not in a position to require JT to report and publish detailed information on these additional markets. This is both consistent with best practice and the Telecommunications (Jersey) Law 2002, which sets out the Authority's role and duties under this Law.'* Final Decision, paragraph 3.18

3.11 The Authority's approach is consistent with the best practice and the Law; the focus of reporting needs to be on markets where JT has been found to have SMP. Therefore while the Authority recognises the importance of the products in Wholesale Residual, as JT are not designated as having SMP in relation to these services, it is not appropriate to require JT to provide separate information for these.

3.12 With respect to shared infrastructure, the Authority notes that, consistent with best practice in regulatory reporting across jurisdictions, shared costs (and where relevant revenues) will be allocated between services using appropriate allocation keys. The details of this will be provided to the Authority alongside the completed regulatory reporting Template and set out within the accompanying Explanatory Note. Moreover, as set out in the Final Decision:

*'That said, the Authority recognises the importance of cost allocation, and with the support of Frontier, will undertake a review of JT's cost allocation methodology as part of the review of the first submission. This review will help ensure JT's approach is appropriate, including ensuring that for the most material cost items for which there is a clear cost driver, an allocation key reflecting this driver is used to allocate costs between markets. This addresses potential concerns on cost drivers and other factors.'* Final Decision, paragraph 3.17 (p8)

3.13 Further, with respect to the wholesale products within Wholesale Residual, the Authority notes it will be reviewing these and the broader telecoms market in the Telecoms Market Review.<sup>2</sup> This will consider whether the SMP designations should change, and subsequently if any regulatory action is appropriate. If following the Telecoms Market Review, the Authority considers that additional and new regulatory financial information should be included in the reporting Template, it will progress work to update the requirement on JT.

3.14 Given the above considerations, the Authority does not consider it appropriate to change the approach to the proposed markets suggested by Airtel.

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<sup>2</sup> Further detail on this Review is available at: [T-083 - Telecoms Market Review](#)

## JT representation

### Points raised by JT

- 3.15 JT's representation noted what it considers to be a 'pragmatic approach' for Retail Voice, which reflects the historic SMP decision in relation to this market. JT also noted its support for the approach to publication; including the explanatory note and the general process in the first year of reporting, and the approach to the first year review and assurance requirements, including the statement being signed by the JT Chief Financial Officer.
- 3.16 JT's representation raised queries over the following areas of the template:
- Calculation of mean capital employed – JT noted that for the first year (2023) this will be stated as the year end capital employed balance (as it has not calculated opening balances).
  - Provision of gross book value (GBV) data – JT noted that GBV is not used in the calculation of mean capital employed, profit or loss, and provides no insight into the profitability of regulated markets. It notes that it is not aware of any other regulator requiring GBV data and that its provision will be disproportionate to the benefits the information will provide. Reflecting this, JT requested the Authority set out the reasoning for its inclusion in the Template.
  - Asset life data – JT noted that in the majority of categories, the asset life data will be a range of useful lives and it may be difficult to calculate the average. JT question the usefulness of including this in the template and request the Authority explain how the information will be used.
  - Reconciliation – JT note that the template explicitly states that reconciliation should be against JT (Jersey) Limited's statutory accounts, and that this should also be stated in the Direction(s).

### Authority response

- 3.17 With respect to JT's queries the Authority notes:

- Calculation of mean capital employed – The Authority notes the approach JT set out is consistent with the guidance provided in the sheet 'Capital Costs' of the Final Template.
- Provision of GBV data – The Final Decision set out that the key objectives of regulatory financial reporting are to:
  - *Underpin JT's ongoing obligation to maintain appropriate accounting records, by providing additional clarity on the regulatory policy framework;*
  - *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 more efficiently complete and implement market reviews and any associated remedies.'* Final Decision, paragraph 1.3

The provision of GBV data supports the third of these objectives, as highlighted in the Final Decision:

*'For example, data on Opex, depreciation, NBV and GBV will support the Authority in developing cost-based prices in relevant markets if required as a remedy.'* Final Decision, paragraph 4.9

- Asset life data – The Authority notes it is often proportionate to conduct cost modelling to inform cost-based prices for groups of assets rather than individual assets, such as at the level of the categorisation in the reporting Template. Indeed, this was the approach adopted for the Wholesale Broadband Access Services Price Review and its inclusion in the Template is consistent with the Authority’s third objective noted above (*‘to more efficiently complete and implement market reviews and any associated remedies’*).<sup>3</sup>

Given this, having asset life data at this level would be valuable. Where the lifetime of assets vary within a given category, the average across asset classes can be provided (weighted by the gross book value for each asset class). It is the Authority’s understanding that this can be calculated within JT’s systems given it has information on asset lives and gross book value for each asset class.

- Reconciliation – The Authority has added this to the Direction.

## Sure representation

### Points raised by Sure

3.18 Sure set out its general support for the Authority’s proposed Directions and noted that, it understood JT had maintained its costing system and that this was reflected in the timing of the submission. Sure noted that in the absence of an existing costing system, the timetable for implementation would be ‘considerably longer’.

3.19 Sure’s representation questioned the rationale for not publishing the information on the average cost and revenue tab in the reporting template, and that this should be reconsidered. Sure noted that this relates to areas where JT has SMP and could be derived from the areas of the template that will be published. Further, to support its view that this tab should be published Sure noted:

- The split between rental and installation should not create any commercial concern to JT, or be of material relevance to the market;
- The weighted average cost of capital (**WACC**) is simply JT’s WACC percentage (publicly known) multiplied by the mean capital employed; and
- The volumes represent the total of each group of products and is something that can be proxied from the annual Telecommunications Statistics and Market Report.

3.20 On Retail Voice, Sure noted its support for its inclusion in the template, but its disappointment that no details would be in the published reporting Template, and asked that this be reconsidered. Sure’s representation stated that:

*‘considering the significant market distortion that JT itself has highlighted to stakeholders over a number of years, in relation to its legacy Prime Talk tariff, we are disappointed to think that*

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<sup>3</sup> Further detail on the use of asset life data in cost modelling is provided in the Frontier Report accompanying the Wholesale Broadband Access Services Price Review, see section A.3.2: [Wholesale Broadband Access Services in Jersey: A report for the JCRA, Frontier Economics](#)



*there would be no publicly available measure of the gradual correction to this SMP market, as the quantity of the thousands of remaining customers on the Prime Talk tariff decreases.’<sup>4</sup>*

#### Authority response

3.21 With respect to JT’s costing systems, the Authority notes the proposals have been shaped through significant engagement with JT, which has enabled an understanding of the accounting systems, the structure of the data within these systems and the underlying ‘raw data’.

3.22 With respect to the published reporting Template, the Authority notes Sure’s concerns around the scope of publication on Average Cost and Revenue, and Retail Voice. In the Final Decision, it was noted:

*‘The Authority’s view is that a key benefit of publication is greater stakeholder confidence that JT are effectively meeting its compliance obligations. Consistent with this, the Authority’s publication requirements are targeted at the markets where JT has SMP and active pricing regulation (or other economic remedies).’* Final Decision, paragraph 3.47

3.23 The Authority considers that not publishing the Average Cost and Revenue information does not undermine these stated objectives:

- The profit and loss and breakdown of costs by market grouping for regulated SMP markets (which will be published) gives stakeholders the ability to see the level of JT’s returns and costs in these markets and understand the key drivers.
- Consistent with this, the Average Cost and Revenue is for the benefit of the Authority, for example providing helpful information to verify the robustness of revenue and cost information in the reports, and as an input for cost modelling to inform analysis and potential remedies.
- The suite of published information is consistent with the objectives and JT’s obligations; Average Cost and Revenue information would not in any event give stakeholders materially more information than what would be available in the published figures.

3.24 With respect to the Retail Voice, publication requirements are focused on markets where JT has SMP and active pricing regulation (or other economic remedies). The Authority notes Retail Voice does not meet these criteria. Further, the Authority notes that it will receive the detailed information on Retail Voice, and intends to use this as part of its upcoming Telecoms Market Review. As part of this Review the Authority will fully review all markets including Retail Voice.<sup>5</sup> If following this, the Authority considers that additional and new regulatory financial information should be included in the reporting Template, it will progress work to update the requirement on JT.

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<sup>4</sup> Prime Talk was a subsidised fixed telephony tariff offered by JT to citizens aged 65+ which provided a subsidy for line rental and lower priced calls. The product was closed to new users in 2015 and the number of customers on the tariff is declining through time.

<sup>5</sup> This matter will fall within the consideration of market definition and SMP Draft Decision for the fixed markets which is due to be consulted on in 2024.

## 4. Final Notice and Directions

4.1 This chapter sets out the Directions to JT to implement regulatory financial reporting. Consistent with the response to the representations set out in chapter 3 only consequential changes have been made to the Directions, namely:

- Adding in the definition of JT as JT (Jersey Limited) in the first paragraph of the Directions;
- Adding a statement ‘where the relevant entity is JT (Jersey Limited)’ to Reconciliation (under Direction 1), consistent with the reasoning set out in paragraph 3.17;
- Amending the date for the submission of the first response (under Direction 2), to 28 June 2024 to reflect the date of this Final Notice; and
- To provide clarity, annexing the reporting Template to this Final Notice. The template is unchanged from the template published alongside the Final Decision.

### 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 (Jersey) Limited 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, where the relevant entity is JT (Jersey Limited).

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

Each template report 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, save for the first template report and explanatory note, 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 28 June 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 published alongside the Final Notice]

**By order of the Authority**

**23 May 2024**