Retail Price Control

2015

Draft Decision

issued to Sure (Guernsey) Limited

Document No: CICRA 15/54 **17 December 2015**

Guernsey Competition and Regulatory Authority,
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1. Executive summary

Retail fixed line services include calls using fixed line phones, exchange lines and a range of related services associated with having a fixed line phone service. Guernsey consumers spend around £9.5m[1] per annum on these services provided by Sure (Guernsey) Limited (Sure). This document, issued by the Guernsey Competition and Regulatory Authority (GCRA), proposes a price control on the retail fixed line services of Sure, as the dominant provider of those services in Guernsey. It does not cover other retail services such as residential and business broadband or leased line services.

The need for the regulatory oversight of Sure's prices arises from its position of dominance, which would allow it, absent of control, to raise prices independently of its customers or its competitors. Regulatory control is therefore appropriate for as long as this concern remains. This concern would reduce if the strength of dominance is reduced due to effective competition that delivered real choice for consumers. However, given the very early stages of the development of such competition and the continued absence of consumer choice the GCRA considers it appropriate to continue to control prices. Should effective competition develop rapidly the GCRA will revisit this issue.

The effect of a new access product, currently WLR[2], on the development of effective competition has not yet been proven. The GCRA therefore considers the threat of competition is not sufficient to constrain Sure's dominant position and therefore the GCRA will continue to apply controls.

However, the introduction of WLR has informed the approach taken by the GCRA in setting prices for these services and an assessment was based on current or most recent prices and costs and relied on benchmarking information.

Given the possibility that competition will develop and considering the absence of data/forecast information the GCRA has taken a light touch approach to setting the levels of the control. This approach is predicated on the potential for the development of effective competition and the desire to avoid unnecessary regulatory burden. Again, should competition not develop the GCRA will reconsider this approach.

[1] *Sure Separated Accounts 2013*

[2] *The telecoms industry in the Channel Islands has been working with the Channel Islands Competition and Regulatory Authorities (CICRA) on the development of new wholesale access products aimed at increasing choice and competition. Wholesale Line Rental (WLR) is a wholesale access product that affords a less extensive form of competition than those access products commonly available in neighbouring jurisdictions and was launched across both Jersey and Guernsey on 1 June 2015. WLR is also a recent development in the Channel Islands and was introduced several years later than planned.*

The GCRA proposes a 'price basket' control which is a light touch benchmarking approach to price control rather than a bottom up cost based approach. This approach gives Sure more flexibility than alternative forms of control and therefore enables Sure to respond to a greater extent to competition than a control set on a product by product basis. The GCRA's proposed determination is that increases in the basket of charges levied by Sure for its retail fixed line services shall be limited by no more than RPI – 0% for the three year period of this price control. Further detail is set out in this document with the timing of any final decision subject to the process set out in section 4.

It is proposed that the determination will remain in place until replaced or removed following a review by the GCRA.

2. Introduction

Background

The last detailed price control review for Sure, in Guernsey, was set in 2008, initially covering a period up to 2011. Since then, Sure has been subject to short term controls essentially allowing for price increases in line with the retail price index (RPI). This was decided on the basis that while the concern regarding Sure's dominant position remained high in the relevant market, the prospect of greater competition through the introduction of more extensive wholesale access products could have a significant bearing on the longer term regulatory approach to controls intended to protect consumers of fixed line services. In the event a less extensive form of wholesale access product, WLR, was introduced in June 2015, much later than expected.

Given the delay in achieving the increased benefits of further competition and the less extensive form of wholesale access competition to be introduced by June 2015, the Channel Islands Competition and Regulatory Authorities[3] (CICRA) decided in 2014 to undertake a formal price control review of JT in Jersey and Sure in Guernsey for their retail fixed line services. To support this process Frontier Economics was commissioned to carry out a review to inform any future price controls.

CICRA issued a pan-Channel Island consultation in March 2015 (CICRA 15/10). That document considered the appropriate forward looking price controls for Sure in Guernsey and JT in Jersey. The consultation was informed by the Frontier Economics report and a redacted version of the full report prepared by Frontier Economics was included in Annex A of the consultation document and is included with this Draft Decision. In recommending the duration, scope and form of the next price control Frontier Economics took into account the potential impact of WLR on competition.

Frontier Economics recommended regulating on the basis of a single price control basket including retail line rental, line connection and call charges. It recommended aligning more closely the average level of retail prices for fixed line services across both Jersey and Guernsey. In particular, Frontier Economics recommended aligning JT's average prices with those of Sure (Guernsey), maintaining that those offered a reasonable reference using an RPI-X% framework which is well tested from previous price controls in the Channels Islands. In its view, as a smaller island jurisdiction with similar features, Sure (Guernsey) offered a reliable reference average price for JT's retail fixed line services.

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[3] *The Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA) are together referred to as CICRA and unless otherwise stated, all references to CICRA in this Decision are to each of the JCRA and GCRA.*

Following the consultation the GCRA has assessed the responses received and in this document proposes the duration, form, scope and level of a future price control.

Disclaimer

This document does not constitute legal, technical or commercial advice; the GCRA is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the GCRA to exercise regulatory powers generally.

Interested parties are invited to submit comments to the GCRA in writing or by email on the matters set out in this paper to the following address:

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

Email: info@cicra.gg

All responses should be clearly marked *"Draft Decision on Sure Retail Price Control 2015"* and should arrive by 5pm on 18 January 2016.

In line with GCRA's consultation policy it intends to make responses to the consultation available on the GCRA website www.cicra.gg . Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. The GCRA regrets that it is not in a position to respond individually to the responses to this consultation.

3. Responses to the Consultation

Introduction

GCRA received a total of three responses to its pan Channel Island consultation on retail price control review, from:

- Sure;
- JT, and
- Airtel-Vodafone (Airtel).

All three were provided on a pan Channel Island basis or specifically addressed both Guernsey and Jersey issues. Airtel's response was more general in nature.

The GCRA would like to thank each of the respondents for their input to this process. The non confidential sections of the responses are published on the CICRA website, www.cicra.gg.

Rationale for price control

The EU regulatory framework in its recommendation of 17 December 2007 (2007/879/EC) states that regulatory controls on retail services should only be imposed when national regulatory authorities consider the relevant wholesale measures, or measures regarding carrier selection or carrier preselection, would fail to achieve the objective of ensuring effective competition and public interest[4].

In the Guernsey fixed line services market, alternative providers do not have the necessary infrastructure to compete with Sure. The market for these services has a limited form of retail competition where the wholesale products in place are essentially 'resell' services. Competitors pay a wholesale rate to Sure for the equivalent Sure retail services and offer them to customers. The scope for competitors to offer variety, innovation or sell at discounts to Sure is limited given the nature of such wholesale products available to them. In these circumstances the challenge facing competitors to offer more attractive propositions than Sure in order to win customers from Sure are significant. It is also relevant that the prices of those key wholesale inputs are generally set by reference to Sure's own retail prices; efficient wholesale charges paid by its competitors in this market therefore rely on efficient retail prices by Sure.

Fixed line services in Guernsey are provided to 52,682 customers. Those customers generated over 84 million minutes of calls in 2013[5] of which Sure has a market share of

[4] *Paragraph 15*

[5] *Telecommunications Statistics Market Report, 2013, CICRA 15/39, September 2015,*

approximately 86% despite the legal monopoly by Sure having ended on 1 October 2001, some 14 years ago. The challenges competitors face in winning customers from the former monopoly is a significant contributing factor to the prevailing high market share held by Sure for such a long period of time.

Wholesale measures in Guernsey are not yet at a stage where they can be considered to achieve the objective of ensuring effective competition in the Guernsey market. GCRA as the regulatory body has a duty to protect consumers of telecommunication services in Guernsey. As effective competition or the potential of effective competition is not yet sufficient to protect consumers interests the GCRA proposes to continue to apply price controls in the market.

Frontier Economics, in its report, concluded that: "*competition for retail fixed line services appear to remain limited in … Guernsey. In particular: (i) there are limited alternative offerings to the incumbent's retail fixed access line services; and (ii) both operators have retained a dominant position in their respective market for retail fixed line services*."

The following relevant features at the time of its report were noted:

- Both Sure and JT remain the sole providers of PSTN access lines in Guernsey and Jersey respectively and there are few alternative fixed network operators present in both markets.
- Barriers to entry to the market remain high as there was no wholesale access service, with WLR only due to be launched in June 2015[6].
- Despite the increasing presence of mobile voice services and availability of over the top (OTT) Voice over Broadband (VoB) services, there is limited evidence to suggest that fixed line access customers in the Channel Islands are substituting away from fixed access line services to these alternative products.

Frontier Economics found that the introduction of WLR did not merit a removal of the price control regulation based on the following factors:

- operator's preliminary forecasts (to 2018) of the expected WLR take-up indicate it may only have limited impact on the market;
- Sure's dominant position will continue. Dominance means that the firm can raise prices irrespective of consumers and competition and therefore price control is still needed, and
- in line with approaches adopted elsewhere, i.e., by Ofcom and ComReg, there is likely to be a need to retain some form of ex-ante regulation on retail fixed line services even after the launch of WLR, until retail competition actually emerged.

[6] *WLR was subsequently launched on 1 June 2015.*

Given the above, Frontier Economics concluded that both Sure and JT are likely to maintain a dominant position in the provision of retail fixed lines in the respective geographic markets of Guernsey and Jersey and there is a continued need for ex-ante price controls for Sure and JT's retail fixed access line services in their relevant markets.

Responses

Sure in its response said that until WLR becomes established across the Channel Islands it would be difficult for each incumbent operator to argue that it is not dominant in the provision of fixed line services in their respective island, i.e. Sure in Guernsey and JT in Jersey. Sure responded with in principle agreement on the need for ex-ante price controls, but had concerns as to how these might be applied. It requested that the GCRA further considers how it intends to monitor and ensure compliance particularly as bundles would soon be allowed to include retail fixed lines. Sure also considers that it is important for the GCRA to reinforce to incumbent operators that the relevant licence conditions must still be adhered to. Specifically that the GCRA should avoid any potential ambiguity with regards to what level a margin squeeze test would be set[7].

JT, in its response to the pan Channel Islands consultation, stated that the introduction of WLR in the Channel Islands removes the barriers to entry which may have led JCRA to previously designate JT as having dominance in the retail market. JT considers that regulating retail line rental prices "is an anachronistic regulatory tool, which is not appropriate in 2015 in Jersey". In the absence of further clarity the GCRA assumes that this comment is also applicable in Guernsey.

GCRA Analysis

The need for the regulatory oversight of Sure's prices arises from its position of dominance, which would allow it, absent of control, to raise prices independently of its customers or its competitors. Regulatory control is therefore appropriate for as long as this concern remains. This concern would reduce if the strength of dominance is reduced due to effective competition that delivered real choice for consumers. However, given the very early stages of the development of such competition and the continued absence of consumer choice the GCRA considers it appropriate to continue to control prices. Should effective competition develop rapidly the GCRA will revisit this issue.

The effect of a new access product, currently WLR, on the development of effective competition has not yet been proven. The GCRA therefore considers the threat of competition is not sufficient to constrain Sure's dominant position and therefore the GCRA will continue to apply controls.

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[7] Sure has raised concerns that margin squeeze issues may arise by intent or effect following the introduction of wholesale line rental

However, the introduction of WLR has informed the approach taken by the GCRA in setting prices for these services. An assessment was based on current or most recent prices and costs and relied on benchmarking information.

Given the possibility that competition will develop and considering the absence of data/forecast information the GCRA has taken a light touch approach to setting the levels of the control. This approach is predicated on the potential for the development of effective competition and the desire to avoid unnecessary regulatory burden. Again, should competition not develop the GCRA will reconsider this approach.

The market in Guernsey is experiencing the early stages of competition and it is difficult to predict how effective competition will be therefore there remains a need for controls. In the absence of more extensive wholesale access products that support greater competition, where the benefits of competition for consumers are likely to be evident in greater levels of switching between providers, prices in line with relevant benchmarks, significant improvement in current customer satisfaction levels and greater variety and innovation available to consumers, the GCRA considers that appropriate certainty and protection for consumers is better provided by the use of a price control supplemented by appropriate licence conditions and other regulatory measures.

GCRA Conclusion

The GCRA therefore concludes that the introduction of WLR has not altered the competitive landscape to the extent that it alters a finding of dominance for Sure in the provision of retail fixed line services in Guernsey or the need to price control such services.

Period of price control going forward

Frontier Economics recommended that the GCRA consider applying a control on Sure's retail prices of fixed line services each year during a price control period of three years. Views were sought on the price control period proposed.

Responses

Sure believes that for effective and sustainable competition it may be detrimental to the market for the duration of the price control to be set for a period of three years and that a one year price control might be more appropriate. Sure considers that, with the introduction of WLR, truly equivalent locally based competition can be provided in the retail fixed call market in Jersey and Guernsey. Sure goes on to state that whilst it may be appropriate for an ex-ante price control mechanism to be maintained for one year post WLR implementation, it believes that if it is kept in place for longer, e.g. up to three years, it may cause more harm than good. While Sure did note that as WLR will still physically be provided solely on each incumbent operator's network (and therefore no differentiation in the quality of network services), and so other licensed operators will need to compete entirely on the pricing of retail calls, it considers that constraining each incumbent operator's retail call charges into a second or third year might nevertheless cause a delay in the growth of effective and sustainable competition.

JT considers that the three year proposed price control is based on an inappropriate comparison of the effect of wholesale regulation seen in the UK around 2002. It believes the GCRA should be forward looking and take into account the expected benefits of wholesale regulation in the Channel Islands by considering whether retail regulation is required. JT proposed that if the GCRA insists on the need for a retail price control for an interim period then there should be a continuation of a control for a 12 month period to avoid additional uncertainty in the market. JT considers that, following the introduction of WLR in the Channel Islands, creating certainty is important and the proposed control would shift JT's retail prices down to an uncompetitive level, with significant cuts required over three years which would bring uncertainty to the sustainable long term values. Further, JT states that this aggressive three year retail price control might stifle the development of the wholesale product or end up being unnecessary due to the wholesale product being effective in promoting competition.

GCRA Analysis

Sure does not expand on why, if there is a risk of prices being above the competitive level given market dominance, price controls will do more harm than good. The response suggests consumers could rely on competition. However the GCRA's assessment above discussed the risks of concluding consumer interests are adequately protected through competition in the fixed line services market given features of the Guernsey market. This analysis is also reflected in the initial notice covering the price control for JT Jersey where it is found to have a similar position of market power in the Jersey market. Locally based competition has significant limitations and is considerably weaker than that of neighbouring jurisdictions.

An important factor for any existing or potential new entrant to the Channel Island market is the degree of certainty it faces as to retail price controls imposed on the dominant provider. GCRA must therefore balance the risks of a shorter term control as argued by the incumbents in each island, against that of a longer term control. A price control of five years or more carries risks in that market developments may overtake the need for such regulatory controls. Too short a price control could be seen as a potential barrier to entry that would deter a new entrant wishing to enter the market in the face of a lack of certainty in the wholesale charges Sure may make that are otherwise constrained by a cap on its retail prices.

Based on evidence in the Channel Island market the GCRA does not believe that the market would become significantly more competitive over a short period of one year. Therefore, while there is some limited form of competition, in the absence of a price control for fixed line services it is unlikely that competition offers a sufficient restraint on prices over the short to medium term. The GCRA considers that, at this present point in time a three year price control delivers an appropriate balance of stability and predictability for all players and importantly does give the opportunity for a new entrant to enter the market with a greater degree of certainty than if a retail control was set for only one year.

However, if it becomes evident that during the period of this price control, there is a significant increase in the state of competition then the GCRA would reconsider, shortening the duration of the price control.

GCRA Conclusion

The GCRA proposes to set a price control for retail fixed access line services over three (3) years. Where competition is seen to be effective the need for the GCRA to intervene will reduce. If the market was considered to be working well for consumers the GCRA would contemplate removal of the price control in advance of the three year control period. Evidence to support reduced intervention in this area will include the availability of more extensive wholesale access products that support a greater degree of competition beyond simple retail 'resell' offers. It would be expected that the benefits of competition would manifest in the extent of switching by consumers between providers, prices that are in line with relevant benchmark, significant improvement in current customer satisfaction levels as well as greater variety and innovation in service provision.

Scope of price control going forward

Frontier Economics recommended continuing to regulate a single basket consisting of fixed line services rather than one that included broadband. It took this view, because it argued this would ensure that the most vulnerable customers (those who continue to use fixed line services rather than a bundle) are better protected by such an approach.

JT in its response stated that line rental and broadband are no longer viewed as separate products by customers and it is simpler for consumers to treat these as a single product. 68% of JT customers purchase line rental and broadband together and JT argued that customers are predominantly purchasing the line rental to use for broadband services. JT believes that this provides evidence for a reassessment of whether line rental and broadband should be considered to be in the same market. JT states that it is not appropriate to regulate the price of one of the monthly charges without reference to the other.

With the majority of JT's customers buying fixed line and broadband together, and with many using the line solely for broadband, JT argued that it is inappropriate to try and regulate the line rental price in isolation. It stated that wholesale regulations look at the combined monthly charge of these two products and it is unclear to JT why any retail regulation should be different.

Sure expressed similar views to JT on this aspect of the control.

GCRA Analysis

For the avoidance of doubt the control covers all fixed line services not only fixed exchange lines and Sure is able to bundle retail broadband and fixed line services as a retail offering to customers. However, a single price control that includes broadband and fixed line services introduces risks of consumer detriment from unfair cross-subsidy between these services. We also consider the point made by Frontier Economics is relevant in that a single price control basket for fixed line services will ensure that the most vulnerable customers (those who continue to use standalone fixed line services) are better protected. Some of the arguments by the incumbents around combined fixed line and broadband services refer to flexibility available to operators in other jurisdictions which the incumbent operators should also be able to benefit from. It is the case that rebalancing between broadband and fixed line services is available in markets where competition is stronger. The flexibility available to such operators is in a context where the recovery of cost is driven by significant competitive pressures. The same reasoning cannot be applied to Sure in the Guernsey market.

JT cite the low spend (<£1 per month) by around 25% of its exchange line customers to support an argument that a high proportion of retail customers only take the exchange line to receive broadband. While it is likely that some customers fall into this category, it is also the case that a proportion of JT's exchange line customers take their calls using the indirect access to JT's network provided by its retail competitors. Around 11% of originated voice calls are accounted for by this indirect access service. These JT exchange line customers would not pay much more than the retail exchange line rental each month to JT as they make calls using competitor services. The fact that JT does not receive more revenue is not because they do not use call services. It is also the case that a proportion of JT's customers are likely to take a fixed line phone for reasons other than to facilitate a broadband connection. Some customers want a fixed line phone for emergencies only, or primarily to receive calls, or only make a limited number of local calls. The inference that low spend by JT's exchange line customers implies the exchange line is only used for broadband is therefore not entirely valid and the proportion of JT customers who do so is likely to be significantly less than the figure cited by JT.

JT cite charges made by Sure for alternative payment methods to direct debit, paper billing charges and late payment fees, arguing these should be included in the price control basket and in comparators. Such charges have not formed part of previous controls and they are not proposed to be included for this control. They do need to be justified by costs as the dominant operators remain in a position of market power in imposing these charges even if they are avoidable for many customers but this regulatory oversight is undertaken outside of the price control process. There is a valid argument that such charges improve efficiency of operations and therefore deliver savings and eliminate unfair cross subsidies between late payers and those that pay on time for example.

GCRA Conclusion

Given Sure has dominance in the provision of retail fixed line services and the risks of consumers bearing unjustifiable cross-subsidisation between fixed line services and broadband services there is a need to set a price control for fixed line services that excludes broadband. The price control proposed would cover the following retail services:

- Exchange line;
- Fixed Line local geographic calls;
- Fixed Line non-geographic calls charged at local rate;
- Fixed Line Jersey and National calls;
- Fixed Line non-geographic calls charged at national rate;
- Fixed Line international call;
- Fixed Line calls to Channel Island mobiles;
- Fixed Line calls to Other mobiles;
- Public Payphones;
- Exchange line connection, and
- ISDN services.

Level of price control going forward

An assessment of the appropriate level of a price cap is usually made on the basis of detailed financial forecasts, comparing expected future revenues and costs, and an appropriate level of efficiency gains. A price path (cap) can then be determined which allows the regulated entity the opportunity – if it acts efficiently – to earn a reasonable rate of return. This is the approach that CICRA (JCRA/GCRA) have previously undertaken. Frontier Economics informed its analysis through:

- Price benchmarking – how the current level of retail prices in the Channel Islands compares to other comparable jurisdictions;

- Cost benchmarking – assessing the potential scope for further cost reductions based on a high-level benchmarking of Sure's operating expenditures (OPEX) to those of other operators.

This analysis is set out in greater detail in the Frontier Economics report. Given the limitations in forecast data available from the incumbent operators in each island the benchmarking approach was undertaken.

However, a strong comparator for Sure in Guernsey is JT in Jersey. In making this comparison, Frontier Economics observed substantial differences in retail prices for fixed line services across the two jurisdictions of Jersey and Guernsey where the average monthly cost to consumers for fixed line services (holding usage constant) was circa 33% higher in Jersey than in Guernsey.

A key driver of the observed differences in retail prices appeared to be the underlying differences in retail price caps applied to Sure and JT over previous years. In particular, Sure (Guernsey) had generally been subject to more stringent retail price controls than JT since 2008. This was particularly true in relation to local calls basket, for which there was a RPI-11.75% regime in place for four consecutive years compared to JT, in whose case an RPI-3% was applied between 2008 and 2011. As such, these recent retail price controls appear to have at least contributed to lower retail prices in Guernsey compared to Jersey.

Frontier Economics recommended a safeguard control on Sure, allowing for price increases in line with inflation, of RPI - 0% each year during a price control period of three years.

In summary, the recommended level of price control by Frontier Economics going forward in the consultation was:

Operator	Recommended price control
Sure	RPI –0%

Responses

Sure agreed with the recommended approach but reiterated, as did JT, arguments for retail broadband services to be included in the control basket, with JT citing the context in which WLR prices were set.

JT argued that there has been a shift from retail to wholesale level regulation internationally and with the introduction of WLR in the Channel Islands the GCRA should follow the international trend and remove the retail price control.

Sure, in its response, did not agree with an RPI – 0% control for Sure (Guernsey). In addition, should such a control be implemented Sure would have concerns as to how this might penalise its business if the RPI reflected a negative position (i.e. less than 0% RPI on an annual basis) during the period of the price control. Sure believes that it is very unlikely to be able to reduce its underlying costs (predominantly salaries) as a direct result of any negative RPI, so could be unfairly penalised if it were forced by the GCRA to reduce its retail charges. Sure proposes that the mechanism be tied solely to RPI changes above a zero rate.

Sure also stated that it believes that retail charges for fixed line services need to be better aligned with those available in the UK and unless the GCRA starts to actively support a rebalancing process between fixed line rental, calls and broadband it will remain almost impossible for CI operators to get near to or match the package pricing available in the UK.

Sure considers that by applying an RPI – 0% price control on Sure in Guernsey would constrain its ability to align prices with its customers expectations. Sure's position is that fixed line rental and call charges need to increase and the increased revenue is used to reduce the broadband charges. Sure further states that to gain full benefit for its customers the GCRA would have to actively encourage margin squeeze for broadband services so that they can be provided at or below the underlying wholesale costs. Sure states that the result of this would be that (for the three years) customers would continue to pay 'too much' for broadband and 'too little' for line rental and calls. Any rebalancing, in Sure's opinion, can only be achieved with regulatory support.

GCRA Analysis

Some of the points raised in this section have been dealt with in previous sections and are not restated in full here.

The responses by JT and Sure appear to suggest there was a formal price control set by the JCRA and the GCRA in respect of the WLR price. The GCRA did not set the pricing for WLR; while the GCRA provided guidance to the parties by drawing on margin squeeze test principles the operators negotiated the wholesale price at launch. The GCRA recognises there has been a shift from retail to wholesale level regulation internationally. However, competition is still in its early stages in Jersey compared to other jurisdictions.

In response to the comments made by Sure the GCRA's concern is in the area of economically set costs not the market messages that prices deliver. The arguments put forward by Sure are not arguments to say that the price cap is not correct. The arguments put forward are marketing arguments with risks i.e. single product customer paying more for their fixed line service in order to allow Sure to be able to reduce its broadband prices.

In is important to note that, according to the Frontier Economics report, the proposed Sure price control is not too tight. It is also important to note that, during the period of time when Frontier Economics was working with the operators and collecting data in order to propose a price control Sure was not able to provide all of the financial information that was requested of it.

The key tenet of the argument put forward by Sure is that they consider that their broadband pricing is too high and that this needs to be reduced and instead recovered from landline pricing. However, the GCRA is planning to investigate whether broadband prices are too high in Guernsey. The GCRA will separately consider whether to review the Guernsey broadband market.

In its response Sure stated that "CICRA recognises that Sure's access (rental) and call charges are low…". To comment on this point the GCRA has not stated this as a point of view - the GCRA considers that the charges are not low but rather appropriate. On the other hand, the GCRA does consider that reducing charges for broadband services below an economic level could have a harmful effect if an operator attempts to recover some of its costs of re-balancing pricing across a portfolio of products.

It is relevant that since Frontier Economics produced its report both the Jersey and Guernsey market have seen some changes in prices. Specifically, Sure raised its monthly line rental price from £9.99 to £12.49 and JT raised its monthly line rental price from £12.99 to £13.24. In addition, changes have been introduced for both Sure and JT's installation charges. JT consider such changes should have been reflected in the price setting in the consultation. However, this notification was made to the GCRA by Sure (Guernsey) on the 9th of April when the consultation was issued on the 30th of March. It is therefore unclear how any proposal in the consultation could be based on increases not formally notified to the Authority by the date of issue.

Sure in its response raised its issue that it had on a number of occasions requested visibility from the GCRA of any likely price control proposal. The GCRA is clear on this matter. Such price controls are subject to open consultation and the GCRA is not in a position to pre-judge the results of the consultation process or decisions made by the Authority following the completion of the consultation process. Decisions made by the Authority are based upon responses received from its consultations and its own assessment as part of that process.

The recent Sure increase has not been assessed for compliance with its present price control obligations by the GCRA, as compliance is in any event assessed at the end of each year and Sure is aware of its licence obligation. However, given the potential for competition to develop and the fact that the GCRA wishes to regulate in a proportionate manner, we propose to take a very light handed approach and set the cap taking into account the increase. If competition does not emerge and we need to revisit this and make a more robust determination we will assess the actual level of charges in relation to the costs.

GCRA Conclusion

The GCRA proposes to impose the following retail price control on Sure in Guernsey where increases are limited to no more than. Year 1: RPI – 0%, Year 2 : RPI – 0% and Year 3: RPI – 0%.

Monitoring and enforcement

In the consultation the GCRA stated that its assessment of Sure's compliance with this price control will be undertaken retrospectively on an annual basis. This annual assessment will require submission of timely information by Sure. The GCRA would seek to review the compliance statement within three months of receipt. In addition the GCRA would be able to use its relevant powers to inspect Sure's financial records to verify the accuracy of its submission in demonstrating its compliance with the price control regime.

In addition, when Sure wishes to introduce a price change, it will need to submit an assessment to the GCRA to demonstrate its compliance with the price control by completing the five steps described below. Whilst Sure will not need the GCRA's approval of individual price changes within the basket of services subject to price control, the assessment will assist the GCRA in assessing compliance at the end of the relevant period. The GCRA may intervene however if it considers that proposals are likely to be non-compliant. In complying with the price control, Sure is also required to comply with other relevant licence conditions.

Responses

Sure welcomed the GCRA's proposal in relation to the average weighting of prices during the relevant price control period as it will, in Sure's opinion, disincentivise operators from timing price changes to maximise profit/minimise losses. Sure considers that in addition to the GCRA requesting the timely submission of the compliance statements, the GCRA should also review the submissions in an equally timely manner.

GCRA Analysis

The GCRA proposes that the approach proposed is suitable. In addition the GCRA notes Sure's additional request to ensure that the GCRA should review compliance statements in an equally timely manner. In addition, the control period will start on the effective date of this Decision. For completeness, the compliance monitoring methodology is included in Annex 2 of this Draft Decision.

GCRA Conclusion

The proposed price control compliance methodology will be implemented at the same time as the introduction of the new retail price control. The control period will commence on the effective date of the new price control.

4. Draft Decision

The GCRA gives this notice of its decision to make a determination under Condition 31.2 of Sure's licence as follows:

> That by reference to the monitoring and enforcement framework in Annex 2 of this Draft Decision the charges levied by Sure for the retail services set out under the 'Scope of price control going forward' section shall be reduced by RPI – 0% for the three year period of this price control and will remain in place until replaced or removed following a review.

It is proposed that the determination will take effect no less than one calendar month from the issue of the Draft Decision and will remain in place until replaced or removed following a review. In the situation of the price control being in place for longer than the three years the third year's RPI – 0% will remain in place. In the event that representations or objections are received in response to this Draft Decision, the effective date of the determination will be set out in a Final Decision.

Annex 1: Legal Background and licensing framework

Legislative background and regulatory duties in the Channel Islands

In Guernsey, Section 5(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 ("the Telecoms Law"), provides that the AUTHORITY may include in licences such conditions as he considers necessary to carry out his functions. The Telecoms Law specifically provides that such conditions can include (but are not limited to):

- Conditions intended to prevent and control anti-competitive behaviour[8]; and
- Conditions regulating 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[9].

In accordance with these provisions in the Telecoms Law, both the "Fixed Telecommunications Licence Conditions"[10] and the "Mobile Telecommunications Conditions"[11] awarded to Sure (Guernsey) include the following text:

"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 Service;
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 the determination applies."

This condition allows the AUTHORITY to regulate the prices that a licensee charges for its telecommunications services in a way and for a time that he deems appropriate, where the licensee has a dominant position in the market.

[8] *Condition 5(1) (c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001*
[9] *Condition 5(1) (f) of the Telecommunications (Bailiwick of Guernsey) Law, 2001*
[10] *Document OUR 01/18; Condition 31.2*
[11] *Document OUR 01/19; Condition 27.2*

Annex 2: Monitoring and Enforcement

The price control will be based on a weighted average basket price index. The GCRA's assessment of Sure's compliance with this price control will be undertaken retrospectively on an annual basis. This annual assessment will require submission of timely information by Sure. The GCRA would seek to review the compliance statement within three months of receipt. In addition the GCRA would be able to use its relevant powers to inspect financial records to verify the accuracy of submission in demonstrating compliance with the price control regime.

In addition, when Sure wishes to introduce a price change, it will need to submit an assessment to the GCRA to demonstrate its compliance with the price control by completing the five steps described below. Whilst Sure will not need the GCRA's approval of individual price changes, the assessment will assist the GCRA in assessing compliance at the end of the relevant period. The GCRA may intervene however if it considers that proposals are likely to be non-compliant. In complying with the price control, Sure is also required to comply with other relevant licence conditions.

Compliance Procedures

In order to demonstrate annual compliance[12] with the price controls for the services included in the price control Sure will need to undertake a number of tasks comprising:

1. Quantifying the price changes for each services;
2. Indexing the price changes;
3. Weighting the services on the basis of revenue earned in the 12 months prior to the relevant period;
4. Deriving the weighted average basket price index; and
5. Comparing this with the Price Control Index (PCI) incorporating RPI.

The list of relevant services in the price controlled basket are:

- Exchange line;
- Fixed Line local geographic calls;
- Fixed Line non-geographic calls charged at local rate;
- Fixed Line Guernsey and National calls;
- Fixed Line non-geographic calls charged at national rate;

[12] *Sure should also follow these steps when notifying GCRA of changes in the prices of price controlled products for the duration of the price control.*

- Fixed Line international call;
- Fixed Line calls to Channel Island mobiles;
- Fixed Line calls to Other mobiles;
- Public Payphones;
- Exchange line connection, and
- ISDN services.

Quantify the price change for each service

This information is derived by comparing the historical (i.e. nominal) prices for each service in the price control periods.

Simply, this is the differential between the old and the new price, represented by:

$$\delta P = \frac{P_t - P_{t-1}}{P_{t-1}}$$

Where:

P_t = The weighted average price for the service during the relevant price control period;

P_{t-1} = The weighted average price for the service during the previous relevant period.

Note that P_t should be weighted to take into account the phasing of any price changes during the relevant period. For example, if the price change were introduced at the start of a relevant period then the new price could be used as P_t for the purposes of the calculation. If however the price change were introduced midway through the year, then the P_t would need to reflect 0.5 of P_{t-1} and 0.5 of the new price to reflect the average price for the service over the period[13].

Index the price change for each service

Once the price change has been quantified, the next step is to index the price changes. The indexed price (IP) for each service is derived from the following formula:

$$IP_i = 100 * (1 + \delta P)$$

[13] *In calculating average prices over a price control period, JT should use of a weight of n/365 for a price that was offered for n days.*

Where:

IPi = Indexed priced for service i within a basket

Weight services based on revenue in the relevant period

Weights for each service in the basket are derived from each service's percentage share of total revenue in that basket over the previous year. Thus the sum of the weights of all the services within the basket equals 1.

Thus:

$$W_i = \frac{R_i}{R_B} \; subject\ to\ 1 = \sum_i^n W_n \; and\ R_B = \sum_i^n R$$

Where:

W_i = weight for a given service in the basket;

R_i = the amount of actual revenue for the previous relevant period that is derived from that individual service;

R_B = the amount of total revenue in the previous relevant period that is derived from a combination of all services in the basket.

Derive the weighted average basket price index (Actual Price Index)

The Actual Price Index (API) is calculated by combining the weights for each individual service with the indexed price changes and summing the products.

$$API = (IP_1 * W_1) + (IP_2 * W_2) + \cdots + (IP_n * W_n)$$

Compare with Price Control Index incorporating RPI

The final step involves:

- Calculating the PCI for the basket; and
- Comparing the PCI with the API to assess compliance.

The PCI is:

$$PCI = 100 * (1 + RPI - X)$$

Where:

RPI = the measure of inflation for the prior year of the relevant price control period. This is obtained from Statistics Unit of the States of Jersey.

X = the efficiency factor applied to the basket in a given year.

The Compliance Decision

The basic price control rule is that the API over the relevant period must be equal to or less than the PCI.

$$i.e. API \leq PCI$$

If the API is greater than the PCI then JT would have failed to comply with the price control regime.

However, if Sure's API for a basket at the end of the relevant period is lower than required by the PCI, it ***may*** be able to carryover the difference into the next charge control year subject to the GCRA's approval. Conversely, if Sure's average charge is higher than the required level, it will be obliged to remedy the situation as the GCRA may reasonably require. The GCRA may also impose sanctions on Sure for failing to comply with the price control regime it has imposed.