



# Channel Islands Wholesale Access Project – Wholesale Line Rental (WLR)

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## Final Decision

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# CONTENTS

<b>1. Introduction</b>	<b>2</b>
<b>2. Structure of the Notice</b>	<b>4</b>
<b>3. Legislation and Licensing</b>	<b>5</b>
<b>4. Consultation Responses</b>	<b>6</b>
<b>5. Rationale and Response</b>	<b>8</b>
<b>6. Final Decision</b>	<b>10</b>
<b>7. Next Steps</b>	<b>12</b>
<b>Annex A - Legal Considerations</b>	<b>13</b>
<b>Annex B - WLR Product Description</b>	<b>15</b>
<b>Annex C - Licence modification</b>	<b>16</b>

## 1. Introduction

This paper constitutes the Final Decision (**FD**) of the Guernsey Competition and Regulatory Authority's (**GCRA**) decision on the licence modifications required for Sure (Guernsey) Limited (**Sure**) to introduce Wholesale Line Rental (**WLR**) on its fixed telecommunications network in Guernsey.

It follows the GCRA's Draft Decision (**DD**) and Jersey Competition Regulatory Authority's (**JCRA**) Initial Notice (**IN**) of June 2014 (documents CICRA<sup>1</sup> 14/30 and 14/29 respectively) setting out proposed licence modifications.

This paper summarises the responses and sets out the GCRA's decision to proceed with licence modifications mandating the introduction of WLR by Sure in Guernsey no later than 1<sup>st</sup> June 2015.

### Background

Wholesale access to the fixed networks of the incumbent telecommunications providers in Jersey and Guernsey is key to the further development of fixed-line competition in the Channel Islands. Competitive access to the network of Sure will stimulate greater competition in fixed-line services in Guernsey, providing consumers with greater choice and better pricing, and helping drive innovation in the services provided to telecoms users. In the event that competition is increased in fixed-line services, the need for price controls on Sure in the longer term should also be reduced.

Wholesale Line Rental (WLR) allows competitors to the telecom incumbents to offer a single bill that includes exchange line rental. Currently, the incumbent (in Guernsey, Sure) maintains a commercial relationship with the customer, given it is the only provider of exchange line rental, even if the customer uses a competitor for calls or broadband services. This allows the incumbent several potential advantages, including the obligatory continuation of a commercial relationship with all customers who take fixed-line services, and the ability to bundle products in a way its competitors cannot. WLR is intended to allow a measure of access competition to remove such obstacles to competition.

In November 2013, the Royal Court of Jersey delivered its judgement on the appeal by JT against the decision of the JCRA to introduce WLR in Jersey. The appeal was allowed.

A further consultation was issued (Consultation Document on Wholesale Line Rental (CICRA (14/12)) on 24<sup>th</sup> March 2014. Responses to that consultation have been considered. It is apparent from those responses and subsequent enquiries that there is general agreement that Wholesale Line Rental should be introduced into the Channel Islands as a measure to increase competition in the retail market.

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<sup>1</sup> CICRA (*the Channel Islands Competition and Regulatory Authorities*) comprises the JCRA and GCRA

At the time of the previous consultation in 2011 the GCRA decided to carry out a high-level Cost Benefit Analysis on the introduction of WLR. It continues to be the case that the needs of the market are in the GCRA's view appropriately met at the present stage of competition by removing the advantage that incumbents currently have over their competitors in terms of ability to bundle their offers. A more even playing field is also enabled through the removal of the ability of Sure and JT to enjoy an exclusive billing relationship with their customers in the Guernsey and Jersey markets in which they are the incumbent.

In terms of the benefits arising from this decision, the GCRA's view is that, irrespective of whether customers choose to switch or not, the improved level of competitive pressure in the market is beneficial to all customers, and not confined to those that switch away from the incumbent. This is because the incumbent is likely to have to react to this competitive pressure in serving its existing customers, with related benefits to those customers who remain with it.

The GCRA further considers that WLR is likely to contribute to the potential benefit of introducing other wholesale products in the future. The ability of other operators to offer bundles will improve their ability to compete against the incumbent and grow their market share. A higher market share enables an entrant to more easily market further services if it were introduced at a later stage, since an existing commercial relationship with customers is likely to reduce marketing and acquisition costs when selling new products.

## 2. Structure of the Notice

This Final Decision is structured as follows:

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|-----------|---|
| Section 3 | sets out the legal and licensing basis for this decision;                                   |
| Section 4 | lists the respondents to the Draft Decision and summarises the key points in the responses; |
| Section 5 | sets out GCRA's consideration of these responses and the rationale behind its decision;     |
| Section 6 | sets down the decision;   |
| Section 7 | considers the next steps;   |
| Annex A   | sets out legal considerations;  |
| Annex B   | provides the product description for WLR;   |
| Annex C   | contains the text of the licence modification for Sure.                                     |

### 3. Legislation and Licensing

The general legislative background is provided by *The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001*.

The sector-specific legislative framework is provided by *The Telecommunications (Bailiwick of Guernsey) Law 2001, (the Law)* together with the telecommunications licences of the licensees in Guernsey. In addition to specific legislation, there is scope for the States of Guernsey to give formal directions to the GCRA.

Condition 6 of Sure's licence provides for the modification of licence conditions:

*"The Authority may from time to time modify, revoke or add to any condition in this licence. Any modification, revocation or addition to the Conditions shall be made in accordance with Section 8 of the Telecommunications Law and any other requirements under any applicable law."*

Section 8 of the Law states that:

*"(1) Having regard to the objectives set out in section 2 of the Regulation Law, and subject to the provisions of any States' Directions and the following provisions of this section, the Authority may modify a licence by amending or revoking any condition included in it or by adding any condition to it (including, subject to the provisions of section 9, any condition as to the application in relation to the licensee of the code).*

*(2) Before making modifications under this section to a licence, the Authority shall publish, and (in the case of an individual licence) give to the holder of the licence, notice -*

*(a) stating the modifications which he proposes to make;*

*(b) stating the reasons why he proposes to make those modifications; and*

*(c) specifying the time (not being less than 7 days from the date of publication of the notice) within which written representations or objections in respect of the proposed modifications may be made by interested parties;*

*and he shall -*

*(i) before making the modification, consider any representations or objections received from any interested party; and*

*(ii) having followed the procedure set out in this subsection, modify the licence (and publish notice of the modification) or decide not to modify the licence (and publish notice of that decision).*

*(3) A modification to a licence shall take effect from such time as the Authority directs, not being earlier than the expiry of the period specified by the Authority in accordance with subsection (2)(c)."*

## 4. Consultation Responses

In March 2014, CICRA carried out a pan-Channel Island consultation on the introduction of Wholesale Line Rental (CICRA 14/12).

Although the IN for Jersey (CICRA 14/29) and DD for Guernsey (CICRA 14/30) were published as separate documents, many of the issues are common to Guernsey and Jersey. The incumbents in one island are also Other Licensed Operators (OLOs) in the other island, and there is a great degree of overlap on the issues. Moreover, some responses were received in common to both consultations. Therefore, in setting out and considering the consultation responses reference has been had to responses made on both the IN and DD.

Responses were received from:

- JT (Jersey and Guernsey);
- Sure (Guernsey).

Copies of the responses are available on CICRA's website at [www.cicra.gg](http://www.cicra.gg) or [www.cicra.je](http://www.cicra.je).

### JT

JT in its response continues to state that it has never been a supporter of WLR but has been a supporter of creating wholesale access products that are future proof and that allow OLOs to differentiate the services they offer to consumers. JT accepts that this view is not supported by other operators or JCRA.

JT agrees to the implementation of WLR at a date no later than 1<sup>st</sup> June 2015.

JT also agrees that the definition of WLR should be limited to standard PSTN telephone line rental, connection and wholesale calls.

In regards to the licence condition to share the efficient cost of the provision of the WLR service it is JT's view that prices will be a contentious issue. With this in mind JT is keen to start pricing discussions early to ensure a conclusion can be reached in a timely manner well in advance of 1<sup>st</sup> June 2015 and has urged CICRA to arrange the first inter-operator meeting to start the process as soon as possible.

JT considers that it is important that discussions start between the operators at an early stage to agree on the scope of WLR and the work streams and responsibilities. From its preliminary work on WLR JT suggests that the five main work streams should be:

- *Scope and Service Preparation – confirm scope of WLR, confirm functionality required, prepare legal agreements, define credit check process.*
- *Service Delivery- process development for ordering (including transfers, adds, moves and changes), provisioning number selection, change of address and in life changes and Service Level Agreements (SLAs).*
- *Service Management – processes for faults, engineering visit, fraud process, nuisance call process, legal intercept process, directory database management and SLAs.*
- *Billing – billing process, Call Detail Record (CDR) format, process and frequency, bill query process and SLAs.*
- *Commercial – agree pricing: WLR rental price; WLR connection price; pricing for any network features and agree the pricing principles and banding of destinations in the wholesale calls rate card.*

## **Sure**

In its response Sure welcomes the proposed implementation of WLR on its network and the similar proposal for JT in Jersey. Sure also stated that it was pleased that the GCRA had taken the opportunity to set out a requirement for each incumbent operator to provide wholesales calls as part of the WLR service.

With regards to cost recovery Sure's position is that costs should be recovered within the standard monthly WLR charge allowing the underlying costs of WLR to be recovered entirely proportionality as operators would pay solely on a per-retail customer basis. The operators with the largest existing retail customer base would therefore appropriately pick up the largest proportion of the underlying WLR costs.

Sure also expressed serious reservations about the amount of resource and time that operators could commit to the contentious topic of setting the monthly WLR charge based on efficiently incurred costs. Further Sure believes that negotiations on the non-price related aspects of WLR will probably be fruitless until a monthly rental charge has been defined and requests CICRA to take direct action to address this issue as a matter of urgency.

Sure added that the WLR definition in the DD does not allow for an end customer taking service via WLR to obtain an entry in the incumbent operator's published phone book and believes that the entry should be provisioned on consistent terms to those of the incumbent's retail customers.



## 5. Rationale and Response

In reaching its decision to require Sure to implement WLR, the GCRA has taken into account the fact that WLR is already in place and available in many countries of various population sizes and income levels. It has also taken careful account of the responses received to the DD.

### **Draft Decision**

In the DD, the GCRA set out the rationale for introducing WLR and the benefits arising from this decision. In particular, the increased competitive pressure in the market when customers have the choice to switch provider is beneficial to all customers, not only those that exercise the choice to switch. Incumbents have a strong incentive to respond to this competitive pressure in order to retain customers and maintain their position and reputation in the market, and OLOs and new entrants must continue to offer improved value and service in order to grow their business. This leads to improved efficiency and quality of service and reduced costs, to the benefit of all customers, whether or not they choose to exercise the right to switch provider.

GCRA noted that WLR is likely to contribute to the potential benefit of introducing other wholesale products in the future, including a naked DSL bitstream product. Introducing WLR will enable OLOs to offer bundled services and offer customers a single bill for all their services. This will improve their ability to compete against the incumbent and grow their market share. A higher market share enables an entrant more easily to market further services such as naked DSL bitstream, and to invest in order to enhance their own offering. If this kind of product were introduced later, having an existing commercial relationship with customers would be likely to reduce marketing and acquisition costs for selling new products, and offer opportunities for economies of scope in the range of services on offer.

The processes required for the introduction and ongoing operation of WLR are relatively simple and well understood.

### **GCRA view of responses**

The GCRA welcomes JT's commitment to work with industry to introduce WLR by 1<sup>st</sup> June 2015 as well as the positive comments made by Sure on the proposed implementation of WLR.

GCRA reminds operators that WLR is largely a change to the billing arrangements irrespective of the underlying technology (whether copper or fibre). It is important that the benefits of competition through enhanced wholesale access are available to all customers. As such, the GCRA would not support the exclusion of customers from the process because of their location or the technology employed in delivering their fixed-line service.

The GCRA acknowledges JT's concerns on the pricing of this service and the GCRA will work with the operators during the implementation of WLR and agree that discussions on pricing should begin early in this process.

In considering Sure's comments on this matter the GCRA welcomes Sure's proposal on cost recovery and that this will be a matter to be discussed at the inter-operator working group meeting. The GCRA is fully aware that the setting of prices relating to WLR could be a contentious issue and will monitor progress closely. In the case that it becomes clear early in the process that operators will not be able to reach agreement on this matter the GCRA will not hesitate to intervene on this matter.

JT's work stream proposal for the implementation phase of WLR is welcomed and the GCRA suggest that this is proposed at the initial inter-operator working group meeting.

The GCRA notes Sure's comments regarding the inclusion of customers in the published directories of the incumbent. The GCRA considers this is a matter to form part of the process and product discussions of the inter-operator working group.

## 6. Final Decision

The GCRA has decided that the fixed telecommunications licence of Sure (Guernsey) Limited shall be modified to mandate the offer of WLR to OLOs, as set out in Annex C to this Notice.

**WLR will be made available to all OLOs by 1<sup>st</sup> June 2015, with the pricing to be determined between Sure and OLOs. Should they be unable to agree, then the appropriate wholesale prices will be determined by the GCRA.**

In reaching this decision and considering the potential benefits of introducing WLR, the GCRA notes the availability of WLR worldwide, the ability it offers for other licensed operators and potential new entrants to offer services economically while building a customer base and the ability for service providers to bundle products and offer customers a single bill.

The ability to offer a single bill for a range of telecommunications services appears to provide a significant benefit to customers, and the absence of significant bundling activity in the islands in fixed telecom services, other than by Sure, is evident. Where it does happen, the reduction in overall charges can be substantial and this is a significant opportunity which the GCRA believes should be extended to all operators and customers in the Channel Islands.

As stated in the DD, it also appears to the GCRA that there are further benefits to competition in removing the obligatory relationship which currently exists between the incumbent and all fixed-line customers for line rental regardless of who they take their calls or broadband services from. As explained already in this and previous documents, this weakens the relationship of an entrant with its customers.

The GCRA also takes the view that the introduction of WLR prior to the consideration of other wholesale access products will enable a sound basis on which to carry out future analysis, since better information and actual penetration figures following the introduction of WLR will be available at a later stage. The ability of other operators to compete in the market should also be improved as a result, and the extent to which the introduction of WLR will have improved the scale of their customer base will have implications for lowering their customer acquisition costs. WLR could also provide economies of scope and scale in marketing services, informing operators' options on how much to invest in other wholesale access products such as naked DSL bitstream and fixed number portability in the future.

The GCRA confirms its decision that the initial introduction of WLR will be for single lines only.

Operators will be entitled to share the efficient costs of the provision of the WLR service proportionately with each OLO that seeks WLR. The GCRA will intervene if Sure and its potential customers are unable to agree on a price or other terms of wholesale access.

The proposed modification of Sure's licence will take effect on the date specified in the Statutory Notice.

The product description for Wholesale Line Rental is as follows (as a minimum product description). The implementation of WLR should be technology agnostic and the ability to rent a line on a wholesale basis should apply equally to copper and fibre networks.

#### *WLR Product Description*

- 1. Wholesale Line Rental (WLR) is a public switched telephone network (PSTN) voice Communications Provider (CP) product, which enables CPs to offer their own branded telephony service directly to their End Users using the incumbent network*
- 2. The incumbent provides, repairs and maintains WLR lines, and provides a consolidated bill to the CPs for all of their services*
- 3. The CP sets their own prices and bills their end-users (single bill)*
- 4. WLR contains wholesale calling and network features (some chargeable)*
- 5. WLR includes an option for a CP to purchase wholesale call minutes*
- 6. Pan CI Retail products supports single line PSTN type service (whether provided over copper or fibre)*
- 7. Understanding service/products that need to be in place to support the product*
  - a. A line connecting the customer to the network of the incumbent operator*
- 8. Minimum term of 12 months applied to line rental*

## 7. Next Steps

The modifications to Sure's telecommunications licence are set out in Annex C mandating Sure to offer WLR for single line services no later than 1<sup>st</sup> June 2015.

Following on from this, the GCRA will consider the introduction of additional wholesale access through the remaining products short listed as part of CIWAP - fixed number portability and naked DSL/bitstream services - in due course.

The GCRA will also examine the provision of WLR on multi-line and ISDN services to extend the benefits of this option to business customers and OLOs serving that particular market. In particular, the GCRA will look at the potential additional costs and complexity of the service compared with single line customers, and whether a separate cost assessment and Cost Benefit Analysis (CBA) would be required.

However, the GCRA notes that there is no barrier to existing operators making such a product available without regulatory intervention and we would encourage bilateral and commercial agreement to offer these services where it is possible to do so.

## **Annex A - Legal Considerations**

### **1. Considerations under Section 2 of The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001**

The GCRA considers that the ability of other telecom operators to compete more aggressively in the fixed line telecommunications market by offering a fuller set of products protects the interests of consumers in respect of price charges, quality service levels, permanence and variety of utility services available to them. As with the assessment under Article 7 of the *Telecommunications (Jersey) Law 2002*, WLR in Guernsey is seen to meet an existing demand. The wider economic and social well-being of the Bailiwick is, in the view of the GCRA, improved in that increased competition in telecoms markets contributes to stable, low inflation, well regulated, competitive domestic markets and maintenance of a stable, competitive environment where infrastructure providers such as telecoms operators have business confidence and are faced with sufficient demand to continue to re-invest. Further competition is also likely to improve the quality of service that customers receive, given the improved choice and impetus this brings to the competitive process. WLR is a less intrusive form of access competition, and may be preferable to duplication of infrastructure on the island, which would lead to road closures and road works for islanders. Since WLR will be offered across the Bailiwick, it will benefit all residents.

### **2. Considerations under The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012**

Section 2 of *The Regulation of Utilities (States' Directions) Ordinance, 2012* requires the GCRA to follow the six principles for economic regulation set out in paragraph 5.11 of the report of the Commerce and Employment Department entitled "Review of Utility Regulation" and dated 8 July 2011 and to take them into account in the performance of its functions and powers.

The six principles of better regulation are: accountability, focus, predictability, coherence, adaptability and efficiency.

The GCRA has considered and fully taken into account the States of Guernsey Strategic Plan and the Fiscal and Economic Plan. These set out the need for stable, low inflation, well regulated, competitive domestic markets and maintenance of a stable, competitive environment where infrastructure providers such as telecoms operators have business confidence and are faced with sufficient demand to continue to re-invest. The GCRA therefore considers this final decision it is made within a framework and is fully consistent with the wider States Strategic Plan.

This final decision is focussed on a specific existing weakness in the competitive landscape of fixed-line telecoms services, an area where there is clear concern from

customers around charges in this sector. An improvement in the ability of operators to compete against the incumbent is in the view of the GCRA critical to addressing these deficiencies and is focussed on a specific area of weakness, namely the exclusive ability of the incumbent to provide exchange line rental.

The wholesale access project has involved extensive consultation and regular discussions with all operators that have indicated an interest in developing further wholesale access for the market. This draft decision follows that process and the March 2014 consultation. CICRA has held separate discussions with the incumbents in both islands to discuss issues around the introduction of WLR. The GCRA therefore considers this final decision is the next step following that process.

It is apparent that the States places a priority on improvements in the availability and cost of fixed line services and this final decision is consistent with that aim.

This final decision is intended as a first initiative in facilitating wholesale access. The development of more comprehensive wholesale access products will be considered after an assessment is made of the contribution of WLR to creating a more even competitive playing field. The approach taken is therefore flexible in that, as has been argued in this document, WLR offers benefits that may improve the cost-benefit equation of further access products in the future.

WLR offers the least intrusive means of achieving greater competition at the access level and is promoted on the basis that it offers a low-cost burden on operators to provide an access product that is likely to enable bundling by operators. The potential efficiencies in the provision of services are also likely to be realised through the offering of fixed line services in this way to customers.

## **Annex B – WLR Product Description**

### *WLR Product Description*

1. *Wholesale Line Rental (WLR) is a public switched telephone network (PSTN) voice Communications Provider (CP) product, which enables CPs to offer their own branded telephony service directly to their End Users using the incumbent network*
2. *The incumbent provides, repairs and maintains WLR lines, and provides a consolidated bill to the CPs for all of their services*
3. *The CP sets their own prices and bills their end-users (single bill)*
4. *WLR contains wholesale calling and network features (some chargeable)*
5. *WLR includes an option for a CP to purchase wholesale call minutes*
6. *Pan CI Retail products supports single line PSTN type service (whether provided over copper or fibre)*
7. *Understanding service/products that need to be in place to support the product*
  - a. *A line connecting the customer to the network of the incumbent operator*
8. *Minimum term of 12 months applied to line rental*



## **Annex C – Licence modification**

The change to Sure's licence will be Licence Condition 16.9. The licence condition proposed is as follows:

*“From the earliest reasonably practicable date after this licence condition takes effect, and in any event no later than 1<sup>st</sup> June 2015, the Licensee shall provide Wholesale Line Rental (WLR) for single lines on its fixed-line network to Other Licensed Operators. The Licensee shall be entitled to share the efficient costs of the provision of the WLR service proportionately with each of the Other Licensed Operators that seek WLR and will ensure that it makes representatives available to attend meetings, upon reasonable notice, with the GCRA and/or its representatives to discuss the implementation or operation of WLR. Where a dispute arises in respect of WLR charges, the GCRA may set the maximum price for the provision of such a service.”*