



Licence Modification for Sure (Guernsey) Limited, Network Access

Final Decision

Channel Islands Competition & Regulatory Authorities

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1. Introduction

- 1.1 This paper constitutes the Final Decision (**FD**) of the Guernsey Competition and Regulatory Authority's (**GCRA**) decision on the licence modification required for Sure (Guernsey) Limited (**Sure**) to introduce Network Access on its telecommunications network in Guernsey.
- 1.2 It follows the GCRA's Draft Decision (**DD**) and Jersey Competition Regulatory Authority's (JCRA) Initial Notice (**IN**) of March 2017 (documents CICRA 17/01 and 17/02, respectively) setting out the proposed new licence condition.
- 1.3 The paper discusses key aspects of the responses and sets out the GCRA's decision to proceed with the introduction of a new licence condition requiring that the licensee shall negotiate with Other Licensed Operators (**OLO**) with a view to concluding an agreement for Network Access, and shall provide Network Access on reasonable request.

Background

- 1.4 CICRA¹ consulted in early 2016 seeking views on the potential benefit to consumers on the introduction of further fixed line access services (Carrier Preselect, Fixed Number Portability and Bitstream Access) and, as a result, proposed next steps for the three services.
- 1.5 One of the services included was Bitstream Access (**BSA**). BSA is where a network provider allows access to a high speed (or internet) access service installed between the network provider and the end customers. This allows OLOs to provide high-speed broadband-type services to the end user as well as introduce features that are not dictated by the network provider's own choice of such retail products.
- 1.6 In October 2016, a second consultation sought views on the implementation of BSA; in particular, on an addition licence condition in Jersey. This would oblige JT (Jersey) Limited (**JT**) to provide access on reasonable request from an OLO. As no interest had originally been expressed for BSA in Guernsey, the provisional view had been that the new condition would only be introduced in Jersey at that point in time; however the second consultation sought views on this.
- 1.7 CICRA concluded that it should continue to encourage OLOs to enter into technical and commercial arrangements with JT for Network Access, as these arrangements should rightly be a matter for agreement between the parties involved, allowing them to set product definitions and agree cost allocations between them. In order to support this process, the JCRA sought to introduce the new condition which would allow, if necessary, conditions to be set by the JCRA which are non-discriminatory, fair and reasonable for both parties and offer the greatest benefit to all users.

¹ The Channel Islands Competition and Regulatory Authorities (**CICRA**) is the joint name for the JCRA and GCRA.

1.8 The consultation also provided support for the introduction of the licence condition in Guernsey, along with indications of demand. CICRA therefore concluded that there was no reason not to bring the licence condition in for both Islands at the same time.

1.9 The Draft Decision issued on 23 March 2017 proposed the introduction of the new licence condition in Guernsey, and a detailed response was received from Sure (Guernsey) Limited.

2. Structure of the Notice

2.1 This document is structured as follows:

Section 3	Legal and Licensing Framework
Section 4	Responses to the Draft Decision
Section 5	GCRA consideration of these responses
Section 6	Final Decision
Section 7	Next Steps
Annex A	Licence Modification for Sure (Guernsey) Limited
Annex B	Statutory Notice

3. Legislation and Licensing

3.1 The Telecommunications (Bailiwick of Guernsey) Law 2001 (the **Guernsey Law**) prohibits a person from operating a telecommunications system in Guernsey unless that person has a telecommunications licence. The body authorised to grant telecommunications licences in Guernsey is the GCRA. Such conditions may be included in a telecommunications licence as the GCRA considers necessary and desirable.

3.2 The GCRA has granted the incumbent operator in Guernsey, Sure (Guernsey) Limited, a telecommunications licence with specific conditions applicable to licensees deemed to hold a position of significant market power in certain markets. Article 8 of the Guernsey Law provides that the GCRA may modify any condition contained in a licence. The power to modify a licence includes the power to insert a new condition, as well as amending or deleting an existing condition.

3.3 Before making modification to a licence, the Guernsey Law requires the GCRA to give publish a notice, and that if any representations or objections are made within the specified period, the GCRA shall consider them and make a Final Decision (**FD**).

4. Consultation Responses

4.1 One response was received from Sure (Guernsey) Limited, along similar lines to their response to the Initial Notice issued in Jersey (CICRA 17/02).

4.2 In summary, the response objects to the introduction of the licence condition into Sure's licence questioned:

- (i) Whether the licence condition should be brought in for all licensees, however only activated on a finding of SMP
- (ii) Whether the term 'Network Access' should be a defined term with specified scope, rather than wide and non-specific as presently drafted.
- (iii) Whether 'reasonable request' should also be defined

4.3 This response differs from Sure's submission to the 2016 Consultation which supported the introduction of the condition in Jersey.

5. GCRA Consideration and Response

5.1 Article 8 (2)(i) of the Guernsey Law requires that the GCRA shall consider any written representations or objections received from any interested party.

5.2 The GCRA's consideration and response are provided below.

Justification for the Proposed Licence Condition

5.3 Sure Comment

It is unclear at present whether any party holds SMP in any of the relevant retail or wholesale broadband markets and thus whether CICRA should be considering the imposition of any SMP remedies, including the remedy under consideration here, at all. CICRA should complete its market reviews in Guernsey and Jersey before proceeding with new remedies in the broadband markets.

To provide the necessary regulatory focus we would suggest CICRA considers a specific licence condition, which would exist in all licences, but would only be enacted in relation to those operators that are designated as holding SMP. It may also benefit CICRA to give some thought as to how it would intend to define that market – whether bitstream (or Naked Bitstream) is considered a market on its own or whether, more likely, it is treated as a potential remedy in a broadband market (when any SMP designation has been imposed). Of course CICRA is already considering the SMP status of the CI broadband market (re CICRA 16/40), so it appears to be well

timed for CICRA to be considering in parallel what potential remedies may be appropriate, should any SMP be established.

5.4 GCRA Response

As drafted, the Draft Decision proposal was for the licence condition to be brought in for Sure in Guernsey (and JT only in Jersey) rather than introduced for all licensees in Guernsey (the relevant condition to be included in that part of the licence specific to an SMP designation). On Sure's proposal, whilst in some circumstances there can be merit in consistency across licences the GCRA does not consider there is any substantive reason for doing so at this time since Sure in Guernsey is realistically the only party likely to be approached for such access. Consideration may be given in future (as part of a review of telecoms licences generally) to where this condition might alternatively sit within the licence and whether it should be more generally applied. However this is not considered a reason to delay its introduction in Guernsey at this time.

Scope of the Proposed Licence Condition

5.5 Sure Comment

The Licence Condition proposed is extremely wide and non-specific, and the term 'Network Access' should be a defined term, with specified scope.

CICRA has been working since around 2010 to encourage the opening up of the CI fixed line markets across the islands. WLR is testament to the benefits of that process. There appeared to be agreement (between the individual operators and CICRA) that bitstream services would be defined as 'Naked Bitstream', being a consolidation of Naked DSL and bitstream functionality, and yet more recently CICRA has referred only to bitstream. In our response to CICRA 16/03 (Wholesale Access Services) we discussed our confusion and, to be honest, we're still not entirely sure what the proposed definition is. Regardless, we believe that our Jersey customers are keen to access a broadband only (rather than with a fixed line) service and consider that we can prove that there is reasonable demand for JT to develop this service for OLOs. In Guernsey, we are happy to develop the service, if we receive a reasonable request – that is, a request that is backed up with evidence of reasonable demand for the service.

5.6 GCRA Response

The licence condition as drafted is deliberately wide and non-specific. The 2016 Consultations provided evidence of existing demand from Operators for Bitstream Access, and encouraging indications that discussions have already been taking place between operators with a view to providing wholesale services. Continued technical and commercial discussions between parties is being supported on the basis of the potential benefit to consumers in Guernsey, and direct arrangements between the parties will better allow the setting of product definitions and agreed cost allocation without the need for regulatory intervention.

5.7 In order to support this process and provide a recognisable framework for potential new entrants, the proposal to introduce a new licence condition providing for non-discriminatory, fair and reasonable conditions for all parties and offer the greatest benefit for consumers. It is not clear why there is any need for the regulatory to define the products to be developed in this

area in any detail, rather to leave the operators to develop products for consumers. The GCRA would also have some concern if there is an expectation that those offering such access would have an unfettered entitlement to disclosure of business information from applicants given they are also retail competitors. The GCRA is likely to intervene swiftly should the conditions imposed by Network Access providers go further than absolutely necessary in terms of information disclosure from applicants.

Definition of Reasonable Request

5.8 Sure Comment

Sure believes that it may be appropriate to recognise an incumbent operator's risk (in terms of the significant development time and resources) for any future wholesale access services. This risk could be appropriately offset by the likes of an upfront development fee, which could be associated with a minimum order commitment. The details of such an arrangement, which should suitably balance the risks of all parties, could be considered once the licensing aspects have been determined. At the same time, it would be useful for CICRA to consider whether it would like to provide any guidance as to what might form a 'reasonable request' (to reduce the risk of ambiguity in this regard).

5.9 GCRA Response

In line with the comments above, this aspect of the condition is deliberately wide, with the definition of 'reasonable request' being entirely dependent on the particular circumstances, the access request made, and response given by the incumbent operator. The GCRA would wish to maintain suitable discretion to support such requests on their merit with the onus on those providing access to engage positively.

6. Final Decision

6.1 In line with Article 8(2)(ii) of the Guernsey Law the GCRA intends to exercise the regulatory function by taking the action proposed in the Draft Decision (CICRA 17/01), namely to introduce the condition into Sure (Guernsey) Limited's Fixed Licence in Guernsey.

Annex A: Licence Condition

- (1) The Licensee shall, to the extent requested by another OLO, negotiate with that OLO with a view to concluding an agreement (or an amendment to an existing agreement) for Network Access.
- (2) Where an OLO reasonably requests in writing Network Access, the Licensee shall provide that Network Access. The Licensee shall also provide such Network Access as the GCRA may from time to time direct.
- (3) The provision of Network Access shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the GCRA may from time to time direct.
- (4) Where the Licensee acquires information from another OLO before, during or after the process of negotiating Network Access and where such information is acquired in confidence, in connection with and solely for the purpose of such negotiations or arrangements, the Licensee shall use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such information shall not be passed on to any other party for whom such information could provide a competitive advantage. This does not apply to the passing of information to the GCRA where the GCRA requires that information in order to carry out its functions.
- (5) The Licensee shall comply with any direction the GCRA may make from time to time under this Condition.

STATUTORY NOTICE

SURE (GUERNSEY) LIMITED
Licence Modification

The GCRA is giving notice that it has modified the fixed licence of Sure (Guernsey) Limited in accordance with Section 8 of the Telecommunications (Bailiwick of Guernsey) Law 2001. The licence modification becomes effective on 13 July 2017.

The modification requires the licensee to negotiate with Other Licensed Operators with a view to concluding an agreement (or an amendment to an agreement) for network access. The licensee shall also provide such access as the GCRA may from time to time direct. The provision of network access shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges.

A copy of the Licence is available for review on the GCRA website (www.cicra.gg) or at the GCRA offices, Suite 4, 1st Floor, La Plaiderie Chambers, La Plaiderie, St Peter Port, GY1 1WG.

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