BUSINESS CONNECTIVITY MARKET REVIEW – PROPOSED DECISION – T1480GJ

SURE (GUERNSEY) LIMITED RESPONSE

INTRODUCTION AND EXECUTIVE SUMMARY

1. Sure (Guernsey) Limited ("Sure") is pleased to respond to the Guernsey Competition and Regulatory Authority's ("the Authority") proposed decision regarding the market definition and competitive assessment of the Guernsey business connectivity market (known as the Business Connectivity Market Review or "BCMR"). We are grateful for the opportunity to comment on the Authority's revised proposals.

2. We welcome the Authority's decision to reassess the Guernsey business connectivity markets and propose a revised market definition and market power assessment. We had significant concerns about the Authority's March 2021[1] proposals, both in terms of its following of regulatory best practice and the extent to which these reflected dynamics in the business connectivity market in Guernsey.

3. However, we have been pleased with the Authority's positive engagement and are keen for this productive dialogue to continue. We recognise that, given the amount of time that has elapsed since the start of this process (October 2019), the Authority may have felt under a certain amount of pressure to hastily conclude its market review on the basis of its March 2021 market definition and competitive assessment. This in our view would have been a significant error, with unintended consequences for competition and customers. We therefore commend the Authority for taking time to carefully reassess the market, which has culminated in what we consider to be a comprehensive and coherent market assessment.

4. We note that the Authority has not asked respondents to answer any specific questions regarding its market analysis. Rather, it has simply requested that interested parties make representations

[1] GCRA 21/5 – Business Connectivity Market Review – T1480GJ – Annex 1 – Product and Market Definition

or objections[2]. As a result, we will not be commenting on every aspect of the Authority's analysis. We have instead focussed this response on the areas in which we believe further clarification is needed or where we believe the data available to us indicates a conclusion that differs from the Authority's[3].

5. We are broadly supportive of the Authority's approach to assessing the market and agree with many of its proposals and/or analysis. For example, we fully support the Authority's decision to more clearly apply the European Union approach to defining markets and assessing competition, and we agree with its conclusion that there exists a single retail leased line market (both product and geographic) that does not pass the Three Criteria Test. We also agree with the Authority's conclusion that future demand for leased line circuits is likely to decrease (driven by leased line consolidation and fibre broadband cannibalisation), while corresponding demand for bandwidth is likely to increase exponentially (primarily driven by the rollout of 5G and increased uptake of cloud services).

6. Notwithstanding our broad support, there are several areas of the Authority's product and geographic market analysis that would benefit from further explanation or evidence in order to allow stakeholders to make informed comments. This is, in part, because we are unable to reconcile some of the Authority's conclusion with the market data available to us or to the European framework it has adopted. We would be grateful if the Authority could engage with us (and any other stakeholders that share similar concerns) to plug any proverbial holes in our understanding. Specifically:
   I. Based on the evidence available to us and the arguments presented by the Authority, we cannot currently agree that dark fibre ("DF") and duct and pole access ("DPA") should be included in the relevant product market. Our assessment of demand- and supply-side constraints suggest that neither DF nor DPA should be included. If the Authority has undertaken any analysis of substitutability between active leased lines and DF or DPA in Guernsey, we would be grateful if it could share that with us and provide an opportunity to comment.
   II. We ask that the Authority provides respondents with more clarity and information regarding its SSNIP analysis and conclusion that all wholesale leased line bandwidths sit

[2] GCRA – Business Connectivity Market Review – T1480GJ – Proposed Decision: market definition & Competitive assessment – 12 April 2022 – para. 13.1

[3] Please note that the fact that Sure has not made comments on or representations regarding a point made by the Authority should not be interpreted as Sure's agreement to those points.

within a single market, due to a chain of substitution. It currently redacts nearly all of its assessment. Furthermore, we increasingly believe that a bandwidth break between 100Mbps and 1Gbps might exist in the wholesale leased line market but need the Authority's guidance on whether this could be the case. We ask that the Authority provide us with further explanation of how it believes demand- and supply-side factors place 100Mbps and 1Gbps leased lines in the same economic market.

III. We are unable to agree with the Authority's approach to defining geographic markets at either the retail or wholesale level, nor with its conclusions. The Authority's proposed 'top-down' approach appears to overlook regulatory barriers to geographic pricing and does not consider the extent to which rival operators compete through managed services to offer cheaper and differentiated solutions. In our view, a bottom-up approach, such as using a 'network reach analysis' similar to that adopted in the UK or Ireland, would be better placed to investigate the possibility of sub-national geographic markets. This should be done at the market definition stage, not the remedies stage, so as to take account of any geographic areas that have become effectively competitive.

7. We explain our concerns and queries in more detail below, along with a summary of our analysis. We conclude that, absent further explanation or evidence, the Authority should:

   I. Remove DF and DPA from its wholesale product market definition;

   II. Introduce a bandwidth split in the wholesale product market between leased lines <=100Mbps and those >100Mbps;

   III. Undertake a new wholesale geographic market assessment based on network reach analysis; and

   IV. Where it identifies sub-national wholesale geographic markets (which, for the avoidance of doubt, we believe exist), the Authority should reapply the Three Criteria Test to these smaller putative markets and reassess the extent to which Sure holds significant market power in each of them. Should a putative market fail the Three Criteria Test, then in line with regulatory best practice it ought to be deregulated. Should competition exist but not at a sufficient level to be considered 'effective competition', then the Authority should apply differentiated (lighter touch) remedies in those areas.

8. Finally, we note the very short timeframe for response provided by the Authority. Once Easter, May Day and Liberation Day bank holidays were accounted for, respondents had just four weeks to respond to the Authority's proposed decision (fewer once employee absences due to Easter holidays were factored in). Operators were given just 24 hours' notice of the publication of the proposed decision – a document with almost 100 pages of analysis and which represented a

significant departure from its previous position – and were therefore unable to suitably adjust commercial and regulatory roadmaps. Despite repeated requests, the Authority has not provided Sure with an extension to its 16 May 2022 deadline, nor did it provide an explanation for why extensions could not be facilitated. We are disappointed that our extension requests were denied and regret that only 24 hours' notice of publication was given. These factors have negatively impacted the extent and depth of our analysis of the Authority's proposals.

WHOLESALE PRODUCT MARKET DEFINITION

Dark fibre and Duct and Pole Access

9. The Authority has proposed to include both DF and DPA in its putative wholesale product market. The Authority's rationale for doing so is that it considers both DF and DPA *would* be an effective demand- or supply-side substitute for wholesale active leased lines on the basis that regulators in the UK (Ofcom) and Jersey (JCRA) have included one or both in their respective wholesale leased line product market definitions[4]. No further analysis of demand- or supply-side substitutability is presented in the Authority's proposed decision.

10. We have several queries and concerns about this conclusion. Absent analysis or evidence demonstrating demand- or supply-side substitutability between active leased lines and DF or DPA in Guernsey, we urge the Authority to remove both DF and DPA from its product market definition.

DPA in other jurisdictions

11. We believe that the Authority may have somewhat misunderstood the way in which DPA is considered by national regulatory authorities ("NRAs") in other jurisdictions. The Authority seems to suggest that Ofcom found DPA to be an effective substitute for wholesale active leased lines. We have reviewed both Ofcom's 2018 Business Connectivity Market Review ("BCMR")[5] and 2021 Wholesale Fixed Telecommunications Market Review ("WFTMR")[6] and we do not agree that this is the correct interpretation. Rather than considering it to be a demand- or supply-side substitute for active leased lines, Ofcom considers DPA to be a remedy that sits *upstream* of the wholesale business connectivity market[7]. This is evidenced by the fact that Ofcom does not mention DPA in its wholesale leased line product market definition in either its 2018 or 2021 market review. In both Final Statements, Ofcom concludes that the wholesale leased line product market includes active leased line access products of all bandwidths and dark fibre access, but excludes asymmetric broadband, Ethernet First Mile ("EFM") and microwave links[8]. In neither market review did it conduct any analysis to test substitutability between leased lines and DPA.

---

[4] GCRA – Business Connectivity Market Review – T1480GJ – Proposed Decision: market definition & Competitive assessment – 12 April 2022 – para. 10.46 and 10.50.

[5] Statement: Promoting competition and investment in fibre networks – review of the physical infrastructure and business connectivity markets - Ofcom

[6] Statement: Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26 - Ofcom

[7] Access to duct and pole networks (both telecoms and non-telecoms), and the extent to which there is competition for provision of duct or pole access, is considered by Ofcom in the Physical Infrastructure Access market, rather than the Business Connectivity market.

[8] Ofcom – Wholesale Fixed Telecommunications Market Review 2021 – 2026 – 18 March 2021 – para. 6.121

12. Furthermore, we have reviewed leased line market assessments from across the EU 27 countries and found that no EU NRA had included DPA in a Market 4 (wholesale leased lines) assessment[9]. We therefore do not agree that there is regulatory precedent for DPA being considered a constraining substitute for wholesale active leased lines.

DF and DPA as a demand- or supply-side substitute

13. Notwithstanding there being no regulatory precedent for DPA being a demand- or supply-side substitute for wholesale active leased lines, it would also be wholly inappropriate to assume that DF (or indeed DPA) could be included in the Guernsey wholesale leased line market simply because NRAs in other jurisdictions have opted to do so; inappropriate for two reasons:
    I. Whilst the UK and Jersey may have included DF in their respective wholesale leased line product markets, it is equally true that NRAs in other jurisdictions have not included DF in their relevant leased line product markets (e.g., the Isle of Man); and
    II. Simply pointing to what other jurisdictions have concluded is not probative of DF and/or DPA providing a competitive constraint to wholesale active leased lines in Guernsey and is therefore not evidence that these 'products' sit in the same market.

14. The European framework[10] followed by the Authority, along with economic best practice and established case law[11], dictates that markets should be defined on the basis of demand- and supply-side substitutability and in a manner that is consistent with the principles of the Hypothetical Monopolist Test[12]. Specifically, the European Commission states, inter alia, that:

    "[…] the NRA may add additional products or areas depending on whether competition from these constrains the price of the main product or service in question" and that *"[…] the relevant product market comprises all products or services that are sufficiently interchangeable or substitutable"*[13]

[9] BEREC Report on Access to physical infrastructure in the context of market analyses – BoR (19) 94 – June 2019
[10] European Commission – Guidelines on market analysis and the assessment of significant market power – 2018/C 159/01 – para 26 - 29
[11] Case C-333/94 P, Tetra Pak v Commission EU:C:1996:436, United Brands v Commission EU:C:1978:22, Deutsche Bahn v Commission EU:T:1997:155.
[12] Bishop & Walker (2010) – para 4.016. – *"it cannot be stressed enough that defining relevant markets on a basis that is not consistent with the principles of the Hypothetical Monopolist Test will, almost by definition, fail to properly take into account demand-side and supply-side substitution possibilities. In consequence, any market shares calculated from such market definitions will not provide, except purely by chance, a good proxy for market power."*
[13] European Commission – Guidelines on market analysis and the assessment of significant market power – 2018/C 159/01 – para 30 and 33

15. That is, new products should only be included in the relevant product market if they provide a genuine competitive constraint on the focal product. A given product will only provide a competitive constraint on the focal product if, following a specified price increase (a SSNIP), a sufficient number of customers would switch to the alternative product so as to make the specified price increase unprofitable. A constraint will arise where customers are readily able to switch to appropriate alternative DF or DPA products (demand-side substitutability), or where an alternative supplier with the relevant resources can quickly, easily, and affordably reposition its resources to provide a new DF or DPA-based competitive constraint (supply-side substitutability). In the context of the Guernsey wholesale leased line market, the inclusion of DF or DPA must therefore be solely based on the extent to which they provide a demand- or supply-side constraint for wholesale active leased lines in Guernsey, rather than because other jurisdictions consider it a suitable constraint.

16. It is currently unclear whether the Authority has undertaken any demand- or supply-side analysis on DF/DPA, and it has certainly not presented this analysis in its proposed decision. In fact, it does not appear to have presented any evidence to suggest that either DF or DPA are competitive constraints on wholesale active leased lines in Guernsey. If the Authority does have such evidence or analysis, we would be grateful if it could share it with stakeholders to give us an opportunity to understand and provide comment.

17. Absent evidence of substitutability, we recommend that the Authority removes both DF and DPA from its relevant product market definition.

Does DF or DPA provide a competitive constraint in Guernsey?

18. Despite no formal analysis being included in the proposed decision, we undertook our own initial assessment of whether DF and DPA could be considered competitive constraints to wholesale active leased lines. In our view, based on the evidence available, neither DF nor DPA would provide either a demand- or supply-side constraint on wholesale active leased lines in Guernsey at this time. It necessarily follows, therefore, that neither product can be included in the relevant product market definition.

19. To reach this conclusion, we conducted a high-level assessment based on Ofcom's approach to including DF in the wholesale product market of its 2018 BCMR and 2021 WFTMR (note, Ofcom uses more or less identical analysis in both market reviews). In both reviews, Ofcom considered

the price (factoring in the required capital expenditure from customers) and availability of DF as crucial factors when determining whether it represented a demand- or supply-side constraint.

Availability

20. To start with, Ofcom established that DF was actually an option that wholesale leased line customers could use to satisfy their connectivity needs. It was able to do so because in the UK there exists a number of DF providers – CityFibre, Zayo, euNetworks and Colt[14]. This is a vital first step as it ensures that customers of wholesale active leased lines can, in practice, switch to DF in response to a SSNIP. The presence of DF providers in the UK (and in Jersey with JEC) sits in stark contrast to Guernsey. As the Authority recognises, Sure does not provide DF access or DPA (nor does any other infrastructure provider for that matter), [✂][15]. The corollary is clear – if DF is not an option that wholesale leased line customers in Guernsey can, in practice, use to satisfy their connectivity needs (precisely because it does not exist), then it is not possible for it to place a competitive constraint on wholesale active leased lines. It therefore follows that DF should not be defined within the Authority's wholesale product market.

Demand-side substitutability

21. Again, notwithstanding the fact that DF is not currently an option for wholesale leased line customers (and therefore cannot be a demand- or supply-side constraint), for completeness we have also reviewed possible demand- and supply-side factors that would impact substitutability between DF and wholesale active leased lines.

22. Ofcom then concluded that DF was not a competitive constraint based on demand-side substitution alone. When assessing the annualised total cost of ownership ("TCO") for DF in the UK (which excluded the cost of installing and managing electronic equipment, and additional civil work required to connect DF networks to customer sites), Ofcom considered it highly unlikely that a sufficient number of 100Mbps and 1Gbps wholesale active leased line customers would switch to DF to render a SSNIP on those products unprofitable. It also stated that substitutability between 10Gbps and DF was ambiguous and insufficient to consider it a demand-side substitute[16].

[14] Ofcom – Wholesale Fixed Telecommunications Market Review 2021 – 2026 – 18 March 2021 – para. 6.78
[15] GCRA – Business Connectivity Market Review – T1480GJ – Proposed Decision: market definition & Competitive assessment – 12 April 2022 – para. 10
[16] Ofcom – Business Connectivity Market Review – 2018 consultation – Annexes 1-22 – para. A8.56 – A8.81

23. We believe a similar conclusion can be reached in Guernsey, in spite of the fact that no DF product exits and therefore no DF pricing data available in which to undertake a SSNIP test. We estimate that should Sure make a DF product available, whether on a commercial or regulatory basis, it is likely to be expensive, difficult to consume and maintain, and therefore not a viable demand-side alternative for wholesale active leased line customers.

24. Firstly, we estimate that the TCO of any DF product would be high, especially in the short run, due to the significant fixed costs associated with delivering DF and the uncertainty of demand for DF access ([✂]). It is important that the Authority understand that DF will not be a low-price solution in Guernsey. Unlike CityFibre in the UK, who built its fibre network in order to provide a DF product, Sure will need to re-engineer its legacy network and create new models of consumption in order to deliver a DF product[17]. In the UK, Ofcom observed that the median TCO of CityFibre's DF in 2018 was more expensive than the median TCO of both 100Mbps and 1Gbps active leased line services, even before capital expenditure on electronic equipment and excess construction charges for additional civil works were considered. If DF prices were closely aligned to 1Gbps products in the UK, there should be no assumption that DF costs (and therefore prices) are going to be lower in Guernsey than for wholesale active leased lines.

25. Additionally, the provision of DF would generate non-trivial risks and uncertainty for Sure's ongoing fibre-to-the-premises ("FTTP") project. In our view, these rather significant risks would need to be accounted for into the price of DF, resulting in an even higher DF price.

26. Sure, through its Guernsey Fibre project, is in the early stages of rolling out FTTP to [✂] of Guernsey's premises and has only recently completed its commercial pilot and launching its full commercial proposition. The project is expected to be completed by the end of 2026, with the forecast cost of the project sitting at approximately £37.5m, £12.5m of which is subsidised by funding from the States of Guernsey ([✂]). The project has been carefully planned over a number of years, and its forecast costs are based on crucial assumptions about the availability of scarce fibre and duct space in each part of the island and are extremely sensitive to changes in both the amount of civils/ducting required and the delivery schedule of the project.

[17] Please note, to accurately assess and forecast the cost (and therefore the price) of providing DF is a significant undertaking that would require many weeks or months of work. We have not been able to undertake an accurate assessment due to the noticeably short timescales provided to respond to this proposed decision.

27. Making DF (or indeed DPA) available would materially affect Sure's assumptions about how much fibre is available for use on the FTTP project and the amount of duct space available for new fibres to be laid. Should fibres and duct space, originally earmarked for FTTP, be utilised for DF access then Sure will need to undertake additional civil/ducting work (which is both expensive and time consuming) in order to deliver island-wide FTTP [✂][18]. Furthermore, additional civil engineering work would likely delay completion of the FTTP project – undertaking civil engineering works is very time consuming[19] and 3-year road closure embargoes will prevent Sure from being able to quickly address duct capacity constraints by digging and installing new duct. [✂].

28. These are significant risks and costs, all of which would need to be mitigated against via either the FTTP business case or DF product price. Given the public funding being made available for FTTP connectivity, we do not consider it appropriate to mitigate these risks by increasing the forecast cost of the FTTP project. As a result, it would need to be mitigated through a higher DF product price. This higher price, which obviously would not consider electronic equipment for the DF customer, would further diminish the extent to which DF is a suitable demand-side constraint to wholesale active leased lines.

29. It is important to note that the extent to which DF is a suitable demand-side constraint will also be impacted by any future reduction in the price of wholesale active leased lines. On numerous occasions, and most recently in response to the Authority's Price Control for Wholesale On-island Leased Lines[20], [✂], we made a number of price reductions to our 1, 2, 4, 8 and 10Gbps wholesale on-island leased line products, [✂]. These lower prices would likely further diminish demand for DF.

30. Finally, there are numerous non-price factors that are likely to further limit the extent to which DF would competitively constrain wholesale active leased lines. For example, in order to investigate any faults or degradation of service on a DF connection, Sure would need to temporarily disconnect the service to install its own electronics to perform diagnostic analyses. This will result in fault identification and repair taking longer than it would on wholesale active

[18] Please note, this is a very high-level estimate. The impact of additional civil engineering work on the FTTP project is a complex issue that would require careful and time-consuming analysis.
[19] Ofcom notes that it usually takes around nine months (178 days) for duct works to be completed, which is likely to be longer in Guernsey due to the need to reconcile new civil engineering works with ongoing FTTP build.
[20] GCRA – T1602G – Price control for wholesale on-island leased lines: Consultation Paper - 14 January 2022

leased line services (with more disruption for the customer) and could impact the SLAs that DF customers could offer their own retail customers.

31. Similarly, where additional duct work is required to facilitate a DF request, it can take a significant amount of time to complete these duct works. Ofcom suggests that such works can take 178 working days[21], a duration that will likely be longer in Guernsey given the ongoing FTTP project.

32. Taken together, we believe that the aforementioned price and non-price factors suggest that DF would not be a suitable demand-side constraint on wholesale active leased lines.

Supply-side substitutability

33. Ofcom concluded that DF was a competitive constraint on wholesale active leased lines on the basis of supply-side substitutability. That is, in response to a SSNIP, Ofcom found UK DF providers could start providing wholesale active leased line services both at premises already connected and to new premises. This conclusion was predominantly driven by the fact that UK DF providers already supplied both DF and active leased line services[22].

34. In paragraph 21, we explained that there are currently no DF providers in Guernsey. There is also no publicly stated intention of either Sure or JT providing such services. As a result, and unlike the UK, it is not possible for DF providers to exert a supply-side constraint on the price of wholesale active leased lines. However, if the Authority has undertaken any analysis of supply-side substitutability that suggests otherwise, then we would be grateful if that could be shared with stakeholders so that we can better understand and comment on those supply-side constraints.

35. Again, absent evidence to the contrary, if DF does not represent either a demand- or supply-side constraint for wholesale active leased lines, then it follows that DF should not be included in the wholesale leased line product market.

DPA

36. We believe that the same analysis and arguments can be applied to DPA. Moreover, many of the factors that make DF an unsuitable demand- or supply-side substitute are likely to be

[21] Ofcom – Business Connectivity Market Review – 2018 consultation – Annexes 1-22 – para. A8.58
[22] Ofcom – Business Connectivity Market Review – 2018 consultation – Volume 1 – para. 4.70 – 4.76

exacerbated in the provision of DPA. We therefore do not repeat this analysis for DPA but conclude that DPA would not be a sufficient demand- or supply-side substitute for wholesale active leased lines.

Possible bandwidth break in the wholesale product market

37. The Authority has provisionally concluded that all bandwidths of wholesale leased lines sit within the same relevant market due to a chain of substitutability[23]. We agree that international precedent, for example in the UK, Jersey, and Isle of Man, suggests that there could exist a chain of substitutability between different bandwidths of leased line in Guernsey. However, as demonstrated in our response regarding DF and DPA, international precedent is not necessarily probative of a chain of substitutability existing in the Guernsey wholesale leased line market. We therefore welcome the Authority's decision to conduct its own SSNIP test, based on available data, to confirm whether each bandwidth confers a competitive constraint on another.

38. We have carefully considered the Authority's provisional conclusion and have several concerns and comments about the Authority's approach. Additionally, when seeking to replicate the Authority's SSNIP test for leased line bandwidths, we observed evidence of a possible existence of a bandwidth break between 100Mbps and 1Gbps in the wholesale leased line market but need the Authority's guidance on whether this is the case.

Comments and concerns about the Authority's analysis

39. Firstly, the Authority appears to suggest that demand-side substitution only occurs when the post-SSNIP margin between the focal product and the next bandwidth is zero. Can the Authority please explain what it means by *'this suggests that a 10 per cent SSNIP by a hypothetical monopolist of any speed of leased lines, apart from 8 Gbps, may be profitable as the price differential is above the SSNIP'*[24]? If the Authority is stating that demand-side substitutability only occurs when the price of the focal product (or bandwidth) is equal to the price of the next higher bandwidth, then we do not agree with this assertion. Both retail and wholesale leased line customers value bandwidth and will therefore be willing to pay more for additional bandwidth,

[23] GCRA – Business Connectivity Market Review – T1480GJ – Proposed Decision: market definition & Competitive assessment – 12 April 2022 – para. 10.8
[24] GCRA – Business Connectivity Market Review – T1480GJ – Proposed Decision: market definition & Competitive assessment – 12 April 2022 – para. 9.23

even if their decision to increase bandwidth is driven by an increase in the price of the product currently purchased (i.e., due to a SSNIP). Rather, the post-SSNIP margin between the focal product and neighbouring bandwidths only needs to be small enough to induce sufficient switching to make the SSNIP unprofitable. This will depend on the nature of customer demand for wholesale on-island leased lines and ought to be assessed by surveying wholesale customers.

40. Secondly, the Authority has redacted almost all of its reasoning for concluding that a chain of substitutability exits in both the retail and wholesale product markets. In paragraph 9.28 of its proposed decision, the Authority states that *'there are several factors that further suggest that the chain of substation can be reliably used to inform the boundaries of the product market'*. However, the Authority then proceeds to redact the following four paragraphs of reasoning (along with two corresponding footnotes). The result is that respondents are unable to understand the Authority's reasoning for concluding that a chain of substitution exits, or whether that is primarily driven by demand-side or supply-side factors.

41. Whilst we recognise that the Authority may be using commercially sensitive information to inform its decision-making, redacting all of its reasoning (not simply the confidential aspects) means that we are unable to understand or comment on that reasoning. We ask the Authority to provide all respondents with more detail about the factors it takes into consideration when concluding a chain of substation exists.

Bandwidth break

42. We increasingly believe that a bandwidth break between 100Mbps and 1Gbps might exist in the wholesale leased line market but need the Authority's guidance as to whether this might be the case.

43. Given much of the Authority's analysis was redacted in its proposed decision, we sought to replicate this analysis, to the extent possible in order to better understand it. In replicating the Authority's application of Hypothetical Monopolist Test for different bandwidths of active leased lines, we tentatively concluded that switching between 100Mbps and 1Gbps leased lines would

unlikely be sufficient to make a 10% SSNIP on 100Mbps unprofitable. This was on the basis of demand-side substitution alone[25].

44. It is important to note that we excluded Sure's 500Mbps wholesale leased line product from our SSNIP analysis. This is for two reasons:
    I. following our price reduction of 1Gbps wholesale leased lines in February, the annualised TCO of 500Mbps wholesale leased lines currently sits higher than the annualised TCO of a 1Gbps wholesale leased line; and
    II. the volume of 500Mbps wholesale leased lines sold remains very low, despite the product being introduced following a request from Airtel.

Demand-side substitution

45. Firstly, we noted that the Authority's published SSNIP analysis focused on switching between 500Mbps and 1Gbps wholesale leased lines, and between 1Gbps and 2Gbps wholesale leased lines. As acknowledged by the Authority, all of these products are priced high compared when compared to international benchmarks, indicating that the profit margins are higher[26] and therefore the critical loss (that is, the maximum loss of sales that can sustain a profitable SSNIP) of each product was likely to be low. The small number of switching customers needed to make a SSNIP unprofitable allowed the Authority to conclude with a higher degree of certainty that a SSNIP would be unprofitable.

46. However, similar analysis does not appear to have been undertaken for lower bandwidth wholesale leased lines, such as 10Mbps and 100Mbps. In our view, assessing switching between lower bandwidth and higher bandwidth wholesale leased lines is important due to the keener pricing of Sure's 2Mbps, 10Mbps and 100Mbps wholesale leased lines (See Figure 1 and 2). The keen pricing of these lower bandwidth wholesale leased lines implies lower margins, and thus indicates that these products have a higher critical loss than higher bandwidth wholesale leased lines. Furthermore, the [✂] majority [✂] of on-island wholesale leased lines sold by Sure in Guernsey continue to be lower bandwidth leased lines. Taken together, lower bandwidth

[25] We note this somewhat aligns with Ofcom's conclusions in both its 2018 BCMR and 2021 WFTMR that evidence of demand-side substitution between different bandwidths was ambiguous.

[26] Note, that margins could be higher but not necessarily high. As set out in our response to the Authority's January 2022 Price control for wholesale on-island leased lines consultation, factors such as non-recurring charges, economies of scale and scope, and the price of (more popular) lower bandwidth services must also be taken into account when benchmarking Sure's wholesale leased line pricing with other jurisdictions.

wholesale leased lines require a much greater number of customers to switch in response to a SSNIP in order for a SSNIP to be unprofitable.

Figure 1: Annualised[27] TCO of Sure's (Guernsey) and JT's (Jersey) lower bandwidth wholesale leased lines (new customers)

[✂]

[27] Sure (Guernsey) and JT (Jersey) only make wholesale active leased lines available on a 1-year contract. We have therefore included non-recurring connection charges in the annualised TCO rather than calculating the connection charge annuity over X number of years.

Figure 2: Annualised TCO of Sure's (Guernsey) and JT's (Jersey) lower bandwidth wholesale leased lines (existing customers)

[✂]

47. Next, we looked at the price differential between Sure's 100Mbps and 1Gbps wholesale leased line. However, given it was established almost 10 years ago, we recognise that Sure's pricing curve for wholesale on-island leased lines needs to be reviewed and restructured. For completeness, we therefore also looked at the price differential between Sure's 100Mbps and JT's 1Gbps wholesale leased line price in Jersey (see Figure 3 and Figure 4)[28].

48. In both instances, we concluded that it was unlikely that, following a 10% SSNIP, a 100Mbps wholesale leased line customer would find it economic to switch to a 1Gbps wholesale leased line. Based on the Sure 1Gbps wholesale leased line price, customers face a [✂] price increase pre-SSNIP and a [✂] increase post-SSNIP. Similarly, based on the JT (Jersey) 1Gbps wholesale leased line price, 100Mbps new customers faced a [✂] pre-SSNIP price increase and a [✂] post-SSNIP price increase ([✂]). This suggests that a 1Gbps wholesale leased line may not attract a sufficient number of 100Mbps customers so as to make a 10% SSNIP on 100Mbps wholesale leased lines unprofitable.

[28] For the avoidance of doubt, we do not consider JT's Jersey wholesale leased line prices to be an appropriate benchmark for Guernsey wholesale leased line pricing. For more information, please see Sure's response to the Price control for wholesale on-island leased lines consultation.

Figure 3: Annualised TCO of Sure's 100Mbps wholesale leased line (post SSNIP) compared against the annualised TCO of Sure's (Guernsey) 1Gbps wholesale leased line

[✂]

Figure 4: Annualised TCO of Sure's 100Mbps wholesale leased line (post SSNIP) compared against the annualised TCO of JT's (Jersey) 1Gbps wholesale leased line

[✂]

49. Finally, we considered the impact that Sure's February 2022 wholesale leased line price reductions had on switching between 100Mbps and 1Gbps bandwidths. On 11 February 2022, Sure made a series of price reductions to its wholesale high speed leased line rental charges[29]. This included a 13% reduction in the annualised TCO of 1Gbps wholesale leased lines. Taking this as similar to 100Mbps customers incurring a 10% SSNIP and recognising that the pre-February 2022 1Gbps rental price was even higher than that analysed in Figure 3, we assessed how many wholesale leased line customers had switched in response to the 13% price reduction. We concluded that in the quarter since Sure's price change notification, [✂] had sought to switch [✂] 100 Mbps to 1Gbps (including expressions of interest). This indicates that, over a two-year period, approximately [✂] circuits would be estimated to migrate from 100Mbps to 1Gbps circuits ([✂]). Whilst this analysis is no probative, it certainly suggests that switching between 100Mbps and 1Gbps is limited, even following a price reduction in 1Gbps services.

<u>Supply-side substitution</u>

50. Whilst a lack of demand-side substitutability can suggest that two products (or indeed bandwidths of products) sit in separate product markets, this will not be the case if there exists a supply-side constraint. As set out above, regulatory best practice and European case law dictate that the profitability of a SSNIP should be assessed having regard to the constraint provided by demand-side and supply-side factors. However, we have not observed any analysis of supply-side factors in the Authority's proposed decision.

[29] Sure letter to Michael Byrne – Notification – Changes to Sure's Wholesale On-Island High Speed Leased Line Pricing – 11 February 2022

51. A supply-side constraint will arise where other providers respond to an increase in the relative price of the focal product (a SSNIP) by switching production facilities and producing a product or service that is capable of undermining the SSNIP. It is generally accepted that a supply-side constraint would need to materialise quickly, easily, and not require significant investment[30]. In the context of wholesale lines, this means that another telecommunications provider supplying other bandwidths, or indeed other premises, would respond to an increase in the price of the focal product bandwidth. It would do this by:

    I. Adjusting electronic equipment installed at the end of the leased line to provide the focal product bandwidth (where the provider serves the premises in question); or
    II. By extending its network to provide the focal product bandwidth to the customer (where the provider does not have an existing connection).

52. We recognise that where a provider has an existing connection to the customer site it can be used to provide the full range of leased line services, and that changing the electronic equipment (or just settings on the electronic equipment) is relatively straightforward. However, for this constraint to be effective, it requires rival telecommunications providers to be connected to all of the premises in which Sure provides the focal product bandwidth. In Guernsey, this is not necessarily the case as Sure has a ubiquitous network and JT (the only other wholesale leased line provider) has a more focussed network, delivering specific point-to-point solutions to its customers.

53. A supply-side constraint in the wholesale leased lines market will therefore come from JT (or another new network provider) extending its network to provide the focal product bandwidth to affected customers. In paragraph 47, we explained that Sure's pricing of 2Mbps, 10Mbps, and 100Mbps wholesale leased lines was considerably keener than higher bandwidth leased lines. This suggests that margins are likely lower when compared against higher bandwidth services. Moreover, in our response to the Authority's 2020 BCMR Information Request[31], dated 3 September 2020, we presented evidence of JT's willingness to build considerable distances (some [✂]m for one and approximately [✂]m for another) to add new customers with high bandwidth demands (=>1Gbps). This, coupled with the prospect of higher margins, suggests that JT is willing to extend its network to supply leased lines where the incumbent prices and margins are higher. However, we have not observed any evidence that suggests JT is willing to extend its network to supply lower bandwidth leased lines.

[30] European Commission – Guidelines on market analysis and the assessment of significant market power – 2018/C 159/01 – para 41
[31] 2020_10_02_Sure responses to GCRA questions RE BCMR – page 12

54. Were it the case that JT was willing to extend its network where the focal product bandwidth is greater than 100Mbps, but not 100Mbps and below, this would suggest that the supply-side conditions differ for wholesale leased lines of greater than 100Mbps than they do for wholesale leased lines of 100Mbps and below. That is, the supply-side constraint for 1Gbps wholesale leased lines is higher than it is for 100Mbps and below. Anecdotally, this could be the reason that the Authority initially concluded that a bandwidth break existed between 100Mbps and 1Gbps in its March 2021 consultation and why it considered JT to be dominant in the provision of retail leased lines of 1Gbps and higher (most of which, we estimate, are delivered through self-supply)[32].

55. Unfortunately, we are unable to determine whether supply-side conditions (i.e., JT's willingness to build out its network based on bandwidth) would be sufficient to make the SSNIP unprofitable at any bandwidth. This is because we are unable to fully assess JT's willingness to build.

56. However, we note that this analysis is something that the Authority can readily undertake. We ask that the Authority provides us with further explanation of how it believes supply-side conditions place 100Mbps and 1Gbps leased lines in the same economic market. Should the Authority concur that demand- and supply-side constraints would not prevent the profitable SSNIP on 100Mbps leased lines and below, then we ask that the Authority reassesses the competitiveness of the wholesale market based on there being two wholesale product markets – 100Mbps and below ("<=100Mbps"), and greater than 100Mbps (">100Mbps").

[32] GCRA 21/5 – Business Connectivity Market Review – T1480GJ – Annex 1 – Product and Market Definition

WHOLESALE GEOGRAPHIC MARKET DEFINITION

Sub-national markets and increased competition

57. In its proposed decision, the Authority has provisionally concluded that there is a single, national geographic market for wholesale leased lines. Its rationale for this conclusion appears to be that there are no geographic areas in Guernsey where competition is more intense and that this is borne out by the fact that there is uniform pricing and limited leased line product differentiation[33]. This has also led the Authority to conclude that the presence of rival infrastructure (i.e., JT) did not have an impact on wholesale leased line competition.

58. The Authority appears to have adopted a 'top-down' approach to geographic market definition, whereby it has evaluated the provision of retail and wholesale leased lines across the whole of Guernsey seeking certain outcomes associated with competition. Where it has not been able to find these outcomes (differentiated leased line pricing and product differentiation), it assumes that competition cannot be afoot, and therefore concludes there is no need to look more closely. We do not agree that this approach is sufficiently robust – its assumptions fail to account for regulatory barriers that prevent geographic price competition, overlook competition in the enterprise business market (in which retail leased lines form a part) and materially underestimates the competitive constraint provided by JT in certain geographic areas.

59. The Authority's approach also overlooks regulatory best practice for assessing the level of competition in fixed wholesale markets. NRAs in many countries, including Ofcom (UK) and ComReg (Ireland), perform a 'network reach analysis'. This means considering the presence of competing networks, and then extending the footprint of those networks by a distance that competitive providers have proven willing to extend their existing networks to reach new customers sites (which is sometimes known as the 'buffer distance'). We believe that this remains the optimum approach for identifying geographic areas where network competition is more intense and recommend that the Authority adopts it for this market review.

60. For the avoidance of doubt, we do not accept the argument that 'network reach analysis is a burdensome process' as a sufficient basis for not undertaking a robust assessment of geographic variations in competition. We urge the Authority to reassess its wholesale geographic market(s) by conducting a network reach analysis in Guernsey. Where there are geographic areas with

[33] GCRA – Business Connectivity Market Review – T1480GJ – Proposed Decision: market definition & Competitive assessment – 12 April 2022 – para. 10.55

more effective competitive conditions (e.g., GY1), driven by sufficiently comprehensive JT network build, these should be distinguished from other areas where competitive conditions are less effective.

Regulatory barriers to geographic price competition

61. In 2014, the Authority found that Sure held significant market power ("SMP") for the provision of wholesale on-island leased lines across the whole of Guernsey. In order to address this SMP, the Authority imposed, inter alia, a non-discrimination obligation (equivalent transactions must be treated equivalently) and a retail-minus 20% pricing obligation (requiring the standard margin between wholesale and retail prices to be no less than 20%). These obligations apply on a product-specific basis.

62. These regulatory remedies have been effective, ensuring that Sure's wholesale customers get equivalent access to wholesale services and ensuring there is sufficient economic space for new market entrants (primarily JT network expansion). However, taken together, these remedies have also had a chilling effect on Sure's ability and incentive to compete geographically in response to market entry. This is because Sure is not afforded the flexibility to reduce prices in response to network expansion in a certain area; it must reduce wholesale prices island-wide (along with the significant revenue implications this will have) or not reduce prices at all. For Sure to reduce prices in a specific geography in response to rival network expansion would be to breach its non-discrimination obligation.

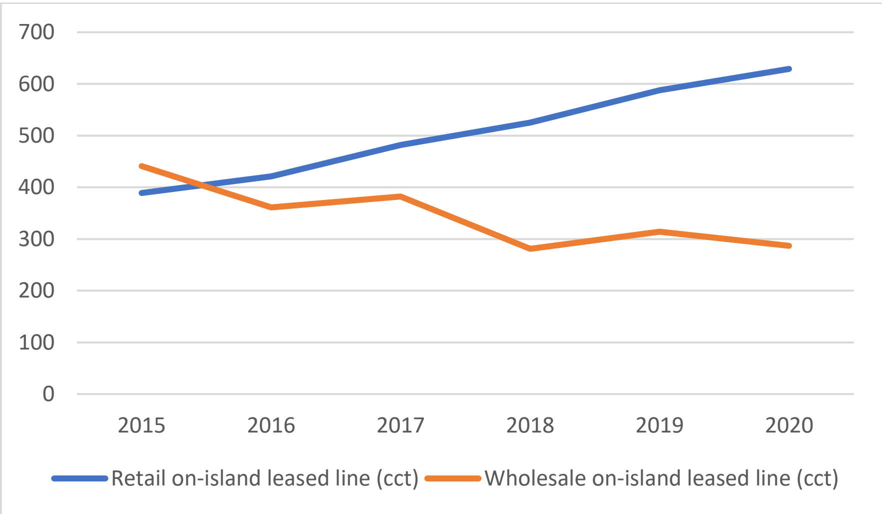
63. Similarly, at the retail level, Sure has little incentive to reduce prices geographically in response to any JT network expansion (which is primarily used for self-supply purposes) due to the disproportionate impact this has on Sure's revenues. Again, this is due to the retail-minus and non-discrimination regulatory obligations. For 'Sure Retail' to reduce prices in order to compete with JT in a given geographic area, it must also ensure that 'Sure Wholesale' has proportionally reduced wholesale prices (so as not to be in breach of the retail-minus 20% pricing obligation). However, given 'Sure Wholesale's' non-discrimination obligation, this new, lower price must be available to all wholesale customers, not just 'Sure Retail' or wholesale customers in the area where JT's network expansion has occurred. The corollary is clear; in order to attempt to win business at the retail level by competing with JT, Sure must also forego significant amounts of revenue at the wholesale level by reducing prices to all wholesale customers.

64. Therefore, given the regulatory obligations placed on Sure, it is unsurprising that the Authority has observed uniform wholesale leased line pricing in Guernsey. The non-discrimination and retail-minus pricing obligations placed on Sure also mean that uniform pricing cannot be reliably used as an indicator for geographic areas where competition is more intense.

Enterprise customer competition

65. Whilst JT does provide a limited number of wholesale leased lines to OLOs, it has predominantly expanded its network in order to self-supply and compete in the enterprise customer market (of which retail leased lines forms a part). This can be observed in Figure 5, which shows the growth of the retail on-island leased line market and corresponding decline of the wholesale on-island leased line market (note, these wholesale volumes do not include self-supply). We estimate that the on-island wholesale market has declined sharply because JT has expanded its own network and moved its retail circuits, historically purchased from Sure Wholesale, on-net.

Figure 5: Volume of circuits in retail and wholesale on-island leased line markets (2015 – 2020)[34]



66. The consequence is that competition in response to JT network expansion is likely to be observable at the retail leased line level, and more specifically in the enterprise customer market. As recognised by the Authority, retail leased lines are no longer an end in themselves, they are purchased by large enterprise and public sector customers in order to consume managed services such as IP feeds[35], SIP private voice, cloud computing and other over-the-top ("OTT") services. These enterprise and public sector customers will usually look to purchase connectivity and managed services together as part of a single solution, often to take advantage of cost

[34] [Telecoms market statistics | JCRA]
[35] Internet Protocol feeds, also known to the Authority as Direct Internet Access

savings and ensure the solution is simple. For example, Sure has recently agreed a connectivity and managed services agreement with [✂], in which the majority [✂] of the value of the agreement was for the provision of [✂] and [✂]. The retail leased line connectivity aspect of the [✂] solution represented a comparatively small aspect of the overall solution cost. It is therefore clear that, when assessing whether or not OLO presence poses a competitive constraint, the price and differentiation of managed services provided over the leased line must be taken into account.

67. We have already explained why Sure currently has little incentive to reduce the price of its retail or wholesale on-island leased lines (see paragraphs 61 – 64). In order to compete against JT network expansion, Sure has instead needed to focus on competing [✂] and [✂], and by introducing [✂], [✂], [✂], [✂], and [✂].

68. [✂].

Figure 6: Average price per Mb (£/Mb) for IP and total IP capacity sold in Guernsey since 2017

[✂]

69. Additionally, Sure has launched a vast array of managed IT services, modern workplace, network, unified communications, and cybersecurity solutions [✂]. Sure now makes available a variety of SIP, cloud computing services (such as cloud compute, cloud back up and cloud recovery), [✂]. Sure also provides advisory and design consultancy in a move away from the traditional service provider model to a bespoke provider that offers a tailored experience[36].

70. We therefore find it puzzling that, at the retail leased line level, the Authority concludes that the presence of OLOs does not have an impact on competitive conditions and that it has not observed any price or product differentiation. Both are plainly evident in the solutions offered to retail leased lines customers. In our view, and taking into account regulatory barriers to geographic leased line discounting, the proliferation and discounting of managed services indicates that OLOs do compete at the retail level and therefore OLO presence does impact competitive conditions.

[36] See Sure Business | Trusted Partner For Businesses

71. Finally, we note that the Authority has stated that in its view, *'the existence of alternative infrastructure is not enough in itself to demonstrate separate geographic markets'*[37]. The Authority has not explained what it means by this, nor has it presented alternative factors that *would* denote separate geographic markets in Guernsey. Given the Authority has heavily referenced the approach adopted by Ofcom and the JCRA in its product market definition, it is surprising that the Authority has decided to deviate from their approach when it comes to defining geographic markets. We ask that the Authority more fully explains the factors it would take into account when seeking to identify separate geographic markets. This is particularly relevant given the Authority appears to intend to segment remedies on the basis of geographic area[38].

JT as a competitive constraint

72. Given the evidence that OLO presence, and specifically JT's network build, does have a positive impact on competition in Guernsey[39], we believe it is relevant to consider JT's fibre network footprint in Guernsey and the extent to which JT is willing to expand that network footprint to connect new premises.

73. Since 2007 JT has been building a significant fibre network in Guernsey. Due to its continued success in the contract to supply the States of Guernsey ("SoG") with connectivity services, and its access to funding from the States of Jersey ("SoJ"), JT has been able to invest significantly and speculatively in a substantial fibre network footprint in Guernsey, and to offer services (including retail and wholesale leased lines) at significant discounts to the prices offered by Sure.

74. In its March 2021 BCMR Draft Decision Presentation, the Authority presented a diagram indicating the extensive deployment of JT's network across Guernsey as at 2020 (see Figure 7). This map demonstrates that JT's fibre network reaches nearly all of the major business districts in Guernsey[40]. JT also has a particularly dense network in St Peter Port (GY1 postcode), in which it is likely to be able to serve nearly all business premises in that postcode sector (this is particularly true given our awareness of JT's willingness to dig long distances). When assessed

[37] GCRA – Business Connectivity Market Review – T1480GJ – Proposed Decision: market definition & Competitive assessment – 12 April 2022 – para. 9.77
[38] GCRA – Business Connectivity Market Review – T1480GJ – Proposed Decision: market definition & Competitive assessment – 12 April 2022 – para. 10.60
[39] This view is held by most NRAs in comparator jurisdictions, including the UK, Jersey, and the Isle of Man.
[40] Please note, JT's fibre network footprint is significantly larger and more expansive than Sure's fibre network footprint in Jersey, which covers only a small part of St Helier. The small size of Sure's deployment in Jersey is what led the JCRA to conclude that Sure's network presence was not large enough to constitute a competitive constraint.

against Sure's fibre network footprint (see Figure 8), it is clear that there are areas in Guernsey where a putative wholesale customer is served by two network providers (Sure and JT), and other areas where it will be served by just one (Sure).

Figure 7: JT's fibre network footprint in Guernsey (as presented by the Authority in March 2021)

Figure 8: Sure's fibre network footprint in Guernsey (as presented by the Authority in March 2021)

75. For example, it is clear from these two maps alone that a putative wholesale customer seeking to purchase a 1Gbps leased line on the west of the island in Castel (GY5) will only be able to purchase its circuit from Sure. Whereas a putative wholesale customer looking to connect to a business premises or mobile base station in St Peter Port (e.g. St Georges Esplanade) will be able to engage with both Sure or JT in order to obtain the better price and/or terms. This suggests a clear difference in competitive conditions – if the wholesale customer is unhappy with the price and/or terms offered by Sure for a 1Gbps leased line, then in St Peter Port it is likely able to engage with JT in order to get a better price or terms due to the density of JT's network. This option is not available to it in Castel.

76. Should the Authority choose to relax the prevailing non-discrimination remedy to allow Sure to geographically price its wholesale on-island leased lines in response to JT network expansion, it is likely that price competition in the wholesale leased line market in St Peter Port will become even more intense in the future. However, the competitive conditions observed in Castel GY5 would remain the same unless a rival network provider expanded its network to the area.

77. We note that when defining separate sub-national geographic markets, NRAs in other jurisdictions often look for the existence of two or more competitive networks in addition to that of the incumbent. In a jurisdiction the size and scale of Guernsey, it is extremely unlikely that there will ever be three competing fixed line networks in a given geographic area due operators' need to achieve minimum viable scale (which is particularly large in telecommunications networks). Therefore, we believe that sub-national geographic markets will exist in Guernsey where JT and Sure have fibre networks in place.

78. However, whilst looking at maps and comparing fibre network footprints can be informative in the first instance, the extent to which rival networks present a competitive constraint on Sure's ubiquitous fibre network should be empirically driven. As set out above, we consider network reach analysis to be the appropriate mechanism for establishing whether there are geographic areas in which the level of wholesale leased line competition differs.

79. When undertaking network reach analysis, the Authority will need establish an appropriate buffer distance - the distance over which rival networks are sufficiently close to a business site to find it economic to dig to that site. In the UK, Ofcom found that an appropriate buffer distance

was 50 metres, as this was consistent with Ofcom's modelling of the economic dig distance for the vast majority of CI Access services[41].

80. We believe that the buffer distance for Guernsey ought to be significantly larger. As set out above, we have anecdotal evidence of JT being willing to dig almost [✂] in order compete with Sure for a high bandwidth/high value customer. However, we do not have evidence of actual dig distances so cannot calculate the mean or the average distance JT would be likely to extend its network to reach new customers. This is information that the Authority ought to collect in the course of its network reach analysis.

Geographic differences – at the market definition or remedies stage?

81. Paradoxically, the Authority states that it does not believe there to be any geographic differences in competition in the wholesale leased line market, but then goes on to state that it will address 'geographic differences' at the remedies stage of the BCMR process[42]. If there are no geographic differences in competition, and OLO presence does not have an impact on competition, then what does it intend to account for at the remedies stage?

82. As set out above, we believe there to be sub-national geographic areas where competition between wholesale providers of leased lines is more intense than other areas. We provided the anecdotal example of St Peter Port and Castel, in which the competitive conditions are plainly different. Whilst we agree with the Authority that such differences can be accounted for at the remedies stage (i.e., more relaxed remedies where competition is more intense), we do not agree that this is appropriate in this market review. Rather, we believe that the geographical boundaries should be established at the market definition stage.

83. As set out above, NRAs in other jurisdictions often look for the existence of two or more competitive networks in addition to that of the incumbent before concluding that competition is more effective or effective (e.g., the High Network Reach and Central London areas in the UK). However, in a jurisdiction the size and scale of Guernsey, we do not believe it will ever be economically feasible to have three competing fixed line networks in a given geographic area due to operators' need to achieve minimum viable scale (which is particularly large in

[41] Ofcom – Business Connectivity Market Review – 2018 consultation – Volume 1 – para. 5.18
[42] GCRA – Business Connectivity Market Review – T1480GJ – Proposed Decision: market definition & Competitive assessment – 12 April 2022 – para. 10.60

telecommunications networks). This is evidenced by the fact that there are only two at-scale on-island network providers in Guernsey today, with this being the case since 2007.

84. The small size and scale of Guernsey therefore suggests that the presence of two fixed network operators (that is, Sure plus another operator) will likely be the appropriate benchmark for effective competition in the wholesale leased line market, provided the coverage from the other operator (including dig distances) is sufficient to cover the geographic area in question. Where such a geographical area exists, for example St Peter Port where both Sure and JT have close to ubiquitous coverage, the Authority would need to explain why it did not consider network competition between Sure and JT to be sufficiently effective. We are not aware of any reasons why, in the absence of regulatory barriers to competition (non-discrimination, transparency of prices, retail-minus price controls), competition cannot be effective between two wholesale leased line providers in Guernsey.

85. We would welcome the Authority's thoughts on what it considered to be the appropriate benchmark for effective competition in the wholesale leased line market in Guernsey.

86. In our view, therefore, any geographic area of the wholesale leased line market which can be categorised being 'Sure plus JT' ought to be considered effectively competitive or trending towards effective competition. This would suggest that any such geographic wholesale leased line market would not pass the Three Criteria Test, a materially different outcome to Sure being (erroneously) considered to have SMP but be subject to lighter touch remedies. Even in the event that that the Authority does not conclude that 'Sure plus JT' is sufficient to constitute effective competition, it is still necessary to undertake this analysis to determine where to apply differentiated remedies.

CONCLUSION

87. In this response, we have sought to set out areas in which we either do not understand the Authority's analysis or do not agree with its conclusions. We believe that many of our concerns or disagreements could be allayed by the Authority publishing any additional or underlying analysis used to arrive at its conclusions. This is particularly the case for the conclusion that a chain of substitution exists in its putative wholesale product market and the Authority's conclusion that there exists a single wholesale leased line geographic market. We would be grateful if the Authority could provide respondents with additional information regarding its analysis before publishing its Final Decision. We propose that a workshop between the Authority, industry and other interested stakeholders would provide an appropriate opportunity to discuss this.

88. However, absent further evidence or analysis, or where the Authority agrees with the assessment set out in our response, we urge the Authority to make certain changes to its wholesale product and geographic market definition. Specifically,

    I. We have demonstrated that, in our view, neither DF nor DPA can be considered to be effective demand- or supply-side substitutes in the Guernsey wholesale leased line market. Absent evidence to the contrary, we urge the Authority to remove both DF and DPA from its putative wholesale leased line product market.

    II. We have highlighted areas of the Authority's analysis that lack detail and are difficult to reconcile with the data available to us. We would ask that the Authority provide an updated proposed decision (or an associated clarification document) with more information on its approach to concluding that a chain of substitution exists <u>in Guernsey</u>, rather than simply because other jurisdictions have concluded this to be the case.

    III. We have raised a question to the Authority about the possibility of a bandwidth split between low bandwidth and high bandwidth wholesale leased lines. We have provided evidence that indicates a possible bandwidth split based on demand-side factors but are unable to complete the analysis as we cannot observe supply-side factors. We would be grateful if the Authority could provide an explanation for why it believes demand- and supply-side factors suggest a chain of substitution across all bandwidths. Should suitable and consistent supply-side constraints exist at all bandwidths, then we accept that such a chain of substitution exists.

    IV. Finally, we have provided evidence that OLO presence does elicit a competitive response, and we have provided reasoning for why price and product differentiation of wholesale on-island leased lines has not been possible. We therefore concluded that areas in which other network providers have expanded their network should be considered to exhibit differences in competitive conditions. Furthermore, we think that these competitive conditions should be considered at the market definition stage due to the likelihood that areas where both Sure and JT are sufficiently present (St Peter Port) would not pass the Three Criteria Test. We urge the Authority to further reassess geographic areas of the wholesale leased line market using network reach analysis. Should any geographic areas of increased competition be identified, such markets should be reassessed under the Three Criteria test and have a new market power assessment applied (with updated market statistics).