



Sure's non-confidential response to CICRA's consultation on Bitstream Access

Sure (Jersey) Limited and Sure (Guernsey) Limited, collectively referred to as Sure, is submitting this response in relation to consultation document CICRA 16/45¹, issued by CICRA in October 2016. That consultation contained proposals to amend JT (Jersey) Limited's licence to require it to provide network access upon reasonable request from an Other Licenced Operator (OLO), along with consideration as to whether a similar requirement should be introduced for Sure (Guernsey) Limited at this time.

We are submitting this document as the non-confidential version of our response to CICRA, which it is welcome to share with other interested parties and publish on its website.

General comments

As we have previously discussed in relation to CICRA's wider review of potential new wholesale access services², we were initially somewhat surprised that CICRA had chosen to focus its proposals on the Jersey market, when in recent years it has generally preferred to regulate on a pan Channel Islands basis. However, after detailed consideration, we believe that CICRA has been right to look to the Jersey market first, as there is clear evidence of the appetite for fixed access competition, whereas in Guernsey³ it would appear that OLOs' customers are yet to demonstrate any material level of interest in additional fixed access services (as evidenced by the low take-up of Wholesale Line Rental 'WLR' services) to warrant the development of additional wholesale fixed access services (such as Bitstream Access) at this time. We also believe that CICRA should focus its own resources and expertise on the regulatory interventions most likely to bring the most material benefits to the telecoms market across the Channel Islands – that currently being wholesale access services in Jersey.

Below we respond to the two questions posed by CICRA within its current consultation (16/45):

1. *Do you agree with CICRA's approach i.e. that it should support commercial negotiations between parties by way of the proposed licence condition in Annex B? If not please set out what alternative would you propose and why?*

¹ www.cicra.gg/files/BSA%20Consultation%20on%20Licence%20Modification.pdf

² www.cicra.gg/files/161006%20Sure%20Response.pdf

³ Please note that references to Guernsey relate to the Bailiwick of Guernsey (encompassing the islands of Guernsey, Alderney, Sark, Brecqhou, Herm, Jethou and Lihou).

Yes, Sure fully supports CICRA's proposals in this regard, including the allowance for reasonable requests to be made and negotiated with JT in the first instance.

JT had previously asked for our views on the development of future wholesale access services, but we had chosen not to invest material resource into this process, having seen clear evidence of JT's unwillingness to engage in the development of WLR until such time as both regulatory and then legal intervention had occurred. Since that time we believe that the relationship and level of trust between Sure and JT has improved, but as two competing operators we remain conscious of the risks of us investing time and effort into a project that, without full regulatory support from CICRA, may well end in failure. We therefore welcome CICRA's proposed new licence condition text (Condition 36: Network Access), which sets out the parameters for future network access development.

2. *Do you agree that there is no requirement to introduce the same condition for the incumbent operator in Guernsey at this time? If you disagree, please set out the reasoning behind your response. If appropriate this could usefully include an evidence based submission on the potential demand for BSA in Guernsey.*

We fully agree with CICRA's proposal not to introduce the same condition into Sure Guernsey's fixed network licence at this time, primarily because there is not yet any clear evidence of the benefit of opening up the fixed network market in that jurisdiction.

One of the benefits of Bitstream Access is the ability to access a broadband service without having to rent a fixed line as the means over which the broadband service is carried. When considering the potential appropriateness and effectiveness of any future wholesale access services (including Bitstream) it is therefore important to consider both the physical access element (currently provided by a fixed line connection) and the technological element (such as broadband).

Across the Channel Islands the fixed line telecommunications markets (by which we mean wholesale lines and calls) were opened up to competition on 1st June 2015 and have, for the first time, allowed customers to choose a preferred single supplier for both their fixed line and broadband services. The appetite for change has been clearly evident in Jersey, with a pre-launch waiting list of over 1,000 WLR customers keen to switch their fixed line away from JT. As of today, a total of [X] Jersey customers have chosen to take their landline service and calls through another provider. This represents around [X]% of the addressable market⁴, so this is clear evidence that Jersey customers welcome fixed line competition and are keen to

⁴ Taking into account the subsidised PrimeTalk service provided by JT to circa [X] Jersey fixed line customers, which we have excluded from our estimate of the size of the addressable market as OLOs simply cannot compete for customers that are benefitting from such a heavily subsidised service.

benefit from it. Conversely, in Guernsey, as of today there are only [3] WLR customers, which represents less than [3] % of that addressable market⁵.

Considering that the main purpose of Bitstream Access is to provide broadband services to customers, it is also pertinent to consider the effectiveness of the opening up of the broadband market across the Channel Islands. Applying known current OLO volumes to the total broadband market volumes most recently reported by CICRA⁶, this reveals that around 33% of customers have moved their broadband service away from JT in Jersey, whereas only 17% have chosen to switch provider from Sure in Guernsey.

In addition, CICRA's own survey results⁷ provide a useful insight into customers' considerations as to whether they intend to switch provider in the future. In Jersey 40% of survey participants indicated that they were likely or very likely to move their broadband service away from JT, whereas in Guernsey only 26% of respondents indicated a similar likelihood to switch their broadband service away from Sure.

There may be a variety of reasons why Guernsey customers have felt significantly less inclined to want to benefit from local fixed line competition, but considering that the market itself is materially smaller in Guernsey than in Jersey, if CICRA were to deem that Bitstream Access were to become a requirement in Guernsey at the same time as in Jersey, Sure would question the extent of the additional benefits that could result from the resource intensive programme that would be required. We would find it extremely difficult to justify to our parent company (Batelco) such an investment of resource, expertise and system costs that would be required to develop further wholesale access services at this time.

To be very clear, Sure supports the introduction of new wholesale access services (including Bitstream Access) across the Channel Islands, but as JT itself has said, in response to CICRA's February 2016 wholesale access consultation, 'it is important that demand is assessed before deciding which products to develop and that the benefits of developing the products outweigh the cost'. JT went on to say that 'it is important that the cost of producing products, which may only have a very limited take-up, needs to be considered in the cost benefit analysis and if the incumbent operators are directed to provide these products, they must be able to make a sufficient return on their investment'.⁸

Sure invested hundreds of hours into the development of WLR in Guernsey, to the unfortunate extent that a full 18 months post launch we have invested more hours than there

⁵ Taking into account the subsidised Telephone Assistance Scheme (TAS) provided by Sure to [3] Guernsey fixed line customers.

⁶ www.cicra.gg/files/CICRA%20Telecommunications%20Statistics%20And%20Market%20Report%202015.pdf

⁷ Page 8 of www.cicra.gg/files/310715%20Broadband%20Report%20-%20FINAL.pdf. 2015 is the latest available, as it appears that CICRA excluded this analysis from its 2016 survey.

⁸ Page 3 of JT's Response to Telecoms Wholesale Access Services Consultation, 31st March 2016, available at www.cicra.gg/files/161006%20JT%20Response.pdf

are currently WLR customers! This is even after JT's recent extensive marketing campaign, including an island-wide 'leaflet drop'. [§<]

Sure does not shy away from competition and very much understands the benefits that it can bring, but the effectiveness of that competition must at least be measured in how many customers actually take up a competitive service when it becomes available.

In relation to WLR, excluding the initial phases of the pan-CI development processes, we believe that the incumbent operator in each island (JT in Jersey and Sure in Guernsey) generally worked well together, but even so, the commercial negotiations were slowed by each operator's desire to take account of its own commercial interests. This was to be expected and as a result we welcomed CICRA's support in facilitating inter-operator negotiations along the way. However, because both incumbent operators needed to be fully involved throughout the entire period of development it became evident that collectively months of time were lost (particularly leading up to the signing of the commercial WLR frameworks – this not being achieved until some 12 months post launch).

Taking the above into account, as well as considering the existing significantly greater competitive fixed line market size in Jersey (for WLR and broadband), we believe that the benefits of future wholesale access services could be realised more quickly if Jersey operators and CICRA were to focus on that jurisdiction for the time being. Sure would intend to participate in that process in the knowledge that, at the appropriate point in the future, it would provide an equivalent service to its own wholesale customers in Guernsey. Suffice to say, we believe that it would be entirely premature to require Sure to undertake that process in Guernsey until such time as an OLO is able to provide evidence of the potential customer demand for such a service.

Submitted on behalf of Sure (Jersey) Limited and Sure (Guernsey) Limited
7th December 2016