BUSINESS CONNECTIVITY MARKET REVIEW

T1621G

Proposed Decision - Wholesale On-Island Leased Line Pricing

31 March 2023

GUERNSEY COMPETITION & REGULATORY AUTHORITY

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1. Introduction

1.1 The States of Guernsey's policy letter states that an ambition of the Digital Framework 2021-2025 (**Digital Framework**):

"*is to ensure our community, business and government can* maximise *the opportunities of the technological age to ensure economic, social and environmental resilience, sustainability and innovation*"

1.2 This ambition and related government ambitions is supported by effective regulation to deliver the telecommunication services that Guernsey requires at appropriate prices.

1.3 In August 2022, to assist in delivering the Digital Framework objectives, GCRA published a final decision concluding its Business Connectivity Market Review (**BCMR**) Stage 1 'market definition and competitive assessment' review (the **Final Decision**) which found Sure (Guernsey) Limited (**Sure**) holds significant market power (**SMP**) in the provision of wholesale on-island leased lines in Guernsey.[1] That SMP designation is a prerequisite to the implementation of certain regulatory remedies, such as price controls, in the wholesale on-island leased line market.

1.4 The GCRA then consulted extensively with Sure and the other licenced operators (**OLO**) in its Stage 2 'BCMR Remedies' consultation, through requests for information, a roundtable discussion, correspondence, and multiple bilateral meetings with Sure. The consultation produced a large quantity of information, and that information was used to determine whether a revised regulatory price control should be applied to Guernsey's wholesale on-island leased line market.

1.5 The analysis undertaken by the GCRA with assistance provided by Frontier Economics has found that Sure's wholesale on-island leased line prices are significantly in excess of the level that 'efficient' prices should be. The findings evidenced in the cost modelling mirror similar conclusions to the benchmarking study reported in the GCRA Information Paper published in March 2022 (**2022 Price Review**).[2]

1.6 Those excessive prices are present in the market despite the existing retail-minus price control on Sure's wholesale on-island leased lines products which has been in place since the 2015 BCMR. The analysis demonstrates to the GCRA that reliance on competition at the retail level to indirectly control wholesale on-island leased line pricing levels has not been a particularly strong constraint on Sure's upstream pricing, and therefore, the GCRA has assessed whether a different form of regulatory price control would deliver a better outcome for competition and consumers.

1.7 Having completed its review of that evidence, existing market information, and considered alternative regulatory options, the GCRA proposes to reduce the current price of wholesale on-island leased line products by 18% on average, with the reductions in prices being applied from 1 January 2024 covering the period to 31 December 2028.

[1] **2022 - Case T1480G** - *BCMR: Market definitions & Competitive Assessment Final decision* (July 2022).

[2] **2022 - Case T1602G** - Price control for wholesale on-island leased lines – consultation (14 March 2022).

Responding to Proposed Decision

1.8 The GCRA invites interested parties to submit written responses on this proposed decision by **1600 on 12 May 2023.**

1.9 Responses can be submitted by email to info@gcra.gg or alternatively in writing to:

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

1.10 **All written comments should be clearly marked '*BCMR - Proposed Decision – Wholesale On-Island Leased Line Pricing*'. The GCRA's normal practice is to publish responses on its website. If any part of a response is held to be commercially confidential, it should be clearly marked (by highlighting the confidential sections in colour) when the response is submitted.**

2. Consultation process undertaken by the GCRA

2.1 The GCRA is under a legal obligation to publish a proposed decision in advance of any final decision (see Annex 1 for a summary of the GCRA's legal and regulatory obligations). The GCRA has therefore been engaged in an extensive consultation process to ensure it obtains sufficient and accurate information on which to base the proposed decision (and any Final Decision) and in the interest of procedural transparency in Annex 4 the numerous interactions and exchanges have been recorded.

2.2 Annex 4 demonstrates the extensive consultation and engagement undertaken by the GCRA in its current review of business connectivity. Throughout the consultation process the GCRA has held discussions with telecommunications providers to ensure the review was conducted transparently, and that the process allowed all interested parties to provide feedback on the review's objectives, information requests, and proposed timelines. Therefore, the GCRA is satisfied that those key stakeholders were given ample opportunity to provide all evidence they considered relevant to the review.

2.3 For Sure, the extensive consultation period also gave it the opportunity to provide its costing, and pricing information and gave it the opportunity to engage in extensive rounds of discussions with the GCRA and Frontier Economics, the GCRA advisors for this analysis. Those discussions and information exchanges allowed Sure the opportunity to provide detailed submissions on its historical cost systems, cost allocations, internal systems and to contribute fully to the review of business connectivity. Given that process, the GCRA is confident that the costing model it has developed, which is central to its assessment of pricing in wholesale on-island leased lines market, is based on accurate and robust data.

3. Structure of price control

Overview

3.1 A GCRA objective is to ensure that all licensed operators have non-discriminatory access to the wholesale network at reasonable prices, and in doing so promotes competition at the retail level.[3] To that end the Proposed Decision is recommending regulatory solutions to address excessive pricing of wholesale on-island leased lines which was identified in the BCMR Stage 2 consultation, and prior to this the BCMR Stage 1 consultation and in the 2022 Price Review.

3.2 Excessive pricing refers to a situation where the prices charged by a dominant undertaking are not closely related to the value to the consumer and/or the cost of producing or providing the relevant service.[4] Concerns about excessive pricing can arise where, absent regulation, price levels are likely to be persistently high with no effective pressure (e.g. from new entry or innovation) to bring them down to competitive levels over the period of the review.

Need for a new price control structure

3.3 In its 2015 BCMR, the GCRA implemented a retail-minus price control to strengthen the competitive environment by allowing space for market entrants, such as JT (Guernsey) Limited (**JT**) and Guernsey Airtel Limited (**Airtel**), to better compete with Sure at the retail level. This was informed by the information gathered during the 2015 BCMR consultation, where it became evident that JT in particular had made inroads into the retail leased lines market in Guernsey.

3.4 The GCRA supported its 2015 price control with several additional conditions and measures (see Annex 2), with the ambition that Sure, as the SMP wholesale provider of on-island leased lines, should not be able to sustain excessive pricing in an appropriately regulated market. The GCRA concluded at the time that the retail-minus approach was the most appropriate and proportionate regulatory means of meeting its objectives of creating a competitive market for wholesale on-island leased line customers that would benefit businesses as the ultimate end users.

3.5 Given the evidence and information analysed in the current review, which is covered in further detail in a subsequent section, the GCRA has concluded that the existing retail-minus price control, with its associated conditions and obligations has not adequately addressed excessive pricing of wholesale on-island leased lines and that a new price control is necessary.

Alternative price control structures considered

3.6 Sure's SMP implies that, from an economic perspective, and in the short to medium term, it has and will have on the relevant market identified, sufficient market power to behave independently of its

[3] **2023** – **GCRA 2023 Work Programme.**

[4] **1978** Case C 27/76 United Brands v. Commission, [1978] ECR 207, [1978] 1 CMLR 429, paragraph 250. In United Brands the Court of Justice of the European Union held that: '…charging a price which is excessive because it has no reasonable relation to the economic value of the product supplied would be… an abuse'.

competitors, customers, and ultimately consumers.[5] This means that, in proposing *ex ante* remedies the GCRA is not obliged to prove that there have been abuses of dominance. The finding of SMP simply indicate that Sure has the ability and incentive to take advantage of a dominant position in future.

3.7 However, given the evidence that the existing retail-minus price control, with its associated conditions and obligations, has not adequately addressed excessive pricing of wholesale on-island leased lines, the GCRA has set out in the following paragraphs alternative regulatory options which could be implemented to address the excessive pricing of its wholesale on-island leased line products and the potential market risks arising from Sure's SMP designation on the market.

Benchmarking

3.8 The GCRA undertook a 2022 Price Review using a benchmarking analysis to compare prices across a peer group of countries (Iceland, Isle of Man, Luxembourg, and Jersey) and in so doing establish whether there were any significant issues with pricing to inform a more considered price control assessment. The benchmarking analysis identified some significant issues, with particular product prices being noticeable outliers.

3.9 In that review, the GCRA presented a wholesale benchmarking analysis which showed in particular that prices for Sure's very high bandwidth (**VHB**) leased line products were significantly higher than comparable jurisdictions, and substantially greater than UK wholesale products.[6] It therefore contemplated an urgent intervention but after engagement with Sure and in response to that consultation Sure agreed to voluntarily reduce its wholesale VHB leased lines prices from 28 March 2022 by as much as 44% and 52%.[7]

3.10 Commenting on Sure's voluntary reductions, the GCRA Chief Executive stated:

> "*These price reductions will have a direct cut-through to the cost of doing business in Guernsey and is an excellent outcome for the sector. I want to commend Sure for the approach it has taken, and I am sure its customers will appreciate the significant reductions it has committed to and how swiftly it intends to implement them*."

3.11 While the 2022 Price Review benchmarking approach delivered immediate positive outcomes in terms of addressing extreme pricing outliers, by securing price reductions to some leased line services, a comprehensive assessment of whether the SMP provider's prices for wholesale on-island leased lines are appropriately based on efficient costs is more challenging through a benchmarking approach. These challenges include: identifying appropriate "peer group" countries; identifying product categories to compare; taking account of time (it is essentially a snapshot of pricing at a given point in time); and securing reliable data, as not all pricing data are publicly available and even where figures are available, they may not be directly comparable.

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[5] **2018 -** Communication from the European Commission - Guidelines on market analysis and the assessment of significant market power (SMP) under the EU regulatory framework for electronic communications networks and services – [para 24].

[6] **Case T1602G:** *Price control for wholesale on-island leased lines: Information Paper & Conclusion* [para. 2.3].

[7] **Case T1602G**: *Price control for wholesale on-island leased lines - Media Release.*

3.12 Also, despite Sure's voluntary reduction in wholesale prices, it nevertheless did not accept that its wholesale on-island leased line pricing was excessive overall. Instead, Sure argued:

> *"The Authority has simply demonstrated that certain elements of Sure's wholesale VHB leased line pricing is higher than some comparator jurisdictions. This is ultimately insufficient to conclude that prices are "excessive" and falls far short of the standard required by competition law."*[8]

3.13 The GCRA concluded that a more detailed analysis was required in order to determine whether Sure's pricing is higher than efficient costs across all its wholesale on-island leased line products and not just the VHB services and that benchmarking with similar jurisdictions was unlikely to fully support States policy with regard to pricing of these services.

Retail-minus approach

3.14 A retail-minus price control sets the wholesale prices of products within the market by reference to the associated retail price, minus a margin that is considered sufficient for a reasonably efficient operator to compete profitably in the downstream market. The establishment of a retail-minus control requires information and a judgment about the costs of providing a retail service, and for the approach to be fully effective generally requires that retail competition is highly competitive.

3.15 The retail-minus approach has the benefit of ensuring that the OLO can provide services only if it is as least as efficient as the SMP operator in producing its retail offer and so the risk of encouraging market entry by an inefficient operator is minimised. The main disadvantage of this approach is that it does not directly address prices in the wholesale market, which could be an issue if the SMP operator is charging excessive wholesale prices.[9] The imposition of a retail-minus control in the wholesale market is therefore an indirect constraint on wholesale prices relying on the impact of competition on retail pricing.

3.16 The GCRA analysis of Sure's wholesale pricing as part of the 2022 Pricing Review, confirmed the following:

a) *"…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. 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."*

3.17 Given the historic evidence as to the success of the existing retail-minus control in constraining prices at the wholesale level, the GCRA does not believe that an updated or remodelled price control

[8] **Case T1602:** Sure response*: Price control for wholesale on-island leased lines - consultation.*

[9] A finding that no operator holds no SMP at the retail level carries with it the conclusion that no operator (or operators) has the ability to set its prices independently of its competitors in the retail market.

based on retail-minus would produce the best results in the relevant market. As demonstrated in a subsequent section, it has not to date reduced excessive upstream prices.

Cost orientated pricing

3.18 The overarching aim of a cost-oriented price control would be to develop a robust estimate of prices based on Sure's efficiently incurred costs, whilst ensuring Sure still has sufficient incentives to invest and that it makes a reasonable return on its investment.

3.19 Cost orientation in regulatory price controls aims to have access prices replicating as much as possible those expected in an effectively competitive market. Cost orientation is a key principle of the EU's regulatory framework and has been imposed as a regulatory remedy following an SMP finding in many markets. The EU approach stresses that the implementation of a cost orientation obligation requires cost modelling, because it is possible that the SMP operators such as Sure, will have costs that are not efficiently incurred, and so the cost-oriented control cannot simply rely on the SMP operator's actual costs, without considering the need to make efficiency adjustments.

3.20 By linking price to the cost of providing the service, the principle of cost orientation is a fair and reasonable way of ensuring that Sure as the SMP operator does not use its market power to price in a way which is detrimental to market entrants and ultimately end-users. There are however two main disadvantages of cost orientation being used as a remedy. The first is to do with the time and resources required to build relevant cost models, and the extent to which they deliver the desired outcomes, and the second is to do with the impact cost orientation may have on investment by the operator. Whilst taking those disadvantages into consideration, the GCRA does not believe the current price control model is working well for customers and the costs of a cost orientation pricing control are proportionate to the overall value and importance of the leased line market as a key and fundamental enabler for many businesses in Guernsey.

3.21 The GCRA concludes that the imposition of a regulatory price control model based on cost orientation, developed through an analysis of Sure's own data adjusted for future efficiencies is the most appropriate mechanism to deliver fair and equitable pricing for the wholesale on-island leased lines market.

Form of cost-orientated price control

3.22 The high proportion of fixed costs and the extent to which network elements are shared between different services, means the calculation of costs in the telecoms sector requires relatively sophisticated cost models. The GCRA has considered several potential approaches to setting regulated cost-oriented prices and those options are as follows:

a) **Top-down cost modelling**: This approach models the actual network costs incurred by an operator in building and maintaining its network using regulatory accounting data. It is usually used when a network is already built and thus when the actual costs of the network are already known and when they can be apportioned to the different services provided.

b) **Bottom-up LRIC modelling:** This approach is to develop the cost model of a hypothetical network operator. This involves forecasting the efficient level of demand and identify the specific network assets that would need to be deployed by an operator to service that demand using engineering rules. The objective of this approach is to proxy the "competitive level" of prices, which would then send the appropriate "build-or-buy" signals to alternative operators that are choosing to either buy wholesale access or build a parallel network themselves. Bottom-up models are powerful but very resource-intensive and can be disproportionate for a small jurisdiction. The bottom-up approach is also more appropriate the greater the prospect of new entrant network competition.

c) **DCF modelling:** This involves calculating the future cashflows generated by the regulated products, based on forecasts for the relevant costs and revenues from those products. Under this approach wholesale prices are set such that the return made on these future cashflows is consistent with a reasonable rate of return (i.e. cost of capital), or in other words, the "net present value" of the future cashflows when discounted using an appropriate rate of return is zero. The calculation of cashflows can be based on a hypothetical operator or aim to reflect the actual network of the operator regulated.

Conclusion

3.23 Based on its assessment of these options, the GCRA proposes that the DCF modelling using forecasts based on Sure's actual demand and cost data, is the appropriate cost modelling approach.

3.24 This is because Sure's FTTP network is currently in the process of being built, meaning a modelling approach that takes into account forecasts of future costs and demand is required. Using this approach, and forecasts of Sure's actual demand and cost data, is also considered a proportionate approach given the size of the jurisdiction.

3.25 The GCRA however recognises that the use of forecast data based on Sure's actual costs may exceed the efficient level of costs and has therefore reviewed the cost data and made adjustments to account for expected efficiency gains.

3.26 The assumptions used to develop the model are outlined in Section 4 and proposed remedies are set out in Section 5, below.

4. Assumptions and assessments

Overview of modelling process

4.1 In order to populate the model, the GCRA requested and obtained a substantial data set from Sure, including Sure's historical costs, forward looking investment in its fibre and legacy network, and consumer demand for different leased line products. The GCRA has also supplemented the data received from Sure with data from other sources, such as the OLOs' demand forecasts.

4.2 The GCRA's cost modelling assessment, which was based on the information and data provided by Sure and OLOs, has found that if wholesale on-island leased line prices were to evolve with inflation from current levels, these would be on average **22%** higher over the price control period (2024-2028) than would be expected if these reflected the level of Sure's efficiently incurred costs. The GCRA's view is that, absent a price control intervention, Sure would have insufficient incentive to act to reduce its wholesale product prices to efficient levels in the wholesale market to the ultimate detriment of customers and effective competition in the market.

4.3 The model developed calculates the "operational cash flows" related to wholesale on-island leased line products over a period of time corresponding to the assets' life, calculated as its expected wholesale revenues minus its expected efficiently incurred capital and operating costs. The model allows the GCRA to identify the level of wholesale on-island leased line prices for each product that would need to be set over that period of time to allow Sure to recover its efficient-incurred costs, that is, make a return on its cashflows equal to a reasonable return, as defined by its weighted average cost of capital (**WACC**). In practice, these are the level of prices that mean that the sum of Sure's discounted cashflows (**DCF**) for wholesale on-island leased line services equal to zero, when using its WACC as a discounting factor.

4.4 To provide a clear and transparent explanation on how the model has estimated the appropriate pricing level, the GCRA has set out its approach to each of the key assumptions deployed in the model and why the GCRA considers each assumption to be reasonable.

Analysis and Key assumptions

4.5 Key assumptions that inform the price control model, which is in the form of an excel spreadsheet, are discussed below.

4.6 <u>Assumption 1:</u> Duration of modelling period: The GCRA proposes a duration period of 40 years, which is assessed as a reasonable lifespan to account for the longest-lived assets in Sure's network (poles and ducts) and which is consistent with the approach in cost models in other jurisdictions.

4.7 <u>Assumption 2</u>: WACC: The GCRA invited Sure to produce its own WACC report, which Sure instructed Oxera to produce and was provided to GCRA on 9 January 2023.[10] The GCRA evaluated Sure's submissions and considered that most of the parameters in capital asset pricing model were reasonably well evidenced. The report findings were summarised as follows:

> *"We present a summary of Oxera's estimates of CAPM input parameters and the estimated WACC range in pre-tax nominal terms, arriving at a midpoint estimate of 9.1%,"*

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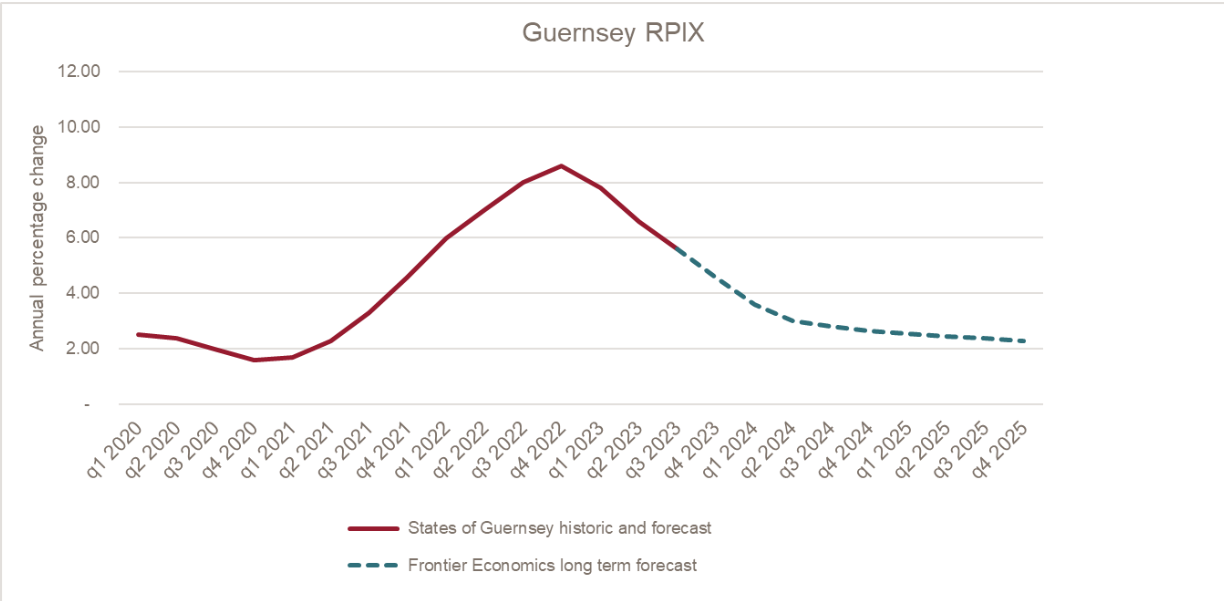
[10] **2023 Oxera Report**, Estimating the WACC for Sure's Guernsey business, 9 January 2023.

4.8 However, in reaching those conclusions Sure's report proposes to include an uncertainty premium and a forward rate adjustment without any regulatory precedent existing (or being referenced). The GCRA does not propose to accept those unsupported/unevidenced adjustments and notes that both the CMA and Ofwat have rejected forward rate adjustments in their previous assessments. Therefore, the GCRA removed this adjustment and has assessed Sure's WACC is in the range of 8.32% to 9.23%, this gives an exact mid-point of 8.78% which the GCRA proposes to round up to 8.8%.

4.9 Assumption 3: Inflation rate. The expected inflation rate is used to forecast Sure's future costs (except for staff-related costs, where wage growth is used). The GCRA propose to apply an inflation rate in 2023 of 6.2% reflecting the inflation forecasts of the State of Guernsey Strategy and Policy Unit and assume that this will decline over time to reach a long-run rate of 2.2% by 2025 and remain at that level thereafter. The proposed long-run rate of 2.2% is based on Guernsey RPIX average between 2016 2019 (pre-covid), which is consistent with Bank of England's long-term target to "*set monetary policy to achieve the Government's target of keeping inflation at 2%*", which has an influential role on the Guernsey inflation rate.



The model estimates future costs based on the expected inflation profile but sets the evolution of wholesale prices at the long run rate throughout the 40 year modelling period in order to smooth the current inflation peak for end users.[11]

4.10 Assumption 4: Wage growth. The expected wage growth is used to forecast Sure's staff-related costs. The GCRA's assumption is based on data from Guernsey Annual Electronic Census Report. Overall remuneration growth was estimated at 3.1% in nominal terms during 2016 to 2019, when inflation was 2.2% (so 0.9% in real terms). The GCRA accepts that the data does not identify whether the growth is due to more employees earning higher salaries. However, the GCRA assumes it was driven

[11] Note that this still ensures that the proposed prices are reflective of Sure's costs. This is because as noted above, the prices over the 40-year modelling period (taking account of the assumed inflation) are set such that Sure's wholesale revenues for leased line services will equal its actual expected efficient costs i.e. the return on its cashflows over the 40 year period will be equal to its WACC.

by higher salaries, and assumes that wage growth will continue at the same rate in real terms going forwards as it did over 2016 to 2019, i.e. wage grow at forecast inflation + 0.9%.

4.11 Assumption 5: Efficiency gains. In the cost model, the assumed growth in costs due to inflation and wage growth is reduced to reflect expected cost savings over time due to expected efficiencies. This approach is consistent with that used by regulatory authorities in other jurisdictions when setting cost-orientated prices. The applied rate of cost savings due to efficiencies differs by type of cost, and over time. On average, across the whole cost base, proposed efficiency rates applied range between 2.3% in 2023 and 1.6% from 2028 onwards. This glide path reflects the fact that efficiencies reduce over time, as Sure continues to move the provision of leased lines services from its copper to its fibre network**,** with less scope for efficiencies on new technologies. The level of efficiencies achievable have been set using three main sources of data.

4.12 Firstly, there is an estimate of Multifactor Productivity (MFP) produced by the UK's Office of National Statistics (ONS), which provide an estimate of the annual efficiency gain for the ICT sector, which is 2.4%. This rate is applied to Sure's costs relating to IT, Billing and datacentres.

4.13 Secondly, Ofcom's Fibre-to-the-Premises (FTTP) model developed as part of its WFTMR Decision. Ofcom explicitly assumes annual efficiency gains of 1.5% for OPEX including repair and maintenance, power, and general management costs. This rate is applied to general OPEX as well as core and leased line specific OPEX (reflecting the GCRA's understanding that this OPEX relates to assets that are already fully fibre).

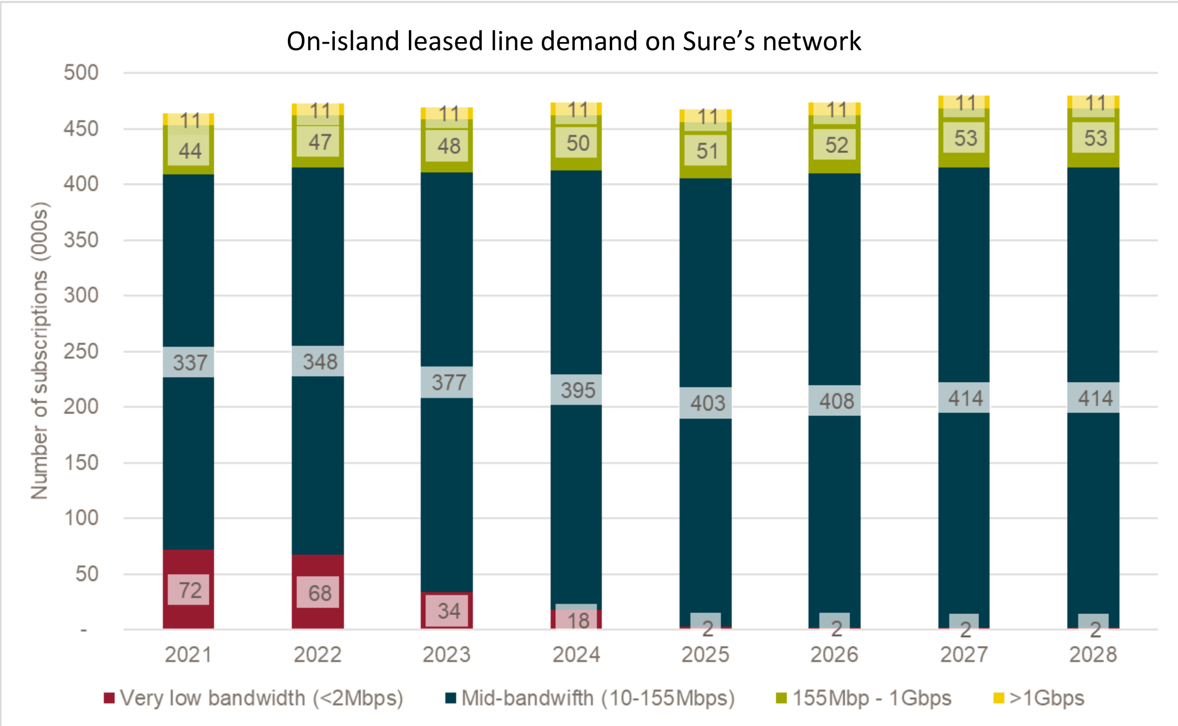
4.14 Thirdly, Ofcom's estimate of efficiency gains for Openreach's network costs used in its Regulatory Asset Base (RAB) model developed as part of its 2020 WFTMR Decision was 4.5%, which relates to OpenReach's legacy copper network. This rate was applied to network specific costs, with an assumption of 3.5% in 2023 reflecting that Sure's network will still be largely copper-based in this year, reducing to 1.5% by 2027, once Sure's Fibre to the Premises (FTTP) project is completed (i.e. consistent with the efficiency gain rate assumed by Ofcom for Openreach's FTTP network).

4.15 Assumption 6: Management fee costs: The GCRA does not propose to allow management fees to be included in the cost model, as it does not consider that these have been sufficiently evidenced or justified by Sure in its submissions. And the GCRA notes Condition 2.10 of Sure's Fixed Telecommunications Licence that requires:

> "*The Licensee shall ensure that:*
>
> *The administration and management of the business associated with the establishment, maintenance and operation of the Licensed Telecommunications Network and provision of the Licensed Telecommunications Services shall be conducted from the Bailiwick; and*
>
> *its business is conducted in a manner which the Guernsey Competition and Regulatory Authority is satisfied is on a normal commercial basis and at arm's length from the business of any of its shareholders or Associated Companies*."

4.16 Assumption 7: Cost allocation to wholesale on-island leased lines: The model needs to allocate to wholesale on-island leased lines products a portion of forecast "shared costs", which support both the provision of wholesale on-island leased line services and other Sure services (incl. other wholesale services such as broadband and fixed voice, but also Sure's fixed retail services, mobile services and other activities). Where data was available, the costs relating to certain cost categories have been allocated on the basis of specific data on the underlying activities driving those costs (e.g. staff timesheet data for staffing costs). Where "direct" data relating to the activities underlying costs was not readily available, the cost allocation keys reflect allocation keys from Sure's previous regulatory accounting system, and other considerations such as the split of subscribers or revenues across services, which is a common approach used in cost models in other jurisdictions, such as Jersey and the UK.

4.17 Assumption 8: Wholesale on-island leased line Demand: The product demand on Sure's network is projected to be static over the review period. A projected change is the expected mix of demand across products, with the gradual removal of very low bandwidth products and their replacement with higher speed products as Sure's FTTP network is rolled out. These forecasts reflect the forecasts from Sure and OLOs.

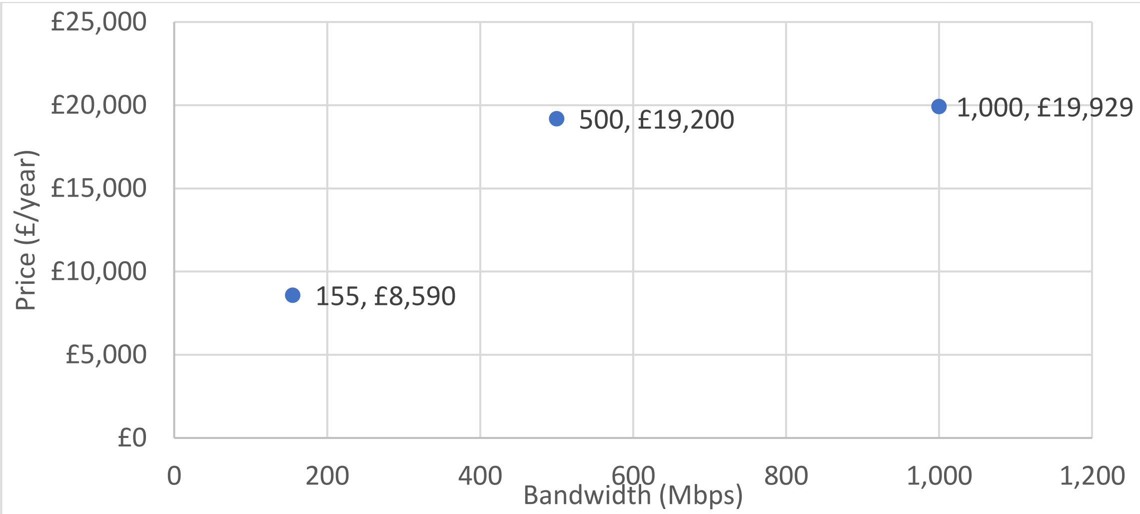


4.18 Assumption 9: The "price relativities" between each wholesale leased line product (i.e. the "pricing curve"). To calculate total revenues from wholesale on-island leased line products, the model multiplies the forecasted demand for each product with the wholesale price for each product. Given this, in order to determine the package of prices that ensures that these are reflective of cost overall, the GCRA needs to consider the appropriate "relativity" in prices between different products, i.e. how much the price of one product should differ from another, given the differences in their characteristics (e.g. differences in bandwidth). To do this, the GCRA proposes to keep the relativities in prices between Sure's products as per its current prices, but with some adjustments to address two apparent anomalies in Sure's current pricing for particular wholesale on-island leased line products.

- First, Sure's current prices for its Ethernet and Fibre Channel products are the same at some bandwidths (i.e. 1Gbps and 2Gbps), but different at others (4Gbps and 8Gbps). The GCRA understands that there is no difference between the specifications of these products that would justify the prices being different at some bandwidth but not others.

- Second, the price of Sure's Lanlink 500Mbps product appears very large compared to the prices of products that are closest to it in terms of bandwidth (i.e. the Lanlink 155Mbps and Lanlink 1,000Mbps products). In particular, the 500Mbps price appears "too close" to the price of the 1,000Mbps product given the differences in bandwidth (see **Figure A** below): the 500Mbps product has c.3 times higher bandwidth than the 155Mbps product but with the price less than doubling; the 1,000Mbps product is then 2 times the bandwidth of the 500Mbps product, but with only a marginally higher price (3%).

Figure A – Difference in rental prices between Lanlink 155Mbps, 500Mbps, and 1,000Mbps products



4.19 To adjust for these anomalies, the GCRA is proposing to make the following adjustments to the price curve.

4.20 Firstly, the GCRA proposes to set the price of 4Gbps and 8Gbps Fibre Channel products at the same level as the Ethernet products with the same Bandwidth (High Speed Ethernet 4Gbps and High Speed Ethernet 8Gbps respectively), consistent with Sure's pricing for the 1Gbps and 2Gbps variants of these products.

4.21 To then reflect the second apparent anomaly, the GCRA proposes to "shift down" the price of products with bandwidths of 500Mbps and above, with a small shift for those with bandwidths greater than 500Mbps, and a bigger shift for the 500Mbps product. The outcome of these shifts means there would now be a more consistent relationship between the price and bandwidth of different products, and in particular between the 500Mbps product and those with higher and lower bandwidths. In other words, as the bandwidth of products increases, the associated increase in prices is more consistent with these increases in the bandwidth than is the case in Sure's current price list. The resulting "price curve" is set in **Figure B** in Section 5 below.[12]

[12] This sets out the curve for the proposed prices in 2024, but the relativities between prices are the same for all years over 2024-28.

5. Remedies

Overview

5.1 Sure has been identified as having SMP in the provision of wholesale on-island leased lines, having the ability and incentive to set wholesale prices which might serve its own commercial interests at the expense of those of the wider market and in particular, consumers. In addition to the risk of excessive prices other types of competition problems may also arise, such as:

- Refusing to provide network access to other downstream service providers (or refusal to provide access on reasonable terms, conditions, and charges), which could restrict competition in the provision of retail services to the detriment of consumers.

- Discrimination in favour of its downstream retail businesses to the detriment of competition in retail leased line services (including by price and/or non-price discrimination), and ultimately to the detriment of end users.

- Engaging in a margin squeeze.

5.2 Therefore, the GCRA is proposing to impose remedies to address potential competition problems associated with Sure's SMP designation.

Price Control – overall reduction in pricing levels

5.3 Given the key assumptions set out in Section 4 and the modelling analysis undertaken, the average level of Sure's wholesale on-island leased line prices is found to be higher than the efficient level of its costs. In particular, the analysis finds that over the 2024-2028 price control period, the estimated level of Sure's prices (if these reflected the efficient level of costs) would on average be 18% lower than Sure's current price level, if these were to increase from current levels in-line with the estimated long-run rate of inflation (2.2%). For example, the average estimated cost-based price of Sure's wholesale on-island leased lines in 2024, reflecting the expected mix of customers across the different leased line products in that year, would be £6,698/year. However, the average price in this year if Sure's current prices increased by 2.2%/year up to 2024 would be £8,213.

5.4 To address this, the GCRA proposes to reduce the current prices of wholesale on-island leased line products to the efficient cost-based level, from 1 January 2024. The prices for each product in each year over the period of the price control from 1st January 2024 to 31st December 2028 are set out in **Table A**, **below.**

5.5 In regard to the risks listed above, in particular given that Sure's retail competitors must purchase wholesale on-island leased lines from Sure to compete in this market, there are risks in giving Sure unilateral latitude as an SMP provider to set individual prices given the future potential for a different mix of leased lines taken by its competitors from itself should they pursue a different mix of retail customers from Sure's own retail business. The GCRA is also mindful of the fact that mobile competitors to Sure rely on Sure for backhaul to support their mobile services, which is provided through Sure's leased lines. There are therefore circumstances where, without necessarily contravening non-discrimination requirements, the overall or average level of prices may comply with an aggregate price control but the SMP provider has incentives and the means to choose to unfairly set higher levels of wholesale prices for some services than others if the overall impact is more negative for its competitors than its own commercial businesses**.** In the judgement of the GCRA, giving the SMP provider of wholesale on-island leased line services unchecked latitude presents a significant enough risk to propose that the price control is on a per product basis. See **Table A, below.**

5.6 There are however countervailing risks when setting price controls on a product/service basis such as stifling commercial freedom in response to changes in market circumstances. In order to mitigate the risk of stifling innovation or response to market demand, the GCRA proposes that in circumstances where the SMP provider considers there is a case to deviate from the control as imposed at the product level, it will be obliged to satisfy certain procedural steps.

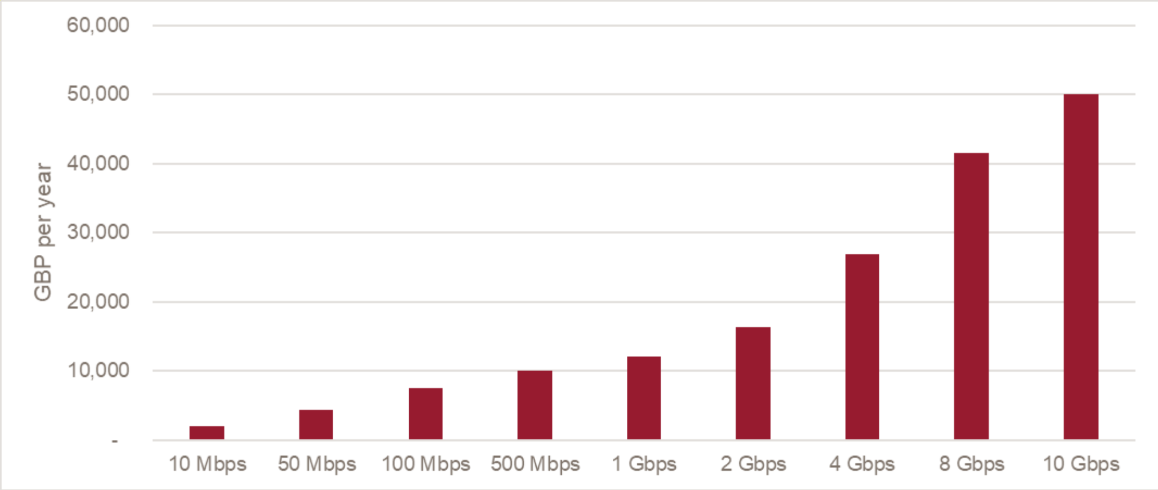
5.7 A prerequisite for such regulatory consent will be to demonstrate comprehensive consultation with OLOs prior to making such a submission to the GCRA. Where there are no substantive objections made to such a proposal, GCRA consent would be a simple administrative procedure given in the form of a published letter agreeing to the amendment to specific Sure wholesale pricing or products – subject to evidence that the overall price control would not be contravened. Where OLOs do raise objections then closer regulatory scrutiny of the case put forward by Sure would be applied and consent can be declined in consideration of the GCRA's duties and functions in law on a case by case basis.

5.8 The defined "*pricing curve*" is tabled in the proposed prices in **Table A**. The prices set on a per product basis are established in reference to this defined "pricing curve" and illustrated for 2024 in **Figure B, below**. This proposed approach also has the benefit of ensuring the current apparent anomalies in Sure's pricing for particular wholesale on-island leased line products can be addressed (which as highlighted in Section 4, includes Sure's pricing of its 500Mbps bandwidth product being very close to that of its 1Gbps product, and the pricing of its Ethernet and Fibre Channels products being the same for some bandwidth variants but not for others).

Table A - Price Control – Control on individual products from 1 January 2024

Price for Leased lines products	2024	2025	2026	2027	2028	average 2024-2028
On-island						
Same Exchange Area, 2 Mbit/s	1,248	1,276	1,304	1,333	1,362	1,305
Different Exchange Areas, 2 Mbit/s	2,247	2,296	2,347	2,398	2,451	2,348
Lanlink 10 Mbit/s (Ethernet, RJ45)	1,999	2,043	2,087	2,133	2,180	2,088
Lanlink 25 Mbit/s (Ethernet, RJ45)	2,909	2,973	3,039	3,105	3,174	3,040
Lanlink 50 Mbit/s (Ethernet, RJ45)	4,427	4,524	4,624	4,725	4,829	4,626
Lanlink 75 Mbit/s (Ethernet, RJ45)	5,944	6,075	6,209	6,345	6,485	6,212
Lanlink 100 Mbit/s (Ethernet, RJ45)	7,462	7,626	7,794	7,966	8,141	7,798
Same exchange area, Lanlink 155 (PT, 1300Nm)	8,326	8,509	8,696	8,887	9,083	8,700
Lanlink 250 Mbit/s (Ethernet, RJ45)	8,727	8,919	9,116	9,316	9,521	9,120
Lanlink 500 (Ethernet RJ45)	9,993	10,213	10,437	10,667	10,902	10,442
Lanlink 750 Mbit/s (Ethernet, RJ45)	11,045	11,288	11,536	11,790	12,049	11,541
Lanlink 1000 (Ethernet, RJ45)	12,097	12,363	12,635	12,913	13,197	12,641
Lanlink 1000 (PT 850Nm/1300Nm)	12,097	12,363	12,635	12,913	13,197	12,641
Lanlink 10 Gbit/s (Ethernet, RJ45)	49,964	51,063	52,187	53,335	54,508	52,211
Fibre Channel 1 Gbit/s	12,097	12,363	12,635	12,913	13,197	12,641
Fibre Channel 2 Gbit/s	16,304	16,663	17,029	17,404	17,787	17,037
Fibre Channel 4 Gbit/s	26,823	27,413	28,016	28,632	29,262	28,029
Fibre Channel 8 Gbit/s	41,549	42,463	43,397	44,352	45,328	43,418
High Speed Ethernet 2Gbps	16,304	16,663	17,029	17,404	17,787	17,037
High Speed Ethernet 4Gbps	26,823	27,413	28,016	28,632	29,262	28,029
High Speed Ethernet 8Gbps	41,549	42,463	43,397	44,352	45,328	43,418
Other on-Island						
Guernsey - Herm, 2 Mbit/s	3,041	3,108	3,177	3,247	3,318	3,178
Guernsey - Alderney, 2 Mbit/s	10,176	10,400	10,629	10,862	11,101	10,634
Guernsey - Sark, 2 Mbit/s	10,176	10,400	10,629	10,862	11,101	10,634
Alderney - Sark, 2 Mbit/s	20,353	20,801	21,258	21,726	22,204	21,268
Guernsey - Herm 10 Mbit/s Ethernet	7,571	7,737	7,907	8,081	8,259	7,911
Guernsey - Alderney 10 Mbit/s Ethernet	15,411	15,750	16,096	16,450	16,812	16,104
Guernsey - Sark 10 Mbit/s Ethernet	15,411	15,750	16,096	16,450	16,812	16,104
Guernsey - Alderney 20 Mbit/s Ethernet	22,517	23,013	23,519	24,036	24,565	23,530

Figure B – The Defined Pricing Curve for leased line products in 2024



Note: The profile of the curve would be the same for the other years in the 2024-28 review period but would show adjustment for inflation.

General access obligations applying to Sure

5.9 An access obligation on Sure allows an OLO to have certain types of wholesale access to the SMP operator's infrastructure. The approach proposed by the GCRA is that it should be based on a reasonable request from the OLO consistent with the '*Statement of Requirements' Information Notice'* published by the GCRA in September 2019. This is designed to allow operators the maximum flexibility to identify wholesale inputs which would help them to innovate in the market, and not just compete on price, but also recognises the investment undertaken by Sure as the SMP operator require appropriately stated requirements from OLOs. This balances the rights of Sure as the SMP operator to develop, operate and make a reasonable return on its network, and the rights of the OLO to request access on a reasonable basis.

5.10 In 2017, the GCRA modified Sure (Guernsey) Limited's fixed licence to require it under new licence condition 34 to provide network access to another OLO on a reasonable request and fair and reasonable terms and conditions and charges.[13] The licence condition was drafted deliberately wide and non-specific, to better allow the setting of product definitions and agreed cost allocation between parties without the need for regulatory intervention. The licence condition also provides for the GCRA to direct Sure to provide specific network access, including terms and charges. It should be noted that an obligation to meet reasonable requests for access means that Sure as an SMP operator would be expected to meet all reasonable requests for access, unless it can demonstrate that it is not technically or economically feasible to do so.

Specific Access Obligation proposed

5.11 As part of this Business Connectivity Market Review, and in addition to the proposed price control reductions, described above, the GCRA considers that denial of access to existing products or the modification of the list of products offered could compromise the effects of the price control and hinder the emergence of a sustainable competitive market at the retail level, and would not be in the end-user's interest. For example, Sure could remove lower bandwidth lower priced products in

[13] **2017 - Document 17/18**. Licence Modification for Sure (Guernsey) Limited, Network Access Final Decision, 30 June 2017.

order to move customers on to higher-priced products, and in turn increase its returns above a reasonable level.

5.12 The GCRA, therefore, proposes to formally direct Sure not to remove or withdraw access to any of its existing wholesale on-island leased line products other than in compliance with the requirements on it to do so as set out in Section 5.

5.13 OLOs seeking access continue to have an obligation to comply with the '*Statement of Requirements' Information Notice'* published in September 2019.

6. Key Elements of Proposed Decision

The GCRA proposes the following assumptions will inform its control:

i. From 1 January 2024, Sure to reduce the current price of wholesale on-island leased line products by 18% on average, with the price control applying over the period 2024-2028.

ii. The DCF modelling using forecasts based on Sure's actual cost data is the appropriate cost modelling approach.

iii. Duration of the modelling period is 40 years.

iv. WACC of 8.8%.

v. Inflation rate in 2023 of 6.2% and to assume that this will decline over time to reach a long-run rate of 2.2% by 2025 and remain at that level thereafter.

vi. Wage growth inflation at forecast as inflation rate + 0.9%.

vii. Applied rate of cost savings due to efficiencies differs by type of cost, and over time. On average, across the whole cost base, efficiency rates applied would range between 2.3% in 2023 and 1.6% from 2028 onwards. **See relevant section for discussion on specific subcategories of efficiency gains proposed.**

viii. Not to take into account management fees.

ix. That where data was available, the costs relating to certain cost categories to be allocated on the basis of specific data on the underlying activities driving those costs. **See relevant section for discussion on specific subcategories of efficiency gains proposed.**

x. The product demand on Sure's network is projected to be static over the review period. A projected change is the expected mix of demand across products, [See Figure in paragraph 4.17].

xi. "Price relativities" between each wholesale leased line product (i.e. the "pricing curve") are set based on the product "price curve" in **Figure B** in Section 5 and set out in **Table A**.

   a. In circumstances where the SMP provider considers there is a case to deviate from the control as imposed at the product level, it will be obliged to satisfy either of the following procedural steps. A prerequisite for regulatory consent will be to demonstrate comprehensive consultation with OLOs prior to making such a submission to the GCRA. Where there are no substantive objections made to such a proposal, GCRA consent would be a simple administrative procedure given in the form of a published letter agreeing to the amendment to specific Sure wholesale pricing or products – subject to evidence that the overall price control would not be contravened.

   b. Where OLOs do raise objections then closer regulatory scrutiny of the case put forward by Sure would be applied and consent can be declined in consideration of the GCRA's duties and functions in law on a case by case basis.

xii. Formally direct Sure not to remove or withdraw access to any of its existing wholesale on-island leased line products other than in compliance with the requirements on it to do so as set out in Section 5/xii above.

xiii. OLOs seeking access continue to be required to comply with the 'Statement of Requirements' Information Notice published in September 2019 .

xiv. The price control would continue unless formally revoked by the GCRA or replaced.

Acronyms & glossary

Term	Description
Active remedies	Active remedies involve active electronic interconnection. e.g. requiring BT to operate an active connection between rival's networks and rival's customers' premises (e.g. WLR or IPStream) - bitstream, wholesale products provided at specified prices – unbundling must be technically feasible to allow 'active' engagement by operator
Alternative Interface (AI)	Alternative Interface (AI) leased lines are digital leased lines geared mainly towards the transmission of IP data and are more suitable for the delivery of high bandwidth services than TI leased lines.
Backhaul	A fibre line that connects an access point, such as a mobile base station with the core network of the operator
Bandwidth	The physical characteristic of a telecoms system that indicates the speed at which information can be transferred, which in digital systems is measured in bits per second (bps).
BEREC	Body of European Regulators for Electronic Communications
Business Connectivity Market Review (BCMR)	Regulatory review of the business connectivity (leased line) market
Cost orientation	A form of price control whereby prices are set by reference to associated costs.
Dark fibre	Unused or 'unlit' optical fibre, i.e. fibre which has been deployed within a communication network, but which is not connected to active electronic equipment used to facilitate data transmission.
Duct access	See Physical infrastructure access
Ethernet	A technology used for data transmission. Originally deployed for use in a LAN environment, the technology has also increasingly been used to support WAN (see below) connectivity, with Ethernet being used in this instance as a leased line technology.
Ex ante	The application of regulation before an abuse of power has necessarily occurred. The reasoning behind its application is that finding that an operator has SMP means that the operator is likely to have the incentive and motivation to behave in a way which exploits its market power to the detriment of competitors

Term	Description
	and ultimately to consumers. Ex ante regulation can be contrasted with ex post regulation, which investigates an incident which has already happened.
Bandwidth	In digital telecommunications systems, the rate measured in bits per second at which information can be transferred
Ex post	The use of regulation following a complaint or abuse of market position by an operator. In contrast to ex ante regulation.
Gbps	Gigabits per second (1,000 Mbps) – speed of multiples of consumer information capacity
Mbps	Megabits per second (1 Megabit = 1 million bits) – measure of bandwidth in a digital system
Leased line	A permanently connected communications link between two premises dedicated to a customer's exclusive use (also known as a private circuit)
NRA	National Regulatory Authority
Other Licensed Operator (OLO)	A licensed operator other than the incumbent operator
Passive remedies	Passive remedies refer to access remedies which are provided without electronics and may include obligations to provide duct or pole access, or dark fibre
Physical infrastructure access	The sharing of an incumbent network operator's physical infrastructure, including ducts and poles, with other licensed operators. This generally allows OLOs to install their own sub-duct and/or cable in the incumbent's ducts and attach and maintain their own equipment on the incumbent's poles.
Private circuit	An alternative term for a leased line
Retail-minus	This is a form of price control whereby the SMP's wholesale price is set by reference to its retail price minus an appropriate margin to enable OLOs to cover their retail costs and compete with the SMP
Significant Market Power (SMP)	The ability to behave independently of competitors, suppliers, and ultimately businesses and consumers in the market
Small but Significant Non-transitory Increase in Price (SSNIP)	A theoretical price increase that forms part of the 'hypothetical monopolist' test used in market definition analysis. The price increase in question is usually considered to be in the range of 5 to 10 per cent.

Term	Description
Tbps	Terabits per second (1,000 Gbps)
Traditional Interface (TI)	Traditional Interface (TI) leased lines are provided using legacy analogue and digital interfaces
UK	United Kingdom
VHB	Very-high bandwidth
VPN	Virtual Private Network – a technology allowing users to make inter-site connections over a public telecommunications network that is software partitioned to emulate the service offered by a physically distinct private network.
Wave Division Multiplex (WDM)	A transmission technology that enables multiple wavelengths of light to share the same fibre optic pair
Wide Area Network (WAN)	A network connecting devices located in geographically dispersed locations, either in the same national area or across national boundaries
WDM	Wavelength division multiplex – a fibre-based technology with features suited for high capacity routes (e.g. between core nodes and to data centres) and for higher capacity backhaul connections WDM is a technology that uses different wavelengths (colours) of light to create separate virtual circuits over the same fibre, or pairs of fibre. WDM circuits generally require electronics and optical lasers built to a higher specification than lower speed circuits.

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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.[14] 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.[15]

The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012 sets out six principles of economic regulation, summarised below: [16]

- 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 Law[17] specifically provides that the GCRA may include in any licence conditions that are:

- intended to prevent and control anti-competitive behaviour;[18] 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.[19]

[14] Section 2 of the Regulation Law.

[15] 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*.

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

[17] 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.

[18] Section 5(1)(c) of the Telecoms Law.

[19] Section 5(1)(f) of the Telecoms Law.

The GCRA is obliged[20] to publish notice:

- 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.[21] 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;[22] the requirement not to show undue preference or to exercise unfair discrimination;[23] the requirement not to unfairly cross subsidise,[24] supported by accounting processes to demonstrate compliance; regulation of prices, and transparency around pricing.[25]

In addition, the fixed telecommunications licences include conditions specific to the provision of leased lines,[26] which apply where a licensee has been found to be in a dominant position. The conditions applicable to the supply of leased lines refer to the retail and wholesale markets, and require that a dominant provider offers lines 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.[27]

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

" 31.1 Where the Licensee intends to introduce:

[20] Section 5(2) of the Telecoms Law.

[21] Part IV, Fixed telecommunications licences.

[22] Condition 24, Fixed telecommunications licences.

[23] Condition 29, Fixed telecommunications licences.

[24] Condition 28, Fixed telecommunications licences.

[25] Condition 31, Fixed telecommunications licences.

[26] Condition 26, Fixed telecommunications licences.

[27] Part V, Fair competition, Fixed telecommunications licences.

(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.

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.

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.

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: Current wholesale market remedies

Licence conditions

Having been designated with SMP in the 2014 BCMR, Sure has a number of licence conditions that relate to its wholesale on-island leased lines obligations. [28] These include:

- **Access** – licence condition 26 obliges Sure to lease out lines to other licensed operators (OLOs) on non-discriminatory terms and at prices that may be set by the GCRA. This includes offering OLOs access to off-island capacity on either a full circuit basis, or a half-circuit basis, with the OLO able to take service from the corresponding far end operator.

Sure Licence condition 26 Leased Circuits

26.1 The Licensee shall offer to lease out circuits for any lawful purpose:

a) on publicly advertised conditions and on non-discriminatory terms. This is without prejudice to discounts that are in accordance with Condition 31;

b) within a reasonable and published period of time from any request;

c) so as to meet the quality standards required under the Conditions; and

d) at prices that do not exceed levels determined from time to time by the GCRA.

26.2 The Licensee shall offer to lease out circuits to other licensed operators on terms that are no less favourable than those on which the Licensee makes equivalent leased circuits available to its Associated Companies or its own business divisions

26.3 The Licensee shall not be obliged to provide, and may cease to provide, leased circuits to Users in cases in which:

a) use of the leased circuits in the manner proposed would harm the integrity, security or interoperability of the Licensed Telecommunications Network or Licensed Telecommunications Services in a material way; or

b) the leased circuits will be connected to Customer Premises Equipment that is not approved for connection to the Licensed Telecommunications Network.

26.4 If the Licensee refuses to provide leased circuits or intends to terminate the provision of a leased circuit service on grounds that the User of the leased circuits is acting in a manner set out in Condition

26.3, the Licensee shall immediately give its reasons in writing to the User, and submit a copy to the GCRA. The GCRA may consider whether the reasons given for the refusal or the intention to terminate the leased circuit are justified and issue directions accordingly.

26.5 The Licensee may include in its agreements with Users of leased circuits, reasonable restrictions consistent with Condition 26.3.

[28] Sure (Guernsey) Limited Fixed Licence: https://www.gcra.gg/media/597684/sure-fixed-final.pdf

- **Non-discrimination** – licence condition 29 obliges Sure not to discriminate between OLOs, and between OLOs and Sure's own retail operation.

Sure Licence condition 29 Undue Preference and Unfair Discrimination

29.1 The Licensee shall not show undue preference to, or exercise unfair discrimination against, any User or Other Licensed Operator regarding the provision of any Licensed Telecommunications Services or Access. The Licensee will be deemed to be in breach of this Condition if it favours any business carried on by the Licensee or an Associated Company or Other Licensed Operator so as to place Other Licensed Operators competing with that business at an unfair disadvantage in relation to any licensed activity.

- **Accounting separation** – licence condition 27 obliges Sure to prepare and maintain separated accounting information.
- **Sure Licence condition 27 Separate Accounts**

27 .1 Within six months of the Licence Commencement Date, the Licensee shall prepare and maintain accounting records in a form that enables the activities specified in any direction given by the GCRA to be separately identifiable, and which the GCRA considers to be sufficient to show and explain the transactions of each of those activities. The GCRA may direct the Licensee as to the basis and timing of such reports as the GCRA may require.

- **Cost accounting** – licence condition 28 constrains Sure from unfair cross-subsidisation and maintain cost accounting obligations to demonstrate its compliance.

Sure Licence condition 28 Cross Subsidisation

28.1 The Licensee shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Telecommunications Network or Telecommunications Services.

28.2 To enable the GCRA to evaluate where any unfair cross-subsidisation or unfair subsidisation is taking place, the Licensee shall record at full cost in its accounting records any material transfer of assets, funds, rights or liabilities between a part and any other part of its business, and between it and any Associated Company, and shall comply with any directions issued by the GCRA for this purpose.

- **Price control** – licence condition 31.2 provides 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

Sure Licence condition 31 Price Regulated Services

31.2 The GCRA 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 m 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.

Price control

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.[29] The salient details are:

- 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;
- Sure to provide a regular compliance statement, to facilitate increased transparency around pricing and costs of wholesale and retail leased lines, including details of prices, number of lines sold, revenues earned and promotional offers made for all retail and wholesale on-island leased lines, by bandwidth.

Leased line price control direction to Sure (Guernsey) Limited

The price control shall be applied to Sure (Guernsey) Ltd in the wholesale market for on-island leased lines in Guernsey as follows:

a) the control shall be set on an ex-ante basis;

b) the control shall apply to all wholesale on-island leased lines;

c) the control shall be applied on a product-by-product basis;

d) 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%. The term of the price control will be aligned with the market review cycle. The price control will come into effect on 1 July 2015.

Sure will be required to submit a regular statement formally confirming its compliance with the wholesale price control. This compliance statement will need to include details of prices, number of lines sold, revenues earned, and promotional offers made for all retail and wholesale on-island leased lines, by bandwidth. The precise content of the compliance statement will be determined by the GCRA.

[29] GCRA (2015). *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

Annex 3: European Union approach to remedies

1.1 The European Union's Electronic Communications Code (**EECC**)[30] provides for a set of behavioural obligations or remedies to be imposed by National Regulatory Authorities (**NRAs**) that establish how the operator with SMP is required to conduct itself in the market.

1.2 It has been standard practice throughout the European Union to impose remedies at a high level on the conclusion of a market review, and to further specify in more detail as required. So, for example, if an NRA proposes that a price control is required following a market review, it may impose this in principle, then consult with operators and stakeholders on the detail of how it should be implemented. However, in this case, the GCRA has opted to conduct a remedies consultation separately from and after the conclusion of the market review.

1.3 The EECC sets out the obligations that may be imposed by NRAs, including:

- **Obligation of transparency** (Article 69) – provides for NRAs to impose obligations of transparency in relation to interconnection or access, requiring SMP operators to make public specific information, such as accounting information, prices, technical specifications, network characteristics and terms and conditions for supply and use.
- **Obligation of non-discrimination** (Article 70) – provides for NRAs to impose obligations of non-discrimination, in relation to interconnection or access, requiring SMP firms to apply equivalent conditions to other licenced operators as is does to its itself.
- **Obligation of accounting separation** (Article 71) – provides for NRAs to impose accounting separation obligations in relation to specific activities related to interconnection and access.
- **Obligation of access to, and use of, specific network facilities** (Article 73) – provides for NRAs to impose obligations on SMP operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities.
- **Price control and accounting obligations** (Article 74) – provides for NRAs to impose obligations relating to cost recovery and price control, including cost orientation of prices and cost-accounting systems, for the provision of specific types of interconnection or access.

1.4 The Body of European Regulators for Electronic Communications (**BEREC**) has published a common position on best practice remedies for wholesale on-island leased lines markets where a position of SMP has been established.[31] BEREC notes:

> *"Wholesale on-island leased lines are key inputs for providing a wide range of business connectivity services. It is therefore vital that, where they are not supplied under conditions of effective competition, they are regulated effectively. This will promote the competition*

[30] European Union (2018). *Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)*, 17 December 2018: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972

[31] BEREC (2012). *BEREC common position on best practice in remedies imposed as a consequence of a position of significant market power in the relevant markets for wholesale on-island leased lines*, BoR (12) 126: https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/common_approaches_positions/1096-revised-berec-common-position-on-best-practices-in-remedies-as-a-consequence-of-a-smp-position-in-the-relevant-markets-for-wholesale-leased-lines

and choice on which businesses throughout the economy are entitled to expect and thereby make a significant contribution to achievement of the Single Market. This best practice is also based on the "Ladder of Investment" principle, as regulated access at different rungs of the ladder promotes both competition and investment."[32]

1.5 In its Common Position, BEREC advises that its expects NRAs to explain in their proposed remedy document the steps they have taken to:

a) analyse the objectives identified in this common position and the related competition issues with reference to the market analysis performed by the NRA;

b) to the extent consistent with applicable national law, provide an effective and proportionate regulatory solution to those issues; and

c) explain transparently how those competition issues have been addressed and give reasons when their regulatory solution departs from the best practice remedies identified in this common position.

1.6 In this BCMR remedies consultation, the GCRA proposes to have regard to the EECC obligations, and be guided by BEREC's Common Position, referencing best practice remedies in relevant sections of this paper. The GCRA considers that its preliminary positions are consistent with the best practice set out in BEREC's Common Position.

Competition problems

1.7 If an operator has been identified with SMP in a particular market, then it has the ability and incentive to engage in exploitative and exclusionary behaviour to the detriment of competition and particularly to the detriment of consumers. Absent appropriate *ex ante* regulation, examples of the types of competition problems that may arise include:

- Refusing to provide network access to other downstream service providers (or refuse to provide access on reasonable terms, conditions, and charges), which could restrict competition in the provision of retail services to the detriment of consumers.
- Discrimination in favour of its downstream retail businesses to the detriment of competition in retail broadband services (including by price and/or non-price discrimination), and ultimately to the detriment of consumers.
- Fixing and maintain some or all of its wholesale prices at an excessively high level or engaging in a price squeeze.

[32] BEREC, 2012: p1.

Annex 4: Engagement with parties

Below is a detailed account of interactions and exchanges with parties relevant to the information gathering and modelling process.

1.1. In December 2014, the GCRA published its previous BCMR Decision which concluded that Sure held SMP in the market for on-island wholesale leased lines in Guernsey.

1.2. In May 2015, the GCRA published its Remedies Decision and Price Control for Sure's wholesale on-island leased lines in Guernsey (Annex 2).

1.3. In October 2019, the GCRA issued a Call for Information at the start of its current BCMR in Guernsey.

1.4. In March 2021, the GCRA consulted on a Draft Decision on markets and SMP. In that consultation, the GCRA set out its views on the definition of the retail and wholesale markets for business connectivity, assessed the level of competition in the defined markets and came to proposed SMP findings. Responses to that consultation were received from the JT, Sure, Newtel Guernsey Limited (**Newtel)** and Airtel.[33]

1.5. In June 2021, the GCRA issued a Direction to Sure and JT requiring the provision of additional information to inform the BCMR market definition and market power assessments. Sure and JT provided further information related to their leased line businesses between August and October 2021, to support further analysis.

1.6. In April 2022, the GCRA consulted on an a further Proposed Decision on Market Definition & Competitive Assessment, and responses to that consultation were received from received from the JT, Sure, Newtel and Airtel.[34]

1.7. On 29 July 2022, the GCRA wrote to Sure and all the other licenced operators (**OLO**) to notify them that it was conducting a BCMR Stage 2 consultation and was considering appropriate remedies for operators with SMP in the relevant markets; and that remedies may include price regulation for the relevant wholesale on-island leased line services.

1.8. On 16 September 2022, information requests (RFI) relating to the GCRA's review were sent to Sure and to the OLOs. The information requests were set out in two separate documents, one was a letter with specific questions for the operators to answer and the second part was a GCRA spreadsheet, with specific tables which the operators were required to complete.

1.9. On 26 September 2022, Sure provided a partial response to the RFI and requested a meeting with the GCRA to discuss the request in further detail.

1.10. On 30 September 2022, a meeting was held between GCRA, Frontier Economics (instructed by the GCRA to assist with the project) and Sure to discuss the information request responses and the various matters raised by in correspondence by Sure.

1.11. On 6 October 2022, JT provided its response to the information requests and on 7 October 2022, Airtel provided its response to the information requests.

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[33] **Case T1480G -** *Business Connectivity Market Review, responses to March 2021* consultation.

[34] **Case T1480G -** *Business Connectivity Market Review, responses to April 2022* consultation.

1.12. On 10 October 2022, the GCRA held its round table discussion with the OLOs (JT, Airtel) and Sure and the discussion addressed the purpose of the project (GCRA), a high-level approach to the project (Frontier) and follow ups from the parties.

1.13. On 11 October 2022, the GCRA provided the operators with the PowerPoint slides from the roundtable meeting and the presentation from Frontier.

1.14. On 21 October 2022, the GCRA had a meeting with Sure to address specific questions relating to OPEX values, split by requested categories in the GCRA spreadsheet template (e.g. DSL specific, FttH specific, etc.). Sure used the meeting to provide an update to the GCRA on its General Ledger analysis and cost allocation data analysis. And on the same day Sure provided answers to the GCRA's written questions, additional information, costing data from it management accounts and an updated version 4 of the GCRA spreadsheet template.

1.15. On 25 October 2022, after conducting a preliminary assessment of the data provided by Sure in response to Information Request, the GCRA provided Sure with a list of information that had been received and that remained outstanding.

1.16. On 25 October 2022, the GCRA followed up with further and additional questions to JT and Airtel following the information both OLO had previously provided. Those questions focused on the following topics:

- Forecast of demand for Sure wholesale on-island leased line products.
- Demand for additional wholesale on-island leased line products.

1.17. On 25 October 2022, the GCRA followed up with additional question to Sure on the information it had provided.

1.18. On 27 October 2022, Sure provided an updated 'version 5' GCRA spreadsheet template with additional information.

1.19. On 28 October 2022, Sure provided the latest backing information which reflect its version 7 of the GCRA spreadsheet template.

1.20. On 3 November 2022, JT provided further detailed and supplemental information in response to the request on 25 October 2022.

1.21. On 8 November 2022, the GCRA wrote to Sure asking for further information and clarification on the data that had been provided in the consultation. And, Sure was also asked to highlight the specific systems where historical data had been extracted from to populate the template spread sheets provided to the GCRA.

1.22. On 8 November 2022, there was a further meeting with Sure to discuss outstanding data and related questions. The discussions covered the following topics:

- Sure confirmed it was continuing its work to provide additional data to break down costs to appropriate granularity for the GCRA's analysis (on CAPEX and staff costs in particular).
- Sure confirmed it would provide clarifications on the outstanding questions.
- Sure confirmed it was instructing external consultants to provide its assessment regarding its Weighted Average Cost of Capital (WACC).

- Discussion to validate categorisation, allocation and forecast rationales.

1.23. On 10 November 2022, Sure was provided with a populated spreadsheet which detailed the GCRA's work-in-progress on categorisation and allocation of OPEX.

1.24. Sure confirmed that it was happy to review the proposed refinements and would respond in a few days. Sure confirmed that it was coordinating and working on the outstanding questions and would also respond on timesheet data categorisation to inform the appropriate allocation of staff-related costs between services.

1.25. On 14 November 2022, Sure provided responses to the GCRA's questions along with an alternative version 7 of the spreadsheet template, which showed the source system data.

1.26. On 18 November 2022, the GCRA provided further clarification questions to assist Sure in its review and provision of relevant OPEX data.

1.27. On 22 November 2022, Sure provided two additional information spreadsheets, on its 2016 to 2022 Department Report Analysis and its Guernsey staff costs per department from 2016 to 2021.

1.28. On 25 November 2022, Sure provided a response the GCRA's questions and its OPEX and CAPEX related data requests.

1.29. On 1 December 2022, a further meeting was held with Sure to discuss outstanding issues with information required from Sure on its OPEX categories and allocation. The following is a summary of the discussions:

- Frontier asked clarifications on the WLR product, clarification on one-off revenues and the underlying demand (reactivation of fibre ONT and new fibre connection).
- Frontier/Sure reviewed staff cost analysis and Sure confirmed it accepted the GCRA's proposed refinements.
- Frontier/Sure discussed the allocation drivers for biggest shared cost buckets (buildings, data centre, general OPEX, fixed access network).
- Frontier/Sure discussed whether revenue or Equi-Proportional Mark-Up (EPMU) approach should be preferable, that the approach was not settled, Frontier explained when these approaches should be preferred and Sure was agreeable with the rationale.
- Sure agreed to provide more up to data information on data centre space occupied by fixed core network equipment.
- Sure raised questions on the proposed modelling approach for leased line revenues, and forecasts which were addressed by Frontier.

1.30. On 9 December 2022, Sure confirmed that it had instructed external consultants to undertaking the work on its WACC report and it would be finalised report by 23 December 2022.

1.31. On 9 January 2023, Sure provided the Oxera produced report on its WACC.

1.32. On 10 January 2023, Sure provided further information on its billing costs, and an updated version 8 of the GCRA's spreadsheet.

1.33. On 12 , 13 January 2023, Sure provided answers to outstanding written questions on:

- Leased line Capex.
- CAPEX forecasts for "*access network capex (e.g. ducts / poles, buildings)*" and "*core network CAPEX (transport network and core functions)*".
- Space occupied by fixed network equipment racks in data centres and buildings.
- Reinvestments.
- Billing Costs.
- Voice only subscriptions.
- Leased line prices.

1.34. On 16 January 2023, Sure provided its 'Fixed Asset Review' and version 9 of the GCRA's spreadsheet.

1.35. On 18 January 2023, Sure was asked "*One additional question on management fees: can you describe what type of costs this encompasses? Is there a rationale to support that a share of these should be allocated to BB or LL products?*" and Sure was asked for that information on management fees again on 9 February 2023.

1.36. On 15 February 2023, Sure confirmed it was unable to provide the required clarifications on its management fee questions. It confirmed that "*Unless we're able to provide an update to you by then, we'd probably need to use the cost driver values from 2014*."