Non-confidential response by Sure (Jersey) Limited and Sure (Guernsey) Limited to CICRA consultation documents 15/10: Pan-Channel Island Consultation on Retail Price Control Review

Sure (Jersey) Limited and Sure (Guernsey) Limited, collectively referred to as "Sure" is submitting this response to CICRA's consultation on its retail price control proposals for Jersey and Guernsey.

This is our non-confidential version of our response, which we are happy for CICRA to share with other interested parties and publish on its website. Redacted text is indicated by the ✂ symbol.

Response to questions:

Q1: Does the respondent agree that a dominant position is held by Sure and JT in the provision of retail fixed line access services? If the respondent does not agree then please provide a full justification for the response citing relevant evidence.

Yes. Until wholesale line rental (WLR) has become 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 access services. Sure very much welcomes the planned introduction of WLR on 1st June 2015.

Q2: Does the respondent agree that there continues to be a need for ex-ante price controls for Sure and JT's retail fixed access line services in the respective jurisdictions of Guernsey and Jersey? If the respondent does not agree then please provide a full justification for the response citing relevant evidence.

In principle, yes, but we have concerns as to how this might best be applied.

As part of the implementation of WLR it is important to ensure that other licenced operators are able to compete fairly and in an environment that penalises incumbent operators for deliberate or even accidental margin squeeze at the retail level. However, with the likelihood that more focus will be placed on the bundling of fixed and broadband services such concerns may become more difficult for CICRA to manage. There remains some ambiguity as to what level any margin squeeze tests should be undertaken at. For example, on the price of individual services, on a basket style basis, or on the total profitability of the services (as would be seen within each incumbent operator's annual separated accounts). As part of this price control review Sure would request that CICRA further considers how it intends to monitor and ensure compliance, particularly as bundles will soon be allowed to include retail fixed lines. There may be a belief that as soon as competition arrives for that market incumbent operators would be free to price their services as they choose, however we believe that it is important for CICRA to reinforce to incumbent operators that the relevant licence conditions[1] must still be adhered to.

[1] Primarily Conditions 30-33 of JT's Licence and Conditions 28-31 of Sure Guernsey's Fixed Licence.

Q3: Does the respondent agree that given the strong positions held by both Sure and JT in the provision of retail fixed call services there continues to be a need for ex-ante price controls for Sure and JT's retail fixed call services in the respective jurisdictions of Guernsey and Jersey? If the respondent does not agree then please provide a full justification for the response citing relevant evidence. What alternatives would you suggest and why?

Some form of competition in the supply of retail fixed call services has existed across the Channel Islands for a number of years, whilst more recently all local operators have been detrimentally affected by the increasing popularity of IP based alternatives (such as Skype, FaceTime & other providers of video and/or voice calls). The shift in calling patterns of local fixed line subscribers has moved from competition with local mobile operators to competition between all local operators and off-island over-the-top (OTT) providers. As CICRA will be aware from the information that Sure (Guernsey) provided to Frontier Economics (as part of the earlier considerations for CICRA's price control proposals), the volume of calls originated on our network has declined over the last few years. It is known that a similar impact has been felt by JT in Jersey. However, even while CI incumbent operators have to compete with these OTT providers, it is only with the introduction of WLR (on 1st June 2015) that <u>truly equivalent locally based competition</u> can be provided in the retail fixed call market. By that we mean, a local fixed line subscriber will be able to use their phone in exactly the same way as they currently do, but as a result of WLR their calls can be managed and billed by another locally licensed operator (an 'OLO'). Whilst it may be appropriate for an ex-ante price control mechanism to be maintained for one year post WLR implementation, Sure believes that if it is kept in place for longer, e.g. up to three years (as considered in Question 9, below), it may cause more harm than good. As the WLR service will still physically be provided solely on each incumbent operator's network (meaning that there will be no differentiation in the quality of network services), OLOs will need to compete almost entirely on the pricing of retail calls. Constraining each incumbent operator's retail call charges into a second or third year may cause a delay in the growth of effective and sustainable competition.

Q4: Does the respondent agree that CICRA should set a price control for a single basket consisting of retail fixed access line services and retail fixed call services? If the respondent does not agree with this then please provide a full justification for the response. What alternative would you suggest and why?

Yes, but we would suggest that it might be beneficial to local consumers if retail broadband services were also included.

Q5: Does the respondent agree that if CICRA sets a price control for a single basket consisting of retail fixed access line services and retail fixed call services then the duration of the price control should be three (3) years? If the respondent does not agree with this then please provide a full justification for the response. What alternative would you suggest and why?

As discussed in response to Question 3 above, 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. Sure believes that a one year price control might be more appropriate, but we further consider our position within our responses to the latter questions within this document.

Q6: Does the respondent agree that any price control should be set primarily on the basis of retail price benchmarking? If not why and what alternative would you suggest?

Sure has, on numerous occasions over recent years, highlighted to CICRA the disparity between its retail fixed line charges in Guernsey and the equivalent charges applied by JT in Jersey. It is unfortunate that having now finally established for itself the scale of this disparity, CICRA is proposing to rectify the issue around the very time that WLR is due to be launched. This is somewhat ironic, given the arguments set out above, in relation to the need for OLOs (with particular relevance in Jersey) to be able to compete on price with the relevant incumbent operator. [✂]

All of this leads us to reluctantly agree with the principle that the price control should be based on retail price benchmarking.

Q7: Does the respondent agree that CICRA should apply a RPI – 0% price control for Sure (Guernsey)? If the respondent does not agree with this then please provide a full justification for the response and suggest an alternative

Sure does not agree with CICRA's proposals for an RPI – 0% control for Sure (Guernsey) for the reasons set out below. 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 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 CICRA to reduce its retail charges. We propose that the mechanism be tied solely to RPI changes above a zero rate.

As CICRA is aware, Sure believes that retail charges for fixed line services need to be better aligned with those available in the UK. It is difficult for local customers not to make broadband (in particular) pricing comparisons, as the disparity between UK and CI charges is becoming increasingly noticeable. Whilst many of these comparisons are not on a like-for-like basis, customers often do not understand or care about the likes of data caps, throttling and contention ratios. Their concern is about the headline price and their perception of better value from UK broadband providers. Unless CICRA 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.

Applying an RPI - 0% price control on Sure (Guernsey) would continue to directly constrain our ability to better align our prices to our customers' expectations. Fixed line rental and call charges need to increase, with the extra revenue being used to reduce broadband charges. To gain full benefit for the customer, CICRA would also need to actively encourage margin squeeze for broadband services, so that they can be provided at or below the underlying wholesale costs. Using the results of the benchmarking analysis undertaken by Frontier Economics, it appears that CICRA recognises that Sure's access (rental) and call charges are low and that rather than allowing Sure to increase its charges to a level similar to JT's, it has decided that JT should reduce its charges down to ours. If CICRA maintains that view it needs to be very aware of the implications for consumers across the Channel Islands. They will continue (for at least three years, unless CICRA is persuaded otherwise) to pay 'too much' for broadband and 'too little' for line rental and calls. Rebalancing can only occur with regulatory support and for as long as retail broadband continues to sit outside of each incumbent operator's price control requirements there is very little voluntary movement that can be made without the significant risk of claims of margin squeeze on retail broadband services. As stated above, we believe that CICRA needs to actively encourage broadband margin squeeze if it is to create the appropriate regulatory framework to encourage the kind of retail price rebalancing that has occurred in the UK.

Q8: Does the respondent agree that CICRA should apply a RPI – 10% price control for JT (Jersey)? If the respondent does not agree with this then please provide a full justification for the response and suggest an alternative.

For the reasons set out in our response to Question 6 (amongst others) it is difficult for us to provide a simple answer here. As a result, we would like the opportunity to discuss the matter with CICRA.

Aspects of particular concern to us are:

- [✂]
- [✂]

Q9: Does the respondent agree that this price control should apply for a period of three (3) years? If the respondent does not agree with this then please provide a full justification for the response and suggest an alternative

In general, no, but this answer needs to be understood in the context of the other points made by Sure within this document.

Q10: Does the respondent agree with the price control compliance methodology proposed by CICRA? If the respondent does not agree with this then please provide a full justification for the response and suggest an alternative

Sure welcomes CICRA's proposals in relation to the average weighting of prices during the relevant price control period, as this will disincentivise operators from timing price changes to maximise profits/minimise losses, [✂]. CICRA points out that the proposed annual assessment would require the submission of timely information by operators, but Sure would assert that it is just as important for CICRA to review these submissions in an equally timely manner. Of some concern is CICRA's plan to require an operator to submit an assessment prior to any price changes being made. Considering operators need to provide customers with an appropriate notice period for price changes and account also has to be taken of the timing of operators' monthly billing cycles, it is possible that the period between notification to CICRA and implementation of price changes could be as long as 4-5 months. This is hardly conducive to incentivising operators or creating any form of certainty beyond months 7-8 of each relevant price control period. Operators would need to second guess CICRA's stance, so as not to unnecessarily create potential carry-over, or worse, run the risk of non-compliance by over-charging customers.

In moving from the current price control structure to one such as that being proposed by CICRA, Sure is also wary of a risk of penalisation, [✂].

On both of the above topics Sure would again like to discuss these further with CICRA (as part of this consultation process).

Conclusion

It is clear from the above responses that Sure has some reservations about CICRA's price control proposals. In trying to best answer each question some opposing positions have needed to be taken, but our overarching aim is for the creation of fair and equitable price control mechanisms across the Channel Islands, which incentivise both incumbent operators and OLOs, whilst ideally also helping to begin the process of alignment with UK prices. To help achieve this Sure would like to propose a workshop so that it can share more details about how we believe this might best be achievable.

Submitted on behalf of Sure (Jersey) Limited and Sure (Guernsey) Limited

8th May 2015