



Reference : M1626G

22 April 2022

Deputy Neil Inder  
President – Committee for Economic Development  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey  
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Dear Neil

### **PROPOSED ACQUISITION OF AIRTEL-VODAFONE BY SURE**

Thank you for your letter of 6th April outlining aspects of this proposed acquisition discussed with the parties and setting out the Committee for Economic Development's reasons for endorsing the proposed acquisition to the States of Guernsey for approval on grounds of exceptional and compelling reasons of public policy.

The Committee has sought comments or advice on the proposed transaction in its letters of 9th November 2022 and more recently of 6th April 2023. This letter and the previous response by the GCRA to your letter of 9th November 2022 have been made in accordance with section 14 of the Competition (Guernsey) Ordinance, 2012.

### **Summary**

Authority members have carefully considered the information as provided, additional evidence available to it as the telecommunications regulator and competition authority and considered the likely market conditions following an acquisition of Airtel by Sure. The view is that:

- 1. The acquisition represents a more adverse outcome for consumers relative to other alternatives. With a virtual monopoly resulting, the likelihood of increased profit, potential for significant price rises, and potentially lower quality for consumers and business is a real concern. The importance of a comprehensive, ready-for-use MVNO<sup>1</sup> access arrangement is***

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<sup>1</sup>"MVNO" or "Mobile Virtual Network Operator": means an organisation offering mobile communications services and operating a physical network infrastructure including, as a minimum, a mobile switching centre, home location register and authentication centre, having its own unique Mobile Network Code with distinct Number series (where applicable) according to ITU standards, and issuing its own branded SIM cards (or equivalent); But it operates without a mobile radio access network.

***a minimum prerequisite for either an exemption by the States or approval by the GCRA through the standard merger/acquisition route.***

- 2. The evidence for a public policy exemption route for this transaction remains unclear based on evidence available to the GCRA to date.***
- 3. The undertakings offered by the parties to date do not meaningfully mitigate the likely consequences of the adverse impact on mobile cost, quality, and choice.***
- 4. There are additional obligations that might be considered to mitigate at least some of the outcomes were the Committee minded to grant an exemption. These would need to be developed further to ensure they are implementable and enforceable. In summary these are:***
  - a. The availability of a comprehensive ready-for-use MVNO arrangement would reduce the risks mentioned. If there was an MVNO if not an MNO<sup>2</sup> as a third player on the retail market the speed at which a potential entrant can make offers available provides a critical restraint on a virtual monopoly.***
  - b. Sure could make a positive commitment to set all international roaming rates at levels that better compare with mobile provider customers in other jurisdictions. Airtel has been particularly competitive in this area and the issue of roaming charges has been a long running challenge for Islanders travelling for business or leisure.***
- 5. While economic regulation can curb the worst excesses that arise from market concentration of this order, it is unlikely that economic regulation can adequately compensate for all outcomes likely to arise from an increase in market share by more than 20% to 80% through acquisition of a rival by the largest market player. In a market where the attractiveness of a service extends to next generation functionality and novelty that comes with that, economic regulation is limited in its ability to drive innovation, which competitive forces are significantly better at achieving.***

**The acquisition represents a more adverse outcome for consumers relative to other alternatives.**

Guernsey consumers have benefitted both in terms of price and quality from the presence of three mobile network operators to the extent that Guernsey compares well with other jurisdictions even with its population size. At the same time the most recent entrant, Guernsey Airtel, is profitable and its parent company is rated as the world's 3<sup>rd</sup> largest mobile telecoms operator by subscribers. If Guernsey Airtel intends to exit the Guernsey market, it would normally be expected to take the standard route for a commercial business namely, to conduct an orderly exit with remaining competitors competing for their market share, or to seek approval through the merger and acquisition process subject to commitments as appropriate. Guernsey Airtel also has a licence condition that governs its exit process – Licence Condition 22.1 of its mobile licence states:

*If the Licensee proposes to cease to provide all or a material part of the Licensed Mobile Telecommunications Services, it shall give not less than three years notice in writing to the GCRA of the*

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<sup>2</sup> An "MNO" or "Mobile Network Operator" is a provider of wireless communications services that owns or controls all the elements necessary to sell and deliver services to an end user, including radio spectrum allocation, wireless network infrastructure, back haul infrastructure, billing, customer care, provisioning computer systems, and marketing and repair organizations.

*proposal and its plans in relation to the cessation of such services. Such cessation shall be affected only with the consent of the GCRA and in accordance with any directions given in relation thereto by the GCRA and the Licensee shall comply with any such directions.*

The alternative to the normal market exit process for an acquisition leading to a market structure that increases the market share of the largest provider by more than 20% to 80% and absent significant countervailing benefits, is that in future Guernsey prices will compare far less favourably than they have historically, and incentives to maintain quality and provide greater choice will substantially reduce. There is compelling research in this area to support such a view<sup>3,4</sup>. What these studies might tell us about this transaction is that as well as the number of competitors, the type of competitor also plays a decisive role in the benefits achieved. A challenger/maverick entrant is critical and in the GCRA's view Guernsey Airtel has played such a role in the Guernsey mobile market. The studies reinforce the view that jurisdictions and markets should rely not on the disposition of a commercial business seeking the benefits that come from being a virtual monopoly but on the realistic threat to its commercial interests should it fall short of consumer expectations. In the circumstances of a market with such a high degree of asymmetry in market share, post an Airtel acquisition, access by an MVNO is one of the few key competitive means left for looking after consumer interests.

**The evidence for a public policy exemption route for this transaction remains unclear based on evidence available to the GCRA to date.**

The GCRA has not seen persuasive evidence underpinning the case for States intervention. It had been suggested by the parties during the early stage of this transaction that the case for this was compelling but the evidence to date remains vague.

If harm to consumers and the market are however eclipsed by more important public policy considerations, exemption of an acquisition by the largest telecom provider in the market on exceptional and compelling grounds of public policy requires that a high threshold is met. As far as the GCRA can discern, these non-economic reasons of public policy are about the speed at which Sure would meet Telecom Security Standards which would in turn bring reputational benefits to the jurisdiction. As is the case for other mobile networks in the UK, Sure's access to capital would in the normal course of business be expected to fund these investments since it is a profitable business backed by a significant owner. These are costs the consumer would in any event bear but in a context where competition would provide a degree of protection. The proposition that appears to be forwarded by the parties is that the only means of securing compliance with these requirements in Guernsey is through a market structure that creates a virtual monopoly. This may align with their own commercial interests but absent significant commitments to offset the obvious risks they are contrary to sound principles of economic policy and the interests of consumers.

The GCRA has also not seen a case made to support the suggestion that only through this transaction is Sure able to meet those standards. It notes Frontier's view that the case, such as it is, is in any event overstated. It is relevant that JT is subject to the same Telecoms Security Requirements but can meet those without the benefit of acquiring Airtel and acquiring an 80% market share. While acknowledging the investment challenge faced by telecom providers, the considerable economic, market and consumer risks as an outcome of the acquisition proposed by the parties to this transaction are yet to

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<sup>3</sup> *Evaluating Market Consolidation in Mobile Communications* - <https://cep.lse.ac.uk/pubs/download/dp1486.pdf>

<sup>4</sup> *What are the factors that determine mobile prices?* [https://research.rewheel.fi/downloads/4G\\_5G\\_prices\\_2x\\_to\\_4x\\_lower\\_in\\_markets\\_with\\_4\\_MNOs\\_PUBLIC.pdf](https://research.rewheel.fi/downloads/4G_5G_prices_2x_to_4x_lower_in_markets_with_4_MNOs_PUBLIC.pdf)

be matched by clear benefits that can be both objectively assessed and shown to be solely contingent on the acquisition proceeding.

**The undertakings offered by the parties to date do not meaningfully mitigate the likely consequences of the adverse impact on mobile cost, quality, and choice.**

The undertakings given by the parties to mitigate the risk to consumers of such a large increase in market concentrations in a dynamic market are to date partial and insubstantial when set against the risks to consumers and the commercial advantage the virtual monopoly will enjoy as a result of the acquisition.

For example, the promise of an MVNO at a future date is not reliant on a commitment from Sure. This can in any event be put in place by the GCRA regardless of whether Sure volunteers it. While it would involve formal processes required by law that take longer than voluntary MVNOs arrangements, an undertaking from Sure is not the only means of achieving that end. However, a comprehensive, ready-for-use MVNO access arrangement that Sure proactively develops in a short time period that potential entrants would find credible to support a rapid launch of their services, is more within Sure's capability than the GCRA's and does assist. This should in the GCRA's view be a minimum prerequisite to either an exemption by the States or approval by the GCRA through the standard merger/acquisition route.

Another commitment mentioned is to provide an MVNO release of spectrum to JT. We would note that it is not within Sure's gift<sup>5</sup> to cede spectrum to another operator and do not see any release of spectrum post-acquisition as any meaningful commitment given the amount of 2G/3G/4G spectrum Sure already has to serve around 70k subscribers; Telefonica, a UK licensed network operator serves almost 20m subscribers and has a comparable 2G/3G/4G spectrum holding.

**There are additional obligations that provide further countervailing benefits to consumers if the Committee is minded to grant an exemption**

Should the Committee remain of the view that the circumstances of an acquisition of Airtel by Sure meets the standard of exceptional and compelling reasons of public policy, it is reasonable for consumers to expect that the parties provide undertakings that are significant enough to offset some of the risks posed when the reduction in choice amounts to a business increasing its market share by more than 20% to 80% by acquiring its largest competitor instead of through the merits of its competitive offerings.

Two areas where the absence of Airtel is likely to be pronounced are:

- the removal of a third challenger/disruptor competing with the two established providers in the Guernsey mobile market, Sure as the incumbent in Guernsey and JT Guernsey essentially as the incumbent in Jersey, and
- in charges for international roaming where Guernsey Airtel has been particularly competitive.

It is apparent from the report commissioned by the Committee that Frontier Economics is not persuaded of the benefits from the undertakings offered that they have looked at and their essential conclusion that what has been offered is insufficient. The GCRA's views align with those conclusions. Given Frontier Economics' assessment and with a view to seeking more tangible and substantive

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<sup>5</sup> The licensing of spectrum in the Guernsey, as in the UK, is carried out by Ofcom, by virtue of powers given to it by the *Wireless Telegraphy Act 2006* and the *Communications Act 2003* (referred to as WT Licences)

commitments the GCRA suggests some options for consideration.

If the States were to consider proceeding with the exemption there are two forms of commitment it might also require. These do not entirely address the concerns identified above but would go further than those already made:

- a. The nature of MVNO demand and a near finalised comprehensive ready-to-use MVNO agreement to match that gives a secure and transparent basis to inform market entry decisions by any prospective MVNO.
- b. Sure could make a positive commitment to set all international roaming rates at levels that better compare with mobile provider customers in other jurisdictions. Airtel has been particularly competitive in this area and the issue of roaming charges has been a long running challenge for Islanders travelling for business or leisure.

Such arrangements require more specific analysis than is possible in the time available for this response, but these would need to be developed with a significant level of further detail to ensure the requirements are clear, work in practice and are enforceable given their complexity prior to the completion of any transaction.

**It is unlikely that economic regulation can adequately compensate for all outcomes likely to arise from an increase in market share by more than 20% to 80% through acquisition of a rival by the largest market player.**

Economic regulation that 'mimics' competitive pressures is less effective as a means of protecting consumers in a dynamic market, compared to what competition is capable of. In a market of rapid technical progress such as mobile it is the competitive process and not regulatory processes that are better equipped to keep up with consumer needs and expectations. There are also potential unintended consequences and therefore further regulatory challenges from a commercial business rising to a position of an 80% market share through acquisition rather than competition on its merits. One of these is that left with a market with two competitors the ability of the two remaining operators to co-ordinate behaviour to protect their dominant positions in each of their home markets increases. The business case for future investment also alters when the asymmetry between Sure and its nearest mobile network rival changes to this extent.

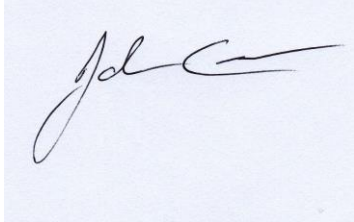
It is emphasised that the ability of economic regulation tools to address specific risks such as, greater co-ordination, reduced incentives for investment, non-competition, or wholesale removal of competing infrastructure by Sure's only rival, are severely limited. To the extent that harm does arise and can be stopped by regulatory intervention these take considerable time and in some cases cannot reverse economic harm already caused. A contribution that competition brings is its ability to reduce the likelihood of issues arising in the first place because the consumer can avoid or mitigate the harm by exercising choice.

Finally, it is worth underlining that the situation in Jersey involves an acquisition between the 2<sup>nd</sup> and 3<sup>rd</sup> largest providers and the market share change from this transaction in Jersey is an increase of 24% to 47%. In important respects this is not comparable to that in Guernsey where the 1<sup>st</sup> acquires the 2<sup>nd</sup> largest and the concerns and remedies needed for the Guernsey market may therefore not be the same as in Jersey.

I trust this provides a sufficient basis to inform the options you may wish to consider going forward.

The Authority is available to discuss this response with your Committee and we believe it may assist the Committee in its further consideration of this matter and provide any further clarity required on the matters I have set out above.

Yours sincerely

A handwritten signature in black ink on a light blue background. The signature is cursive and appears to read 'John Curran'.

**John Curran**  
**Chairman**

Copies to : Chief Strategy & Policy Officer

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