



Price control for wholesale on-island leased lines

T1602G

Consultation Paper

Date: 14 January 2022

GUERNSEY COMPETITION AND REGULATORY AUTHORITY

Suite 4, 1st Floor,

La Plaiderie Chambers, La Plaiderie, St Peter Port,

Guernsey, GY1 1WG

T : +44 (0) 1481 711120

E : info@gcra.gg

CONTENTS

1. Summary	1
2. Update on the BCMR	2
3. Sure’s current leased lines price control	2
4. Current price control performance	4
5. Addressing the problem – amending the current price control	9
6. Structure of the alternative benchmarking approach	11
7. Consultation and next steps	13
Annex 1: Legal background and licensing framework	15
Annex 2: List of consultation questions	18

LIST OF FIGURES

Figure 1: Leased line retail price comparison	5
Figure 2: Wholesale price comparison, <1 Gbps	6
Figure 3: Wholesale price comparison, 1 Gbps	7
Figure 4: Wholesale price comparison, > 1 Gbps	7

1. Summary

- 1.1 Leased lines are the essential building blocks used to put in place secure, dedicated data transmission connectivity between fixed locations. Retail leased lines are bought by businesses and public sector organisations, while wholesale leased lines are bought by telecoms operators, both to provide their retail offerings and to extend their own mobile networks.
- 1.2 The majority of retail leased lines in Guernsey are provided by JT (Guernsey) Limited (**JT**) and Sure (Guernsey) Limited (**Sure**). Sure is dominant in the wholesale market and a retail-minus wholesale price control was applied to Sure's on-island leased lines of any bandwidth in 2015.
- 1.3 The Guernsey Competition and Regulatory Authority's (**GCRA**) considers that very-high bandwidth (**VHB**) (1 Gbps¹ and above) retail leased line prices in Guernsey are significantly higher than comparable jurisdictions and are excessive. Sure's wholesale prices exhibit a similar pattern.
- 1.4 The financial services sector in Guernsey is a significant user of VHB leased lines. Excessive retail prices have the potential to reduce Guernsey's ability to compete in this key economic sector with its major offshore competitors, such as Jersey and the Isle of Man. Excessive wholesale pricing of VHB leased lines also impacts the provision of cost-effective backhaul solutions for current generation mobile network operators and may constrain the future cost-effective rollout of 5G infrastructure.
- 1.5 This non-statutory consultation paper sets out the GCRA's preliminary views on an alternative pricing approach for Sure's on-island wholesale leased lines. This alternative would replace the retail-minus mechanism for VHB products with a benchmarked price cap that would reduce wholesale prices substantially. Final consumers are expected to benefit from a consequent fall in the retail price driven by retail competition.
- 1.6 The GCRA is seeking comments on this consultation paper, with responses from interested parties due by **4pm Friday, 11 February 2022**.
- 1.7 The remainder of the paper is structured as follows:
 - Section 2 provides an update on the current Business Connectivity Market Review.
 - Section 3 sets out the details of Sure's current wholesale price control.
 - Section 4 considers the performance of the current price control.
 - Section 5 sets out the GCRA's preliminary views on an alternative approach to the price control on which the GCRA is seeking comments.
 - Section 6 examines ways of structuring the alternative pricing approach and discusses issues around its implementation, should it be adopted.
 - Section 7 sets out the details of the consultation process.
 - [Annex 1](#) outlines the GCRA's legal requirements and licensing framework.
 - [Annex 2](#) sets out the list of consultation questions.

¹ Gigabits per second.

2. Update on the BCMR

- 2.1 In October 2019, the GCRA issued a Call for Information to licenced telecommunication operators, businesses and public sector organisations at the start of its current review of the Business Connectivity Market (**BCMR**) in Guernsey.² Throughout 2020, the GCRA engaged with relevant parties to obtain evidence to inform the BCMR and, in March 2021, the GCRA published its Draft Decision for consultation.³ The GCRA received responses from licenced telecommunication operators and those responses informed its decision to seek additional information to assist the BCMR assessment and analysis.
- 2.2 In June 2021, the GCRA issued directions to Sure and JT requiring the provision of additional information to inform the GCRA's market definitions and market power assessment. Sure and JT provided substantial amounts of information related to their respective leased line businesses between August and October 2021, which has in turn enabled the GCRA to undertake further analysis to inform the BCMR.
- 2.3 The GCRA is continuing its analysis of the information provided and intends to conclude its BCMR market definitions and market power assessment in 2022.
- 2.4 For avoidance of doubt, the consultation detailed in this document is non-statutory.

3. Sure's current leased lines price control

Leased lines market review 2014

- 3.1 In the GCRA's most recent completed BCMR in 2014,⁴ one retail and one wholesale on-island leased lines market was defined, each with one product (leased lines of all bandwidth speeds) and one geographic area (whole of Guernsey). Sure was designated as having Significant Market Power (**SMP**) in the wholesale market.
- 3.2 The GCRA's final decision put the following SMP obligations on Sure, the majority taking effect through existing licence conditions:⁵
- Access – obligation to make access to wholesale on-island leased lines available to Other Licensed Operators (**OLOs**) in response to a reasonable request for access (Condition 26).
 - Non-discrimination – obligation not to discriminate between OLOs (Condition 29).

² GCRA (2019). *Business Connectivity Market Review: Call for Information (Non Statutory)*, T1480GJ, October 2019: <https://www.gcra.gg/media/598126/business-connectivity-market-review-call-for-information.pdf>

³ GCRA (2021a). *Business Connectivity Market Review, Draft Decision T1480GJ*, Document No: GCRA 21/4, March 2021: <https://www.gcra.gg/cases/2019/t1480gj-business-connectivity-market-review/t1480gj-business-connectivity-market-review-market-definition-and-powers-draft-decision/>

⁴ CICRA (2014). *Business connectivity market review: Guernsey Final Decision*, Document No: CICRA 14/49, 1 October 2014: <https://www.gcra.gg/media/3746/t994gj-business-connectivity-market-review-final-notice.pdf>

⁵ Sure (Guernsey) Limited Fixed Licence: <https://www.gcra.gg/media/597684/sure-fixed-final.pdf>

- Transparency – obligation to publish and maintain a Reference Offer and Service Level Agreement that governs Sure’s relationship with the OLO, including Key Performance Indicators and publish prices and non-price terms and conditions.
- Accounting separation – obligation to prepare and maintain separated accounting information (Condition 27).
- Cost accounting – obligation to maintain its current cost accounting obligations (Condition 28.2).
- Price controls – provision for the GCRA to impose a price control on any licensed services within a relevant market in which Sure has been found to be dominant (Condition 31.2).

Leased lines price control 2015

3.3 Following the 2014 market review, the GCRA put in place a retail-minus price control on Sure’s wholesale on-island leased lines from 1 July 2015, as follows:⁶

- the control is set on an ex ante basis, applies to all wholesale on-island leased lines and is applied on a product-by-product basis;
- for each retail leased line product offering, a wholesale equivalent product must be offered at a price that complies with the proposed control;
- the control shall be set at retail-minus 20 per cent;
- the term of the price control will be aligned with the market review cycle.

3.4 Sure is also required to submit a regular statement formally confirming its compliance with the wholesale price control. This compliance statement includes details of prices, number of lines sold, revenues earned, and promotional offers made for all retail and wholesale leased lines, by bandwidth, with the precise content of the compliance statement determined by the GCRA.

3.5 In reaching the 2015 decision, the GCRA considered several options for setting price controls in the wholesale on-island market for leased lines in Guernsey. The aim was to find a mechanism which has the desired outcome of achieving retail prices which are similar to those which would prevail in a competitive market, and which are fair and reasonable, both for the customer and for the operator. The GCRA expressed a wish to achieve this in a way which is pragmatic, proportionate and implementable in practice.

3.6 The GCRA considered three broad options when considering the form of price control: benchmarking, retail-minus and cost-orientation.

3.7 The GCRA’s view at the time was that **benchmarking** is not sufficiently robust as a means of setting prices for wholesale leased line services. The GCRA noted that while benchmarking can provide comparative examples which may be useful indicators of any anomalies between pricing in

⁶ CICRA (2015b). *Review of the price control for wholesale on island leased lines: Guernsey, Final Decision and Response to Consultation and Draft Decision*, CICRA 15/16, 19 May 2015: <https://www.gcra.gg/media/2088/t1097gj-price-control-for-wholesale-on-island-leased-lines-guernsey-final-decision.pdf>

Guernsey and pricing in other jurisdictions, the complexity of the products means that comparisons are not valid without a consideration of context.

- 3.8 At the time, the GCRA also took the view that, in principle, relating prices to underlying costs would be reasonable and fair, both to operators and to customers. However, the GCRA's prime concern with **cost orientation** as a remedy (as opposed to a principle) was that it would be likely to be a resource-intensive remedy for both operators and the regulator, one which would take some time to implement, and one where the ultimate benefit for end users is not guaranteed. The GCRA was also concerned that a remedy based on cost modelling may not be sufficiently supportive of investment in infrastructure and services, noting that Ofcom had come to a similar conclusion in its review of the business connectivity market in the UK.
- 3.9 The GCRA also took the view at the time that one of the major advantages of a **retail-minus** approach is that it would strengthen the competitive environment by allowing market entrants to compete efficiently. The GCRA noted a disadvantage of the retail-minus approach is that it relies on competitors actively seeking to compete and grow market share. The GCRA noted that market entrants, notably JT, had made considerable inroads into the retail leased lines market in Guernsey, that entrants could price as competitively as they chose and that business end-users could take advantage of this choice through appropriately structured competitive procurement processes.
- 3.10 In the GCRA's view, a correctly calibrated retail-minus control, augmented by a suite of flanking measures, would ensure that the SMP operator was not in a position to sustain excessive pricing in the regulated market. For all of these reasons, the GCRA concluded that a retail-minus approach was the most appropriate and proportionate means of meeting its objectives.

4. Current price control performance

Current market review concerns

- 4.1 The BCMR Draft Decision identified operator concerns with the high level of retail leased line prices, especially for Very High-Bandwidth (VHB) services of 1 Gbps and above:

Operators have also raised the issue of the high level of pricing, in particular, for Very High-Bandwidth services (VHB), 1Gbps and above. These complaints appear justified given that the blended price of the 1Gbps product is approximately four times what BT charges and recovers on its Fully Allocated Costs basis.⁷

- 4.2 The Draft Decision also noted that prices, at least at certain higher bands, are not evidently cost reflective given that pricing structures have remained unchanged over the period of the review compared to the decline in technology costs.⁸

⁷ GCRA (2021b). *Business Connectivity Market Review, Annex 1 Product and Market Definition T1480GJ*, Document No: GCRA 21/5, March 2021, page 14: <https://www.gcra.gg/media/598293/bcmr-draft-decision-annex-1.pdf>

⁸ GCRA, 2021b: page 22.

Retail price benchmarking

- 4.3 The high retail prices for Guernsey⁹ VHB leased lines was also reflected in the benchmarking published by the Jersey Competition Regulatory Authority (JCRA) in its draft 2021 BCMR.¹⁰ The JCRA benchmarked retail prices of leased lines on Jersey at different bandwidths with comparable jurisdictions, including Guernsey and the Isle of Man (Figure 1).
- 4.4 The retail benchmarking data shows that prices on Guernsey are lower than most comparator countries for 10 Mbps¹¹ same exchange, but higher than most for 10 Mbps different exchanges. The 100 Mbps product same exchange is in the middle, while the different exchange price is materially higher. The 1 Gbps leased line prices in Guernsey are materially higher than all comparator countries. For example, the price of a 1 Gbps line in Guernsey is more than twice that in the Isle of Man.

Figure 1: Leased line retail price comparison¹²

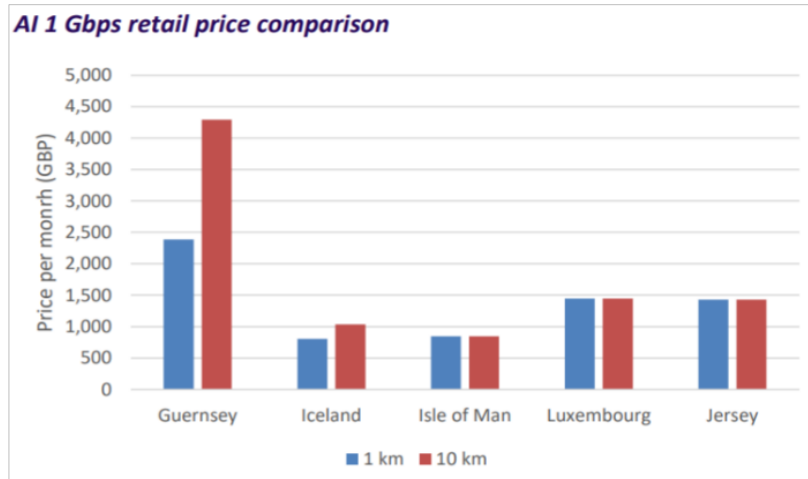


⁹ In 2020, retail leased line products in Guernsey were offered by Sure (Guernsey) Limited, JT (Guernsey) Limited, Business Telecom Limited, C5 IT Services (Guernsey) Limited and Logicalis Guernsey Limited.

¹⁰ JCRA (2020). *Business connectivity market review, Non-statutory Draft Decision (Consultation) Case T-012*, 26 October 2020: <https://www.jcra.je/media/598280/t-012-business-connectivity-market-review-draft-decision.pdf>

¹¹ Megabits per second.

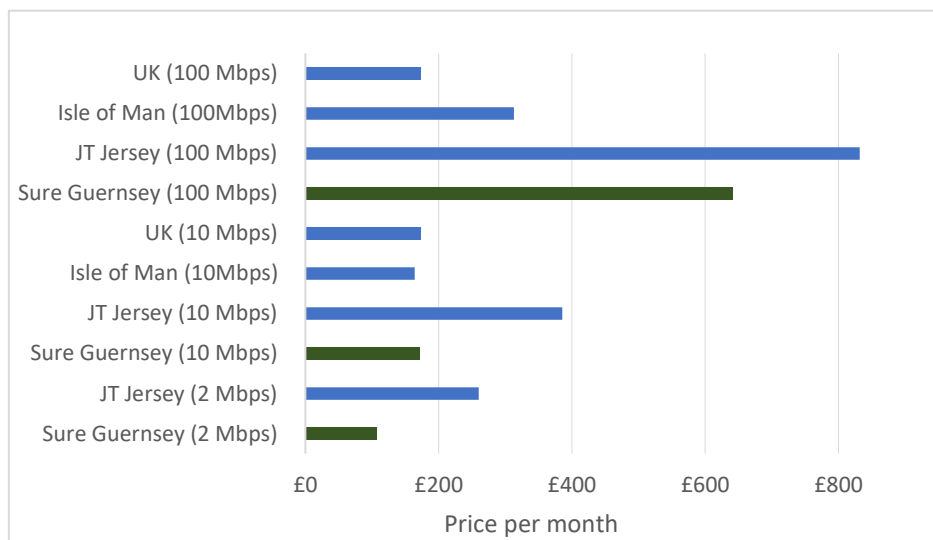
¹² JCRA, 2020: Annex 4.



Wholesale price benchmarking

4.5 To further inform this paper, the GCRA benchmarked Sure’s wholesale leased line prices at different bandwidths with Jersey (JT (Jersey) Limited),¹³ the Isle of Man (Manx Telecom) and the United Kingdom (Openreach).^{14,15} The data shows that Guernsey same exchange prices for lower speed lines (less than 1 Gbps) are lower than Jersey prices, but higher than UK prices (**Figure 2**). The differential with the UK is particularly marked for the 100 Mbps product.

Figure 2: Wholesale price comparison, <1 Gbps



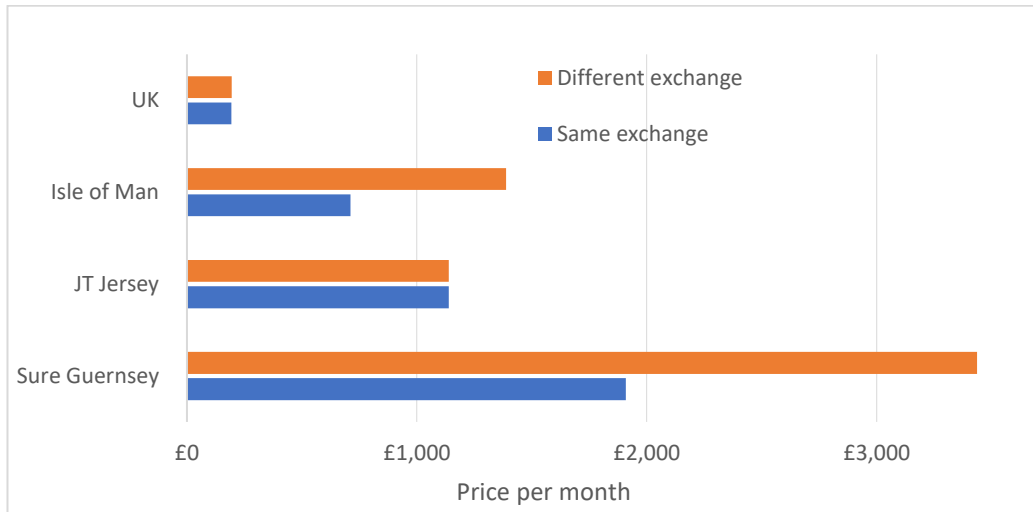
4.6 The 1 Gbps leased line wholesale prices tell a different story (**Figure 3**). The Guernsey price of £1,909 per month for the same exchange is 1.7 times the Jersey price of £1,139 and nearly 10 times the £193 charged in the UK. The Guernsey same exchange price is also substantially higher than the Isle of Man different exchange (Non-metro) price.

¹³ JT (Jersey) Limited reduced its wholesale prices from September 2021, following the JCRA BCMR review.

¹⁴ For consistency, monthly wholesale rental prices include any associated connection charges amortised over 60 months, and Sure’s Same Exchange prices have been utilised.

¹⁵ Openreach wholesale prices sourced from: <https://www.openreach.co.uk/cportal/products/pricing>

Figure 3: Wholesale price comparison, 1 Gbps



4.7 The price comparison for products with bandwidths greater than 1 Gbps (**Figure 4**), shows that Guernsey prices are higher than in Jersey and Isle of Man, but by a smaller margin than for the 1 Gbps product. The Guernsey price of £5,087 per month for the 10 Gbps product is 1.2 times the Jersey price of £4,133, but still 10 times the £506 charged in the UK.

Figure 4: Wholesale price comparison, >1 Gbps



Assessment

Retail-minus is not working

4.8 The retail benchmark price analysis reveals that Guernsey VHB leased line prices are significantly higher than comparable jurisdictions. The wholesale analysis shows that Sure’s VHB leased line prices are significantly higher than comparable jurisdictions, and substantially greater than UK wholesale products. This contrasts with the lower bandwidth product prices, where, for the same exchange, Sure’s prices compare favourably with comparable jurisdictions, albeit still higher than UK prices.

4.9 This suggests that the retail-minus price control has been less effective in restraining excessive pricing for the VHB leased line products than for lower speed products. A retail-minus approach

will lead to cost-oriented 'efficient' wholesale prices if retail prices are themselves cost-oriented and the retail costs subtracted from the retail prices are accurately estimated. There are a number of reasons why retail-minus may not have worked effectively in this case. The GCRA previously identified two. The first is that it relies on competitors actively seeking to compete and grow market share.¹⁶ The second is that it does not directly address prices in the retail market, which could be an issue if the SMP operator is charging a retail price which is above marginal cost.¹⁷

Practical impact

4.10 The financial services sector in Guernsey is a significant user of VHB leased lines. Excessive retail prices have the potential to reduce Guernsey's ability to compete in this key economic sector with its major offshore competitors, such as Jersey and the Isle of Man. This issue was highlighted in the States of Guernsey policy letter: *Delivering Next Generation Digital Infrastructure*, published in September 2021.¹⁸ The policy letter endorsed 'Wholesale products and prices should be similar to those available in similar sized jurisdictions in which Sure operates, to ensure Guernsey remains competitive' as a broad principle to be followed in coordinating the Sure fibre broadband roll-out solution.¹⁹

4.11 Excessive wholesale pricing of VHB leased lines also impacts the provision of cost-effective backhaul solutions for current 2, 3 and 4G mobile network operators. High prices are a constraint on the extension of existing networks by operators, especially those not in a position to self-supply. The advent of next-generation 5G mobile networks will see a step change in demand for backhaul, with connectivity and capacity for up to 10 Gbps likely to be a standard requirement. Excessive pricing of VHB lines therefore has even greater potential to constrain the future cost-effective rollout of 5G infrastructure.

Economic impact of excessive pricing

4.12 When a firm is able to set price above marginal cost, not only is welfare transferred from the consumer to the producer, but there is also a 'deadweight loss'. As the price is reduced to a more competitive level, which is closer to marginal cost, through regulatory action, for example, this results in an increase in consumer surplus and a decrease in producer surplus. The deadweight loss is also reduced and transferred to consumers, providing additional benefit to consumers. Put simply, consumers gain more than producers (operators) lose, and total welfare is increased.

4.13 It should be emphasised that the above analysis assumes that the competitiveness of the market results in a retail price reduction in line with the reduction in the wholesale price. If this reduction is not passed on to consumers, that would raise questions about the competitiveness of the retail market.

¹⁶ CICRA, 2015b: page 5.

¹⁷ CICRA (2015a). *Review of the price control for wholesale on island leased lines: Guernsey, Consultation and Draft Decision*, CICRA 15/07, 19 March 2015: page 7: <https://www.gcra.gg/media/2056/t1097gj-wholesale-on-island-leased-lines-guernsey-draft-decision.pdf>

¹⁸ States of Guernsey (2021). *Delivering Next Generation Digital Infrastructure*, Policy and Resources Committee and Committee for Economic Development, Policy Letter, 13 September 2021: <https://www.gov.gg/article/185510/Delivering-Next-Generation-Digital-Infrastructure>

¹⁹ States of Guernsey, 2021: page 17.

Question 1: Do you agree with the GCRA's view that Guernsey VHB (1 Gbps and above) leased lines prices are excessive? The GCRA is especially keen to hear from business users of leased lines in Guernsey.

5. Addressing the problem – amending the current price control

Objective and approach

- 5.1 The GCRA's primary focus remains supporting and maintaining well-functioning markets in Guernsey through the duties placed on the GCRA by law, as set out in [Annex 1](#). Well-functioning markets are a key goal of market economies, and their success benefits all aspects of modern life. Key to this objective is ensuring that prices, especially those of dominant operators and service providers, are fair, and reasonable.
- 5.2 Therefore, this section sets out an alternative pricing approach on which the GCRA is seeking comments. The approach seeks to amend the current price control to reduce VHB wholesale prices to similar levels applied in comparable jurisdictions, which would encourage market forces to drive similar reductions in retail pricing.
- 5.3 To address the excessive VHB wholesale leased line pricing identified in Section 4, the GCRA is considering the following approach:
- retaining the current retail-minus price control for lower-speed leased lines i.e. less than 1 Gbps;
 - retaining the supporting remedies e.g. non-discrimination, cost accounting, accounting separation and transparency, which are contained in Sure's licence conditions; and
 - replacing the retail-minus control on VHB (i.e., 1Gbps and greater) leased lines with a price cap, benchmarked against JT (Jersey) Limited's current wholesale prices.
- 5.4 In reaching this view, the GCRA discounted cost-orientation for the same reasons outlined in 2015 and, instead considers benchmarking as the preferred solution.

Benchmarking

- 5.5 Benchmarking is an established and accepted method for setting price controls in a range of telecommunications markets. The GCRA has previously considered that benchmarking is a useful and relevant methodology to apply, and one that may be particularly well suited to small jurisdictions like the Channel Islands where the cost and complexity of bottom-up cost-orientation modelling is regarded as disproportionate and/ or where retail-minus is not appropriate or likely to be ineffective.

GCRA benchmarking in other markets

- 5.6 The GCRA has applied a benchmarking approach to informing and implementing price controls in other telecommunications markets, including mobile termination rates (**MTR**) and retail fixed line services.

- 5.7 The GCRA's final decision²⁰ set a transition to a maximum MTR of 0.7 pence per minute for Sure, JT (Guernsey) Limited and Guernsey Airtel Limited. The level was based on benchmarking, using Body of European Economic Regulators for Electronic Communications data, the six smallest European countries by population where MTRs were set using a particular methodology.
- 5.8 The GCRA applied a 'price basket' form of price control for Sure's retail fixed line services, informed by benchmarking comparative jurisdictions.²¹ The GCRA noted that JT (Jersey) Limited is a strong comparator for Sure in Guernsey, albeit that Jersey may benefit from economies of scale over Guernsey.²²

Leased line benchmarking

- 5.9 The GCRA's primary concern with benchmarking in 2015 was that the complexity of the leased lines products means that comparisons are not valid without consideration of context. It remains the case that Sure provides a long list of wholesale on-island leased line products, across several speeds and technologies. For example, the list includes some unusual lower-speed products, such as 45 and 155 Mbps leased lines, as well as some more bespoke offerings connecting Guernsey and other islands in the Bailiwick. The complete list remains difficult to benchmark against comparable jurisdictions.
- 5.10 However, the GCRA considers that benchmarking a subset of the list, that is the VHB products from 1 Gbps and above only, is a less complex task. There are essentially 5 different speed products: 1, 2, 4, 8 Gbps offered in Ethernet and Fibre Channel, and a 10 Gbps Fibre Channel product.²³ JT (Jersey) Limited, for example, provides a similar wholesale on-island leased line portfolio.²⁴

Conclusion

- 5.11 The GCRA is considering adopting a benchmark wholesale price control mechanism, using JT (Jersey) Limited's prices as the basis for comparison. Jersey is a key Guernsey competitor, especially in the financial services sector. It also meets the definition of 'similar sized jurisdictions' in which Sure operates', in relation to which the States of Guernsey seeks similar wholesale pricing (see paragraph 4.10).
- 5.12 It is important to emphasise that benchmarking Sure's VHB leased line prices against JT (Jersey) Limited's would not guarantee or imply that Sure's prices will be set at an efficient level under the

²⁰ GCRA (2020). *Review of mobile termination rates in Guernsey, Statutory Notice of a Final Decision*, GCRA 20/01. 7 July 2020: <https://www.gcra.gg/media/598255/t1394gi-mobile-termination-rates-final-decision-statutory-notice.pdf>

²¹ CICRA (2016). *Retail Price Control 2016 Final Decision Determination issued to Sure (Guernsey) Limited*, CICRA 16/19, 7 April 2016: <https://www.gcra.gg/media/2164/t1064gi-sure-guernsey-retail-price-control-final-decision.pdf>

²² CICRA (2015c). *Retail Price Control 2015 Draft Decision issued to Sure (Guernsey) Limited*, CICRA 15/54, 17 December 2015: page 15: <https://www.gcra.gg/media/2143/t1064gi-sure-guernsey-ltd-retail-price-control-draft-decision.pdf>

²³ Fibre Channel is a serial I/O interconnect network technology capable of supporting multiple protocols. It is used primarily for storage area networks, and often used in commercial data centres. Ethernet is the most frequently used technology for communication between devices.

²⁴ JT (Jersey) Limited (2021). *JT Wholesale On-island Private Circuits Price List*, 29 July 2021.

alternative being considered, nor that Jersey will always be an appropriate comparator. For example, the magnitude of the difference in prices between Guernsey (and Jersey) and larger jurisdictions, such as the UK, are unlikely to be entirely explained by higher costs due to smaller economies of scale. This suggests that there is room for further price reductions towards cost-reflective prices.

Question 2: Do you agree that benchmarking Sure’s wholesale VHB (1 Gbps and above) leased lines is an appropriate mechanism to remedy excessive prices? If not, what alternatives do you suggest?

6. Structure of the alternative benchmarking approach

Introduction

6.1 As set out in Section 5, the GCRA is considering replacing the retail-minus control on VHB (1 Gbps and greater) leased lines with a price cap, benchmarked against JT (Jersey) Limited’s current wholesale prices. There are a number of ways such a benchmarked price cap control could be structured. These are as follows:

- Should the control be applied on a VHB product-by-product basis or to a set of products?
- How quickly should the control be implemented?
- Should the control be set in a way that would eliminate differential pricing?
- Over what time period should the control be in place?
- Should wholesale prices be made publicly available?

Product-by-product or grouped basis

6.2 A product-by-product approach means that the SMP operator is required to ensure that every type of VHB wholesale leased line offered for sale complies with a specific price cap, while a portfolio approach means that compliance must be at the level of a group of products. For example, this could be a particular speed.

6.3 The decision about whether to apply the control on a product-by-product basis or by using some form of grouping balances giving some level of SMP operator pricing flexibility, against the need to limit the scope for excessive pricing within a portfolio. A grouping approach can also provide greater simplicity.

6.4 As noted in Section 5, Sure’s current wholesale leased line price list²⁵ contains 5 different bandwidth speeds, which provides scope for grouping as an alternative to constraining individual products within each speed. Apart from the 2 Gbps products, Sure’s other products are similarly priced across Fibre Channel and Ethernet technologies.

6.5 The GCRA is therefore considering a speed-based grouping price control, i.e. a separate maximum price for any lines falling into the 1, 2, 4, 8 and 10 Gbps product groups, primarily for simplicity.

²⁵ Sure (2021). *Wholesale Private Circuits (Leased Lines) Price List*, 3 September 2021.

Question 3: Should a benchmarking approach be adopted for Sure’s wholesale VHB (1 Gbps and above) leased lines, do you agree that it should apply by VHB speed category?

Implementation of control

- 6.6 Should an alternative approach be applied, the price cap could be applied immediately (that is in one step), or gradually over a glidepath (also known as a price path). For example, in its MTR price control decision in 2020, the GCRA elected to implement the maximum rates over a three-year period.
- 6.7 In this context, the GCRA considers that a cap should be applied in a gradual manner over a 2-year glidepath, in two steps. This would strike the right balance between the prompt introduction of a remedy which, as set out above, the GCRA considers is in the interest of consumers, and allowing time for Sure to adjust its pricing schedule and rebalance its revenues.

Question 4: Should a benchmarking approach be adopted for Sure’s wholesale VHB (1 Gbps and above) leased lines, do you agree that it should be applied gradually?

Differential pricing

- 6.8 For some of its 1 and 2 Gbps leased lines products, Sure’s rental charge differs according to whether the terminating segments of the leased line are sited in the same exchange or not. In its response to the 2015 price control consultation, Sure expressed a view that differential pricing was justified in Guernsey, because the same exchange/different exchange difference recognised additional equipment and longer line lengths.²⁶ The ‘same exchange’ and ‘different exchange’ prices can be materially different. For example, the ‘different exchange’ monthly price for the 1 Gbps Fibre Channel product is £3,426 per month, 1.8 times more than the ‘same exchange’ price of £1,909.
- 6.9 The question that arises is whether or not the benchmarking approach under consideration should limit or eliminate such differential pricing for VHB products. In its 2015 price control decision, the GCRA elected not to eliminate differential pricing, noting that Sure would not be prohibited from eliminating differential pricing of its own accord²⁷ and that technology developments are likely to lead to the elimination of differential pricing over the medium-term.²⁸
- 6.10 The GCRA notes that Sure only applies differential pricing to some of its VHB products and that JT (Jersey) Limited no longer applies any differential pricing. Manx Telecom, the incumbent operator in the Isle of Man, designated with SMP for leased lines, applies differential pricing. A review of its retail prices²⁹ shows that its ‘Non-Metro’³⁰ prices are 1.3 to 1.9 times its ‘Metro’ offerings. In the United Kingdom, Openreach’s standard wholesale prices apply to a radial

²⁶ CICRA, 2016: page 17.

²⁷ CICRA, 2015b: page 17.

²⁸ CICRA, 2016: page 18.

²⁹ <https://www.manxtelecom.com/support/business-charges-tariffs/on-island-ethernet-services-prices/>

³⁰ Metro means any circuit that originates and terminates within Douglas and Castletown exchange areas. It also includes circuits between Douglas and Castletown. Non-Metro means any circuit that originates or terminates outside of the Douglas and Castletown exchange areas.

distance of up to 25 kilometres (km), with a maximum route distance of 40 km.³¹ It offers extended reach products with a radial distance of up to 45 km and a maximum route distance of 86 km, for a small differential markup.

- 6.11 In the absence of compelling evidence that Sure actually incurs differential costs of the order of magnitude implied by the differential pricing it currently applies to a subset of its VHB products, the GCRA considers that differential pricing should be eliminated for all of Sure's VHB products.

Question 5: Should a benchmarking approach be adopted, do you agree that differential pricing for Sure's VHB (1 Gbps and above) wholesale leased line products should be eliminated?

Time period

- 6.12 The GCRA's standard approach is to link a price control to the market review process unless, as is the case here, circumstances warrant earlier intervention. The market review process is a periodic reappraisal of developments, including market power and the effectiveness of remedies previously put in place. This would mean that decisions about the control would be taken consistently with decisions about market definition, market power and appropriate remedies.

Question 6: Do you agree that, should a benchmarking approach be adopted for Sure's wholesale VHB (1 Gbps and above) leased lines, its term should be aligned with the market review cycle? If not, what alternatives do you suggest?

Transparency

- 6.13 Sure makes available its wholesale price list to its competitors, that is other Guernsey licensed telecommunications licensees operators, on its website. The price list is not published more widely. In the interests of transparency, the GCRA is considering requiring Sure to publish its wholesale price list for all leased lines on a publicly-accessible page of its website.

Question 7: Do you agree that Sure's wholesale price list for all leased lines should be made public?

7. Consultation and next steps

- 7.1 The GCRA invites interested parties to submit responses to the alternative price control approach presented in this paper by **4pm, Friday, 11 February 2022.**

³¹ <https://www.cvf.openreach.co.uk/cportal/products/ethernet/ethernet-access-direct>

7.2 All written comments should be clearly marked '*Consultation on the price control for wholesale on-island leased lines*' and should be delivered by hand or by e-mail to the following address:

GCRA
Suite 4, 1st Floor
La Plaiderie Chambers
La Plaiderie
St Peter Port
Guernsey
GY1 1WG

E-mail: info@gcra.gg

7.3 In line with the GCRA's consultation policy, it intends to make comments on the consultation paper available on its website. Any material that is confidential should be put in a separate annex and clearly marked as such, in order that it may be kept confidential.

7.4 Should the GCRA elect to proceed with amending Sure's price control, the next step will be the publication of a proposed decision. A proposed decision would take into consideration comments received on this consultation paper.

Annex 1: Legal background and licensing framework

Legal background

The Regulation of Utilities (Bailiwick of Guernsey) Law 2001 (the Regulation Law) sets out the general duties which the States and the GCRA must take into account in exercising their functions.³² These include the requirement to protect consumers and other users in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services; to ensure that utility services are provided in a way which will best contribute to economic and social development; and to introduce, maintain and promote effective and sustainable competition.³³

The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012 sets out six principles of economic regulation, summarised below:³⁴

- Accountability – regulate within the framework of duties and policies set by the States.
- Focus – focus on protecting consumer interests through competition where possible, or a system replicating competitive outcomes if not, with a focus on outcomes.
- Predictability – provide a stable and objective regulatory environment.
- Coherence – develop frameworks that are a logical part of States broader policy context and priorities.
- Adaptability – evolve as circumstances change.
- Efficiency – make proportionate, cost-effective, timely and robust interventions and decisions.

Section 5(1) of *The Telecommunications (Bailiwick of Guernsey) Law, 2001 (the Telecoms Law)* provides that the GCRA may include in licences such conditions as they consider appropriate, having regard to objectives set out in Section 2 of the Regulation Law, and the enforcement of the Regulation Law and the Telecoms Law.

The Telecoms Law³⁵ specifically provides that the GCRA may include in any licence conditions that are:

- intended to prevent and control anti-competitive behaviour,³⁶ and
- regulate the price premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market.³⁷

³² Section 2 of the Regulation Law.

³³ These broad objectives were maintained in the transfer of functions and responsibilities to GCRA, as set out in the *Guernsey Competition and Regulatory Authority Ordinance, 2012*.

³⁴ *The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012*:
<https://www.guernseylegalresources.gg/CHttpHandler.ashx?id=75588&p=0>

³⁵ The definition of dominance and abuse of dominance is not explicit in the Telecoms Law. However, the *Competition (Guernsey) Ordinance, 2012* sets out the States' approach to defining abuse of dominance and anti-competitive practice.

³⁶ Section 5(1)(c) of the Telecoms Law.

³⁷ Section 5(1)(f) of the Telecoms Law.

The GCRA is obliged to publish notice:³⁸

- of a proposed decision as to whether a person has a dominant position in a relevant market and of the conditions, if any, proposed to be included in the licence granted or to be granted to that person in relation to the control of that dominant position;
- of a proposed decision to regulate the prices, premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market; and
- of a proposed decision to include quality of service conditions in any licence.

Licensing framework

Licences are issued to fixed telecommunications providers under Part I, section 1 of the Telecoms Law. All fixed and mobile telecommunications licences include a Part which addresses conditions applicable to dominant operators.³⁹ If the GCRA has found that a licensee has a dominant position in a relevant market, the provisions of this Part of the licence may apply.

The provisions which are applicable to dominant operators include (but are not limited to) measures addressing the availability and associated terms of Other Licensed Operator (OLO) access to networks and services;⁴⁰ the requirement not to show undue preference or to exercise unfair discrimination;⁴¹ the requirement not to unfairly cross subsidise,⁴² supported by accounting processes to demonstrate compliance; regulation of prices, and transparency around pricing.⁴³

In addition, the fixed telecommunications licences include conditions specific to the provision of leased circuits,⁴⁴ which apply where a licensee has been found to be in a dominant position. The conditions applicable to the supply of leased circuits refer to the retail and wholesale markets, and require that a dominant provider offers circuits on publicly advertised and non-discriminatory terms, and in compliance with quality standards and at prices determined by the GCRA.

The fixed telecommunications licences also include a Part which directly obliges the licensee not to engage in any practice which has the object or likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of telecommunications networks and services.⁴⁵

Licence Condition 31

The form and implementation of the price control are addressed in Condition 31 of Sure's licence, as follows:

³⁸ Section 5(2) of the Telecoms Law.

³⁹ Part IV, Fixed telecommunications licences.

⁴⁰ Condition 24, Fixed telecommunications licences.

⁴¹ Condition 29, Fixed telecommunications licences.

⁴² Condition 28, Fixed telecommunications licences.

⁴³ Condition 31, Fixed telecommunications licences.

⁴⁴ Condition 26, Fixed telecommunications licences.

⁴⁵ Part V, Fair competition, Fixed telecommunications licences.

- “ 31.1 Where the Licensee intends to introduce:
- (a) new prices for any Licensed Telecommunications Services, or prices for new Licensed Telecommunications Services to be introduced by the Licensee;*
 - (b) any discounts to published prices for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant or for any Subscribers to whom additional services or goods are provided by the Licensee or any of its Associated Companies; or*
 - (c) special offers to all or any of its customers for particular categories of Licensed Telecommunications Services where those Licensed Telecommunications Services have been found to be within a Relevant Market in which the Licensee has been found to be dominant, it shall publish the same at least twenty one (21) days prior to their coming into effect or otherwise as required by law, and provide full details of the same to the Director General.*
- 31.2 The Director General may determine the maximum level of charges the Licensee may apply for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant. A determination may;
- (a) provide for the overall limit to apply to such Licensed Telecommunications Services or categories of Licensed Telecommunications Services or any combination of Licensed Telecommunications Services;*
 - (b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
 - (c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.*
- 31.3 All published prices, discount schemes and special offers of or introduced by the Licensee for Licensed Telecommunications Services shall be transparent and non-discriminatory; all discount schemes shall be cost-justified and all special offers shall be objectively justifiable.
- 31.4 If the Director General, after consulting the Licensee and such other persons as she may determine, is satisfied that any published price, discount scheme or special offer is in breach the Regulation Law, Telecommunications Law or this Licence, the Director General may, by issuing a direction, require the Licensee to bring the relevant prices, discount schemes or special offers into conformity with the Laws and/or the requirements of this Licence.”

Annex 2: List of consultation questions

Question 1: Do you agree with the GCRA's view that Guernsey VHB (1 Gbps and above) leased lines prices are excessive? The GCRA is especially keen to hear from business users of leased lines in Guernsey.

Question 2: Do you agree that benchmarking Sure's wholesale VHB (1 Gbps and above) leased lines is an appropriate mechanism to remedy excessive prices? If not, what alternatives do you suggest?

Question 3: Should a benchmarking approach be adopted for Sure's wholesale VHB (1 Gbps and above) leased lines, do you agree that it should apply by VHB speed category?

Question 4: Should a benchmarking approach be adopted for Sure's wholesale VHB (1 Gbps and above) leased lines, do you agree that it should be applied gradually?

Question 5: Should a benchmarking approach be adopted, do you agree that differential pricing for Sure's VHB (1 Gbps and above) wholesale leased line products should be eliminated?

Question 6: Do you agree that, should a benchmarking approach be adopted for Sure's wholesale VHB (1 Gbps and above) leased lines, its term should be aligned with the market review cycle? If not, what alternatives do you suggest?

Question 7: Do you agree that Sure's wholesale price list for all leased lines should be made public?