Non-confidential Version of Response by Sure (Guernsey) Limited and Sure (Jersey) Limited to CICRA Consultation Document 14/12: Wholesale Access to Fixed Telecoms Networks: Wholesale Line Rental

Overview

Sure (Jersey) Limited and Sure (Guernsey) Limited, jointly referred to as Sure, are submitting this document in response to CICRA 14/12 – Wholesale Access to Fixed Telecoms Network - Wholesale Line Rental Consultation[1], issued on 24 March 2014.

This document is the public version of our response to CICRA. Any commercially sensitive details included in our original confidential response are represented here by the symbol [✂]. Such details are not to be revealed by CICRA to any third party without Sure's prior and express permission.

We understand that CICRA is keen to promote openness within the Wholesale Line Rental (WLR) consideration process and we have therefore provided this separate non-confidential version of our response, which we are happy for CICRA to publish on its website. In summary our position is as follows:

- Sure has been, and remains, a strong supporter of the introduction of WLR.
- Sure continues to believe there is a clear demand for WLR and that it will be an effective means of promoting competition in fixed services.
- Given the delays that have already been caused to this process due to JT's legal challenge, and the prospect of further delaying tactics being employed by JT in any new process, it is absolutely essential that CICRA takes a more active role in this process going forward. It will not be sufficient for CICRA to rely on the operators to reach agreement on the specifics of WLR, including the appropriate pricing. Past experience on this issue – and current experience on a range of other important regulatory issues – show that regardless of how much the other operators try to progress this initiative to deliver clear consumer benefits through increased competition, JT's strategy is to create as much delay as possible. We have no reason to believe that JT's strategy will be any different this time.
- CICRA must therefore take clear leadership of the WLR process in order for this product to be implemented without any further delays.
- The fact that there are a significant proportion of JT customers currently on its Prime Talk tariff should not be reason to delay the introduction of WLR. The subsidy itself is essentially a political rather than a regulatory issue and could be resolved by Social Security - or some other States department - taking over the role of administering this subsidy (which would be available to eligible customers regardless of who supplied their fixed line).

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[1] www.cicra.gg/_files/WLR%2024.3.14.pdf

In summary, we consider that now is the time for CICRA to take the lead to drive WLR to a successful conclusion, in order to finally reap the benefits of the considerable time invested by numerous parties within the CIWAP process – instigated some four years ago.

Background

Sure has been a strong supporter of Wholesale Line Rental (WLR) for some considerable time and took over the management of the product proposals when JT stepped away from the process, citing lack of time (preferring to focus its efforts elsewhere instead). During 2012 in particular, Sure invested a considerable amount of time detailing the various aspects of JT's original (high-level) product proposals (reproduced on page 10 of CICRA 14/12). This included our mapping of processes, more specific scoping and proposals for the costing/charging of each element of the WLR service (including specific costing to support these proposals). This detailed analysis was undertaken on the basis of what had previously been deemed by the Guernsey Competition and Regulatory Authority (GCRA) to reflect efficiently incurred costs. They included what we considered to be an entirely cost-reflective proposal for the main aspect of the WLR service – the monthly line rental itself. Sure's proposal was that an £8.00 monthly charge (which is only 1p different to the WLR service provided by Openreach in the UK[2]) should apply on a pan-CI basis, bearing in mind that JT's enforced migration of its Jersey incumbent network infrastructure from copper to fibre would have no or only limited benefit to line rental and call services. These services are entirely non line length dependant (unlike copper broadband), meaning that JT's insistence that line rental and calls be provided over its new fibre network should not result in it being able to inappropriately recover its significant fibre related costs from such services. Sure believes that JT's fibre network costs (c. £41m) should be associated solely with the services that could benefit from such an upgrade - data services (primarily broadband and leased lines).

General

Before providing responses to the specific questions posed by CICRA, we would note that the key objection from JT in Jersey (i.e. the only other Channel Islands incumbent operator) is that it considers WLR to be an outdated technology and specific to a copper network. As CICRA highlights, this is not correct and regardless of whether the service is provided over JT's copper or fibre network, we believe that Other Licensed Operators (OLOs) should have the right to provide line rental and voice services in the same way that JT Retail does. If JT would therefore like to suggest another name for such services (instead of WLR and calls) we would be happy to accommodate that.

As we know from the last CIWAP (WLR) meeting, held in Jersey on 17 September 2013, JT had assumed that WLR did not include any calls. This was disappointing to note, particularly as Sure's proposals for the provision and pricing of such calls had been published twice on CICRA's website in May 2013. JT's expectation was that calls would continue to be routed to an OLO via the current IDA (carrier select) functionality, however this logic is flawed because it assumes that an OLO would take all of the calls (not just those that customers currently choose to route via OLOs). In reality the only way to provide this certainty (and therefore an assurance that the incumbent operator would have

[2] www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=%2BrBpMW3XM9acnyJyysVXlUueE80IBTlV7sFIBygiOy9UNeIS4WkJBRh6z%2FRUAIt8maxtgrEro1A7w5V8nzAZpQ%3D%3D (price w.e.f. 17/05/14)

no need for an ongoing billing relationship with that customer) would be if carrier pre-select (CPS) were activated at the same time as WLR.

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Responses to questions:

Question 1 (Views on level of interest currently assigned to WLR & supporting information to justify the chosen level of interest, with further justification of a respondent's position has changed in this regard):

As CICRA highlighted in its consideration of the preferences expressed by operators (as published in document CICRA 11/01), the timing of a Naked Bitstream product influenced the views on the desirability of other products – WLR in particular. Sure's original preferences were made in the context of the expected wide availability of Naked Bitstream, however for this product to be effective in the mass market, fixed number portability could be key to customer buy-in. As a result, Sure had highly rated these two products. WLR was ranked by us as a 'somewhat unnecessary product' at the time as a result, but as more details of JT's fibre rollout became known it soon became apparent that Naked Bitstream could only be classed as a mass market product towards the latter part of JT's island-wide swap-out of its copper network to fibre. Fair competition would only therefore be available to all after 2016 (assuming that JT's fibre rollout is completed on time). We understand from JT more recently that this target date might now only include premises that make use of broadband/fibre services, with some voice only premises not being switched to JT's fibre network until as late as 2018. The opportunity for an OLO to access the entire customer base in Jersey (and therefore 'fully own' the customer) is still therefore years away. For this reason and as Sure has reiterated in various discussions since document CICRA 11/01 was published, we believe that WLR is now an entirely necessary product, as it provides the only reasonable means of bringing full competition to the CI fixed line market (c. 95,000 users) in a timely manner.

Whilst the majority of CI operators saw Naked Bitstream as a necessary product, from a general customer's perspective the implications for some customers have not been fully considered. Whilst there is a growing number of customers for whom their exchange line is primarily considered to be the means over which their broadband connection is provided, it appears that some of those customers, when explained that they could lose their fixed line number and have no facility for calls in emergency situations, then ask whether there would be any kind of replacement facility provided (not knowing what it's called, but generally meaning a VoIP style service with FNP). Sure considers that both Naked Bitstream and FNP will play an important part within the next five years, but that customer education will also be required. It should be noted that BT does not yet provide broadband (either copper or fibre) to its customers without an exchange line, but it would be useful from a CI customers' perspective for BT to do so first, so that local customers could then become aware (through TV, online & newspaper advertisements) of the potential options for the future provision of fixed network data and voice services that could be made available to them here.

Question 2 (Details of appropriate definition of the WLR product - PSTN WLR, PSTN multiple line WLR & WLR on ISDN lines, with again, justification if the position has changed from that previously stated.)

Sure recognises the benefits to the market of WLR being made available on PSTN multiple lines and ISDN lines and is keen to develop those services. However, we believe that WLR on a PSTN single line should be introduced first. This is consistent with our previously stated position.

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In terms of potential customer benefit, the vast majority of the c. 95,000 CI customer base take only the standard PSTN product and we believe that risks to the further delay in the availability of single line WLR should be avoided, if possible. [✂]

The high level definition of the WLR service, as proposed by Sure, would be:

1. Wholesale Line Rental (WLR) is a product that replicates the functionality of a retail exchange line, but at a wholesale level, thereby allowing Communication Providers (CPs) to provide their own branded retail exchange line services (and associated features) to end customers.
2. At launch the WLR service is to be provided on single exchange lines (either residential or business) only (i.e. not multiple or ISDN lines).
3. The incumbent operator is required to provide, repair and maintain each WLR line to the same standard as it provides to its own retail customers, but with billing of these services provided on a wholesale basis. The CP then sets its own prices and bills their end customers (single bill).
4. [✂]
5. All outbound calls made from each WLR line are to be routed to the relevant CP's switch, using the standard Reference Interconnect links (which may already exist for any CP currently taking an IDA service from the incumbent operator). Charging would be applied at standard RIO rates.
6. The minimum term for WLR) is six months [although this will be dependent on whether the incumbent operator is allowed to charge for migrations between providers. Sure's preference is that such one off costs should be recovered within the WLR monthly rental charge (so as not to disadvantage new entrants)].

We have previously proposed and CICRA had stated that it was minded to agree that general product set-up and operating costs should be shared by all subscribers, so as to be consistent with the principle that the benefits of the resulting increased competition would likely accrue to all users. This avoids a scenario where CPs have to 'pay to play', whilst an incumbent operator faces only minimal costs.

Question 3 (Indication of the WLR aspects that the regulator should prescribe & those areas where operators and incumbents should negotiate.)

Sure strongly disagrees with CICRA's proposals for incumbent operators and retail operators to progress the introduction of WLR ([✂]) on a commercial basis. We do not believe that CICRA runs the risk of being overly prescriptive and indeed, we consider that unless CICRA is entirely prescriptive this project is highly likely to fail. Whilst Sure remains keen to work with other operators to develop and launch a WLR product, JT has continually shown its unwillingness to deal with OLOs fairly (when compared to any of the requirements of JT Retail). We have no evidence to suggest that JT's position is likely to change in this respect. [✂]

As a result, we believe that CICRA must take the lead and ensure that all relevant parties remain fully engaged throughout the process and, if required, enforces any requirements using the regulatory powers available to it.

Sure continues to seek an equitable outcome, underpinned by the recognition of efficiently incurred costs and intends to strongly question JT, should it continue to promote a retail minus approach (which, we note has not been supported by any other party[3]). Sure does not believe that the introduction of WLR should allow for a scenario in which profiteering by an incumbent operator is permissible.

In summary, Sure believes that it is unlikely to be workable for operators and incumbents to be left to negotiate any aspects of WLR. We therefore request CICRA's full involvement and leadership through until launch (and then beyond, to consider the additional requirements relating to multiple lines and ISDN lines).

Question 4 (Should a revised cost benefit analysis be carried out? If so, provide evidence/rationale for any significant changes to that set out in the 2013 decision.)

The work that Sure undertook to aid CICRA's high level cost benefit analysis would probably not provide significantly different results on a like for like basis if it were re-worked using the latest CostPerform (cost accounting system) data. [✂].

Question 5 (Is a regulatory impact assessment needed to support the regulatory decision? If so, provide evidence/rationale to support that view.)

Considering the success of WLR in other jurisdictions Sure suggests that a wider regulatory impact assessment is unnecessary. Sure's proposals for the recognition of costs associated with the provision of WLR appear to be broadly in line with those of Openreach in the UK and whilst the profitability of WLR, in isolation, is likely to be low, its inclusion within a bundle of services (e.g. line, broadband, mobile & TV) should be welcomed by consumers, with the added benefit that all services can be billed by just one provider (irrespective of whether that is the incumbent or another retail provider).

Question 6 (What is a reasonable timeframe for introducing WLR. For incumbents, set out the work processes for introducing WLR)

Sure has already provided details of its proposals in relation to the introduction of WLR (much of which has been published by CICRA) [✂]

[3] As per page 14 of www.cicra.gg/_files/CICRA%201101.pdf (Figure 4)

We remain reasonably confident that the changes required to accommodate the various WLR related aspects can be fulfilled within a six month period (as previously indicated[4]), [✂]

Question 7 (What evidence do incumbents draw on to inform their views on the demand in this area? Evidence from incumbents from consultation/discussion with retail operators is sought. Where incumbents have chosen to respond to such demand set out the process and timescale for delivery to meet that demand.)

One only has to look at the UK market to see, from a consumer's perspective, how beneficial bundling of a full range of telecommunications services can be. Sure is aware of increasing local demand from current and prospective customers to similarly have a single provider for all of their telecommunications services.

Looking at the demand from local operators:

- In Guernsey - to date no operator has specifically requested WLR and indeed, **JT has stated to CICRA that it 'considers that there is no business case for JT Guernsey to offer WLR in Guernsey' [to its retail customers]**[5]. That has no bearing on Sure's continued support of such a product, should any operator(s) wish to make use of WLR in Guernsey in the future. [✂] Sure is keen to promote the standardisation of WLR across the Chanel Islands.

- In Jersey – JT cannot fail to acknowledge Sure's eagerness to gain access to a WLR product. Unlike JT in Guernsey, we absolutely believe that there is a business case for another provider to offer line rental to retail customers. We have championed the scoping of the product and we continue to encourage feedback and suggestions for the further enhancement of WLR. It is hoped that operators' responses to the current CICRA consultation will further assist in this regard.

We would be interested to know how JT has responded to a particular request made by CICRA within its current consultation – 'How the incumbents have chosen to respond to that demand [for WLR] is also relevant to CICRA's considerations and incumbents are therefore requested to set out their plans to meet such demand or why they have to date not done so if there is demand'.

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Question 8 (Views required on pricing principles for setting of WLR access price and consideration of CICRA's proposed approach.)

It will be of no surprise to CICRA that Sure anticipates that pricing is likely to be the most contentious element of the WLR development process. It is for this reason that we are disappointed to note that CICRA's preference is still that participants negotiate and agree a wholesale price, with regulatory

4 As per page 9 of www.cicra.gg/_files/2012_12_19%20CW%20response%20re%20WLR%20(proposed%20licence%20modifications)%20.pdf Sure provided this submission on 19 December 2012, stating that it remained committed to launching WLR by 3 June 2013 (i.e. in under six months).

5 Page 10 of the PDF (numbered 9 within the document): www.cicra.gg/_files/Draft%20Decision%20-%20WLR%20-%20CWG.pdf

intervention only being used where absolutely necessary to set a price. As reminded by the footer of this document, Sure's long-held belief is that the same price should be used in both islands. Our reasons for this are discussed below.

We believe that there are four main considerations:

- JT's fibre network - This is an enforced migration of all copper delivered services over to fibre. The main benefit of fibre, over copper, is in relation to data speeds. Does fibre have a direct benefit to line rental and fixed network calls? No. In fact, from a customer's perspective it can have a detrimental impact (re existing phone sockets & power cuts). In which case, why should line rental customers be penalised by JT's necessity to try to recover its fibre investment (based on a business case that is reportedly not viable)? As all costs should be efficiently incurred, JT should not be allowed to recover the premium for fibre costs within a WLR product.

- Price control limitations – JT and Sure are bound by very different price control regimes; these having been defined prior to the establishment of a joint CI regulatory body (CICRA). As a result, each incumbent operator is constrained in its retail pricing preferences, not only by the current requirements, but also by the influence that previous price controls have had. Using exchange line connection charges as an example, the following shows the current charges per operator:

Connection type:	Jersey Telecom	Sure (Guernsey)
Engineering visit required	£120.49	£39.99
No engineering visit required	£49.99	£39.99

Sure standardised is connection charge, so as to provide certainty to its customers, most of whom would have no idea as to whether an engineering visit might be required. JT, on the other hand, with charges as high as £120.49, is likely to be over-recovering its costs at the retail level. Even before Sure standardised its charge for connection with/without an engineering visit its maximum charge was £69.99. That amount was cost justified, but Sure would be interested to know how JT considers a charge of £120.49 to be an efficiently incurred cost-justified charge. This is just one example of the disparity of charges between the two incumbent operators and in the majority of instances JT charges more than Sure. As JT provides services to a larger number of customers and on a single island (rather than four within the Bailiwick of Guernsey) logic would suggest that JT's costs (and therefore charges) should be lower on a per user basis. As already discussed, Sure does not consider that the implementation of WLR should in any way allow for profiteering, but without CICRA's lead this could be the intended outcome for JT.

Also in relation to price controls, CICRA has indicated that retail price controls are likely to continue for at least some period beyond the introduction of WLR. It would seem entirely inappropriate therefore for CICRA to limit retail exchange line prices, whilst at the same time leaving it to CIWAP participants to negotiate their own wholesale prices. This runs the high risk of retail margin squeeze, should one or both of the incumbents attempt to apply a wholesale price too close to its associated retail charge(s). CICRA therefore must take active control over the process of WLR price setting (for all aspects of the product, not just the monthly line rental). Such an approach would also remove the need for the continuation of retail price control, which will otherwise look superfluous in the light of the introduction of a regulated wholesale access product.

- JT proposes that WLR (if it is forced to introduce it) should be provided on retail minus basis, but as it is not required within its separated accounts to separate PSTN and ISDN (both forming 'Fixed Line Access') the retail specific costs of PSTN lines cannot readily be verified. Therefore, it will be difficult to assess whether the retail minus percentage that would be proposed by JT is actually enough to cover the retail specific costs that it incurs in the provision of that service. Considering CICRA's recent concerns in relation to the use of JT's model for the costing of wholesale broadband services (Page 3 of document 14/24[6]) Sure gains no comfort from the concept of JT using the same underlying costing source for the justification of WLR services.

  Further issues would arise if both incumbent operators were required to propose justifiable retail minus prices. The criteria set by the JCRA for JT, compared to the criteria set by the GCRA for Sure, are materially different (not least because of current cost accounting requirements in Guernsey), so unless CICRA intends to standardise the incumbent operators models as part of the WLR costing process (which we find unlikely, particularly as neither set of results would then have been independently audited) then the retail minus proposals from JT and Sure could not be comparable.

  Without going into the details of the differences, but to aid the understanding of this point, we would draw CICRA's attention to Page 31 of JT's 2012 historic cost separated accounts[7] and page 59 (numbered page 50 within the PDF) of Sure's 2012/13 current cost separated accounts[8]. Note 2 in Sure's accounts explains that for Guernsey regulatory compliance Sure is required to calculate an 'allowable cash' balance and exclude the remaining mean cash value. This has the effect of lowering the network related operational costs, as an artificially low return on cash is created. Sure would be happy to discuss the various material differences that currently exist between the two incumbent operators' models, but is confident that a retail minus costing approach could not currently be consistently achieved.

  Sure's concerns are exacerbated by the fact that the JCRA appears to have allowed JT to move to a lesser audit opinion ('properly prepared') for its separated accounts, after what appears to be only one year of 'fairly presents'. If true, this is disappointing that this has been allowed without consultation with other interested parties and significantly undermines the reassurance sought by Sure and others as to the credibility and reliability of JT's separated accounts results.

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[6] www.cicra.gg/_files/Wholesale%20Broadband%20Prices%20JT%20Jsy%20-%20consultation.pdf
[7] www.jtglobal.com/Global/PDFs/terms_and_cons/2012%20Separated%20Accounts_Published.pdf
[8] http://international.sure.com/assets/Uploads/2012-13-Regulatory-Accounts.pdf

Sure would reiterate its preference (and that of all other providers apart from JT, as discussed in response to Question 3) to use a cost plus methodology. Unfortunately, unlike Sure, as far as we are aware, JT's prices have never been confirmed to have been generally based on efficiently incurred costs. This reinforces our argument as to why Sure's justified cost plus WLR charge should be used on a pan-islands basis. Bearing in mind the similarity to BT's WLR rate (as we highlighted in our Background section, above), this would appear to present an equitable outcome (also bearing in mind that JT should not be seeking to recover material fibre related costs from exchange line services).

- JT Primetalk – Irrespective of CICRA's views about whether CIWAP participants should negotiate WLR charges, it must recognise that there are wider political issues that need to be addressed in relation to JT's subsidised Prime Talk service (line rental at £1.81 per month). We understand that the discount is provided to thousands of JT's retail subscribers. [✂]

  One potential solution would be for another States department (e.g. Social Security) to take over the provision of the subsidy, so that JT is reimbursed for each Prime Talk discount it provides. As both entities are government owned there would be no change to the total revenue received by the States of Jersey. The outcome would be that any provider would then be able to provide retail services to Prime Talk customers. What must be strongly guarded against is a scenario in which JT considers that it needs to cease providing discounted lines and blames competition (e.g. Sure) and/or regulation (i.e. CICRA) for the removal of the benefit.

  Whilst the above may be something that is a political rather than a regulatory issue, Sure does believe that there are also regulatory issues associated with Prime Talk that CICRA must address as part of the WLR process. This relates to the restrictive condition of service that is currently applied to the Prime Talk service, which 'is not available to a senior citizen in a household that has a phone service provided by any supplier other than JT'. [✂] Sure will require CICRA's assistance, as part of the WLR development process, to resolve what we believe to be an anti-competitive policy, which JT may try to manipulate to reduce the addressable exchange line market in Jersey.

Other key issue not covered by CICRA's specific questions

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Sure (Jersey) Limited & Sure (Guernsey) Limited

16 May 2014