



PAN-CHANNEL ISLAND RETAIL PRICE CONTROL REVIEW

T1498GJ

CALL FOR INFORMATION

Channel Islands Competition and Regulatory Authorities

Document No: CICRA 20/07

Date: 24 February 2020

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1. EXECUTIVE SUMMARY

- 1.1 The Channel Islands Competition and Regulatory Authority (**Authority**)¹ is issuing this Call for Information as a first step in considering how regulation could be applied to Retail Fixed Line Access Services and Fixed Call Services in the Channel Islands. These services include call charges using fixed line phones, exchange line charges and a range of related fees associated with having a fixed line phone service.
- 1.2 The purpose of the Call for Information is to review the retail price control for Sure (in Guernsey) and JT (in Jersey) and consider if a control is required going forward, and if so, the appropriate controls needed for the future.
- 1.3 The last full price controls for Sure in Guernsey and JT in Jersey were set in 2016, initially covering a period up to 31 December 2019 in the case of Guernsey, and 23 February 2020 in the case of Jersey.

2. STRUCTURE OF THIS DOCUMENT

- 2.1 The document is structured as follows:

Section 3	Sets out the background to this matter
Section 4	Sets out the Authority's initial considerations on Fixed Line Access and Fixed Call Services
Section 5	Sets out the Authority's initial considerations on a retail price control on this market
Section 6	Sets out the Authority's concerns regarding customers who only take fixed voice services.
Section 7	Next steps for this process

- 2.2 Interested parties are invited to submit comments to the Authority in writing or by email on the matters set out in this paper to the following addresses:

Suite 4, 1st Floor La Plaiderie Chambers, La Plaiderie St Peter Port Guernsey GY1 1WG Email: info@cicra.gg	2 nd Floor, Salisbury House 1-9 Union Street St Helier Jersey JE2 3RF Email: info@cicra.je
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- 2.3 All comments should be clearly marked "*Pan-Channel Island Call for Information on Retail Price Control Review 2020*" and should arrive by 5pm on 17 April 2020.

¹ CICRA is the name given to the Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA). For the purposes of this document the Authority refers to the JCRA in Jersey and the GCRA in Guernsey jointly.

- 2.4 In line with Authority's consultation policy, the Authority intend to make responses to the consultation available on the CICRA website, the combined website of the GCRA and JCRA. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. The Authority regrets that it is not in a position to respond individually to the responses to this consultation.

Disclaimer

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

3. BACKGROUND

- 3.1 The need for the regulatory oversight of Sure and JT's prices arose from their position of dominance which would allow them, absent of control, to raise prices independently of their customers or competitors. A regulatory control is appropriate for as long as such concern remains. This concern would reduce if the strength of dominance is reduced due to effective competition that delivered real choice for consumers. However, given the very early stages of the development of such competition and the continued absence of consumer choice the Authority considered in 2016 that it was appropriate to continue to control prices. At that point in time the Authority stated that should effective competition develop rapidly the Authority would revisit this issue.
- 3.2 The relationship between the extent of regulatory oversight of prices for retail fixed line services depends on the extent of choice through competition available to customers. The weaker those choices the greater the regulatory role in ensuring prices are fair.
- 3.3 Operators have worked together on the development of new wholesale access products aimed at increasing choice and competition in fixed-line telecoms services. As a result of this work Wholesale Line Rental (**WLR**) was launched across both Islands on 1 June 2015.
- 3.4 The purpose of this document is to seek views on the retail price control for Sure (in Guernsey) and JT (in Jersey) and consider if a control is required going forward and, if so, the appropriate controls needed for the future.
- 3.5 Full price controls for Sure in Guernsey and JT in Jersey were set in 2008 initially covering a period up to 2011. From 2011, both JT and Sure had been subject to yearly roll overs and an interim price control, allowing for price increases in line with the respective Island's retail price index (RPI). At the time, CICRA considered that maintaining a price control was appropriate as both operators still held a dominant position in the relevant markets.
- 3.6 Given the delay in introducing choice to consumers, in particular WLR, the increased benefits of competition had not been realised and CICRA decided in 2014 to undertake a formal price control review. To support this process Frontier Economics was commissioned to carry out a review of the price controls applied to retail fixed line services in the Channel Islands to inform CICRA's views on any future price controls.

3.7 The 2014 review concluded in September 2016 with a Final Notice issued to JT and a Final Decision issued to Sure in Guernsey. The new price control for Sure commenced on 1 January 2017 for a three year period ending 31 December 2019. Following JT’s action in the Royal Court its price control commenced on 24 February 2017.

4. FIXED LINE ACCESS AND FIXED CALL SERVICES

4.1 The purpose of this section is to set out the Authority’s initial review of the situation and its views on considering a future retail price control.

Fixed line access services

4.2 Frontier Economics, in its report to the Authority for its previous price control², concluded that: *“competition for retail fixed line access services appears to remain limited in both Guernsey and Jersey. In particular: (i) there are limited alternative offerings to the incumbent’s retail fixed access line services; and (ii) both operators have retained a dominant position in their respective market for retail fixed line access services.”*

4.3 Relevant features were that:

- Both Sure and JT remained the sole providers of PSTN access lines in Guernsey and Jersey respectively, and,
- there are few alternative fixed network operators present in both markets.

4.4 Despite the increasing presence of mobile voice services and availability of over the top (OTT) Voice over Broadband (VoB) services, there is limited evidence to suggest that fixed line customers in the Channel Islands are substituting away from fixed access line services to these alternative products.

4.5 Since the last retail price review JT has completed its deployment of a full fibre network with every premise in Jersey served by a fibre connection. Whilst this provides significant steps forward in broadband services the fixed line access and fixed call services have remained the same with JT still providing its customers with the equivalent fixed line access and fixed call services.

4.6 Given the above, the Authority’s initial consideration is that both Sure and JT are likely to maintain a dominant position in the provision of retail fixed lines and therefore there is a continued need for ex-ante price controls for Sure and JT’s retail Fixed Line Access Services and Fixed Call Services.

Question 1

Does the respondent agree that a dominant position is still held by both Sure and JT in the provision of Fixed Line Access Services

The respondent should provide a full justification for its response citing all relevant evidence

² <https://www.cicra.gg/media/3318/t1064gj-consultation-retail-price-control-frontier-economics-report.pdf>

Fixed call services

4.7 In its 2015 report Frontier Economics³ found: “...limited evidence to suggest that the market has become sufficiently competitive to remove fully ex-ante regulation.”

4.8 Relevant features were that:

- Despite the presence of alternative network operators and indirect call service providers in both jurisdictions, Sure and JT remain the main providers of retail fixed call services in their respective markets.
- Fixed call volumes have dropped over the last few years in both Guernsey and Jersey. This is likely to be the case due to two factors: Fixed-to-mobile substitution and OTT-based VoIP and instant messaging services. However, this does not provide compelling evidence that the market is effectively competitive.

4.9 The above analysis suggests that alternative services and changing consumer demands may constrain, at least to some extent, an operators’ ability to price these services above a competitive level (absent any regulation) and these constraints may increase over the forthcoming years. However, it appears that JT and Sure currently, and will continue to, retain a strong position in the provisioning of retail fixed call services.

4.10 In 2015 the Authority, by reference to the Frontier Economics’ report, concluded that there remained a need for some form of ex-ante price regulation for retail fixed call services.

4.11 Whilst the Authority notes that revenues in this market have continued to fall alongside a fall in the number of exchange lines connected the Authority still considers that both Sure and JT remain dominant for the provision of these services in their relevant market. This could lead to the Authority again concluding that there remains a need for some form of ex-ante price regulation for this market.

Question 2

Does the respondent agree that a dominant position is still held by both Sure and JT in the provision of Fixed Call Services

The respondent should provide a full justification for its response citing all relevant evidence

The need for an ex-ante price control going forward

4.12 In 2016, the effect of a new access product, WLR, on the development of effective competition had not been proven. The Authority therefore considered the threat of competition was not sufficient to constrain Sure’s and JT’s dominant positions and therefore the Authority would continue to apply controls. However, the introduction of WLR did inform the approach taken by the Authority in setting prices for these services and the assessment was based on the then current or most recent prices and costs and relied on benchmarking information. Given the possibility that competition would develop and considering the absence of data/forecast information the Authority took a light touch approach to setting the levels of the control. This

³ <https://www.cicra.gg/media/3318/t1064gj-consultation-retail-price-control-frontier-economics-report.pdf>

approach was predicated on the potential for the development of effective competition and the desire to avoid unnecessary regulatory burden. At the time the Authority stated that should competition not develop it would reconsider this approach.

- 4.13 In concluding the 2016 retail price control the Authority put in place a ‘price basket’ control which is a light touch benchmarking approach to price control rather than a bottom up cost based approach. This approach gave Sure and JT more flexibility than alternative forms of control and therefore enabled the dominant operators to respond to a greater extent to competition than a control set on a product by product basis.
- 4.14 The Authority’s determination was that increases in the basket of charges levied by Sure for its retail fixed line services would be limited by no more than RPI – 0% for the three year period of the price control.⁴
- 4.15 In addition the Authority’s determination was that increases in the basket of charges levied by JT for its retail fixed line services would be limited by no more than RPI – 6.5% for the first two years of the three year period and RPI – 0% for the final and third year of the price control.⁵
- 4.16 The price control covered the following retail services:
- Exchange line;
 - Fixed Line local geographic calls;
 - Fixed Line non-geographic calls charged at local rate;
 - Fixed Line Jersey and National calls;
 - Fixed Line non-geographic calls charged at national rate;
 - Fixed Line international call;
 - Fixed Line calls to Channel Island mobiles;
 - Fixed Line calls to Other mobiles;
 - Public Payphones;
 - Exchange line connection, and
 - ISDN services

RATIONALE FOR PRICE CONTROL

- 4.17 The EU regulatory framework in its recommendation of 17 December 2007 (2007/879/EC)⁶ states that regulatory controls on retail services should only be imposed when national regulatory authorities consider the relevant wholesale measures, or measures, regarding carrier selection or carrier preselection, would fail to achieve the objective of ensuring effective competition and public interest.

Guernsey

- 4.18 In the Guernsey fixed line services market, alternative providers do not have the necessary infrastructure to compete with Sure. The market for these services has a limited form of retail competition where the wholesale products in place are essentially ‘resell’ services. Competitors

⁴ Final Decision issued to Sure (Guernsey) Limited, CICRA 16/37, 27 September 2016

⁵ Retail Price Control 2016, Final Notice issued to JT (Jersey) Limited, CICRA 16/36, September 2016

⁶ 2007/879/EC, Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications network and services

pay a wholesale rate to Sure for the equivalent Sure retail services and offer them to customers. The scope for competitors to offer variety, innovation or sell at discounts to Sure is limited given the nature of such wholesale products available to them. In these circumstances the challenge facing competitors to offer more attractive propositions than Sure in order to win customers from Sure are significant. It is also relevant that the prices of those key wholesale inputs are generally set by reference to Sure's own retail prices; efficient wholesale charges paid by its competitors in this market therefore rely on efficient retail prices by Sure.

- 4.19 The challenges competitors face in winning customers from the former monopoly is a significant contributing factor to the prevailing high market share held by Sure for such a long period of time.
- 4.20 The Authority considers that wholesale measures in Guernsey are not yet at a stage where they can be considered to achieve the objective of ensuring effective competition in the Guernsey market. The Authority as the regulatory body has a duty to protect consumers of telecommunication services in Guernsey. The Authority considers that as effective competition or the potential of effective competition is not yet sufficient to protect consumers' interests, the Authority is seeking further information on this matter from stakeholders to allow it to consider any potential future price controls in this market.

Jersey

- 4.21 In Jersey fixed line services market, alternative providers do not have the necessary infrastructure to compete with JT. The market for these services has a limited form of retail competition where the wholesale products in place are essentially 'resell' services. Competitors pay a wholesale rate to JT for the equivalent JT retail services and offer them to customers. The scope for competitors to offer variety, innovation or sell at a discount to JT is limited given the nature of such wholesale products available to them. In these circumstances the challenge facing competitors to offer more attractive propositions than JT in order to win customers from JT are significant. It is also relevant that the prices of those key wholesale inputs are generally set by reference to JT's own retail prices; efficient wholesale charges paid by its competitors in this market therefore rely on efficient retail prices by JT.
- 4.22 The challenges competitors face in winning customers from the former monopoly is a significant contributing factor to the prevailing high market share held by JT for such a long period of time.
- 4.23 The Authority considers that wholesale measures in Jersey are not yet at a stage where they can be considered to achieve the objective of ensuring effective competition in the Jersey market. The Authority as the regulatory body has a duty to protect consumers of telecommunication services in Jersey. The Authority considers that as effective competition or the potential of effective competition is not yet sufficient to protect consumers' interests, the Authority is seeking further information on this matter from stakeholders to allow it to consider any potential future price controls in the market.

Question 3

Does the respondent agree that therefore there continues to be a need for ex-ante price controls for Sure’s and JT’ retail fixed call services in the respective jurisdictions of Guernsey and Jersey?

The respondent should provide a full justification for its response citing all relevant evidence.

5. RETAIL PRICE CONTROL

5.1 In the Authority’s consideration of the previous price control, Frontier Economics found that the introduction of WLR did not merit a removal of the price control regulation based on the following factors:

- Operator’s preliminary forecasts (to 2018) of the expected WLR take-up indicate it may only have limited impact on the market for retail fixed line services, and,
- In line with approaches adopted elsewhere (ie, by Ofcom and ComReg), there is likely to be a need to retain some form of ex-ante regulation on retail access line services even after the launch of WLR, until retail competition actually emerged.

5.2 In examining a price control Frontier Economics took into account the impact of WLR on competition and recommended that the Authority consider setting a price control for a single basket consisting of retail fixed access line services and retail fixed call services for a period of three years.

By reference to the most recent Telecommunications Market Statistics report⁷:

	Guernsey	Jersey
<i>Total fixed line revenues in 2018</i>	<i>£10.9m</i>	<i>£15.2m</i>
<i>Fixed line subscriptions per 100 inhabitants</i>	<i>57</i>	<i>45</i>
<i>Fixed line call minutes</i>	<i>68 million</i>	<i>99 million</i>
<i>Change in fixed line call minutes from 2017 Market report</i>	<i>-2.9%</i>	<i>-10.6%</i>
<i>Average revenue per fixed (wireline and wireless) subscription per month</i>	<i>£25.44</i>	<i>£26.49</i>

5.3 By December 2018, Sure was retailing 17.5% of the fixed line network wirelines connections in Jersey. Airtel, Homenet and Nitel also offer services relevant to the market for fixed telephony. JT launched its service in Guernsey in June 2016 and has acquired 6.7% of Guernsey’s fixed network wireline connections by December 2018.

5.4 The number of fixed lines has decreased from 52,332 in 2013 to 35,372 in 2018 in Guernsey and from 59,063 in 2013 to 46,871 in 2018 in Jersey.

5.5 At the time of the publication of the 2018 Telecommunications Statistics there were 202 Carrier Select customers in Guernsey and 607 in Jersey. There were also 2,294 WLR customers in Guernsey and 8,604 in Jersey.

⁷ Telecommunications Statistics and Market Report 2018, Information Notice, CICRA 19/35, 13 September 2019

5.6 Whilst market conditions have changed during the period of the current retail price control which might have resulted in:

- a) a reduction in the number of fixed line subscribers,
- b) a reduction in relevant call volumes, and,
- c) an increase in customers using WLR

both Sure and JT remain dominant in the provision of these services in Guernsey and Jersey respectively.

5.7 Whilst technology and consumer trends has driven significant changes in the broadband market with ever increasing speeds alongside of unlimited data usage the fixed voice service offering has remained static and with the potential that a number of vulnerable and low income customers are reliant on fixed voice services and do not benefit from broadband services or retail bundling of services, including mobile services.

5.8 The Authority considers that there are potentially four options with regards to the next steps for a retail price control. Those options are:

Option 1 – the removal of the retail price control in full.

Option 2 – the roll over of the existing price control (ie, to continue with an RPI – 0% price control).

Option 3 – the introduction of a safeguard cap on the entry level tariff of the operators previously found to be dominant on this market.

Option 4 – no retail price control but the operators previously found dominant on this market to provide voluntary assurances and commitments to the Authority. Such assurances could relate, for example, to providing additional protection for low spending consumers or any other group of consumers that the operators and the Authority could consider to be the most vulnerable once the price control is removed.

5.9 In other jurisdictions a number of key measure have been used to assess whether a market is suitable for the removal of the retail price control on this market. These key measures include:

- The take-up of residential wholesale line rental (WLR);
- The take-up of carrier pre-selection (CPS);
- The dominant operator’s market share;
- Rates and ease of switching;
- Awareness of supplies, and,
- Residential call costs.

Question 4

Does the respondent have a view on which of the potential options it considers is suitable for the way forward in this market?

The respondent should provide a full justification for its response citing all relevant evidence.

Question 5

Does the respondent consider that until a full review of the retail price control has been completed an RPI – 0% interim price control should apply to the relevant market.

If the respondent does not consider that an RPI – 0% interim price control should apply to the relevant market, the respondent is requested to fully justify its response citing all relevant evidence.

6. FIXED VOICE ONLY CUSTOMERS

- 6.1 The Authority is concerned that there is a subset of consumers that are potentially at risk from higher prices and cannot take advantage of competitive benefits that other services takers can (such as voice services over broadband and/or mobile services).
- 6.2 Relatively higher prices in the relevant market could lead consumers to switch to other services such as substitution by mobile services, substitution with broadband OTT services (such as Skype) or substitution by VoIP services.
- 6.3 Customers that only take exchange line and voice services are only able to take the benefits of the PSTN service. These customers are often low income or vulnerable persons who are reliant on their service to maintain contact with families, carers and social / health support services.
- 6.4 Whilst these customers can switch between operators as a result of the introduction of WLR and the Authority does recognise that customers have swapped service providers, the Authority has not observed a significant improvement in prices for customers taking only the exchange line and voice services (as opposed to bundles containing broadband and / or mobile services).
- 6.5 Specifically, the Authority is aware that for a specific group of consumers there is even more limited choice. Vulnerable customers who are in need of a lifeline services, such as the Piper Lifeline service cannot switch service provider which results in these customers not being able to take advantage of more competitive landline and calls prices.
- 6.6 The Authority understands that the restriction to switching for this group of customers was because at the time of the introduction of WLR, operators were not able to put in place a resilient technical solution to allow customers to move between service provider whilst maintaining their lifeline service.
- 6.7 The Authority wishes to consider whether it is appropriate that this group of customers should not be able to take advantage of lower priced solutions owing to their personal situation restricting them solely because they need a lifeline service.

Question 6

The Authority seeks to understand from respondents:

- i) Is there a specific subset of consumers which are unable to switch their Fixed Line Access Service due to their specific set of circumstances (for example, 'lifeline customers' or other vulnerable consumers)?
- ii) What is the impact of this inability to switch providers?
- iii) What additional remedies, if any, should the Authority consider to address any such vulnerability?

Question 7

Does the respondent wish to provide any other relevant comments in response to this Call for Information?

The respondent should provide a full justification for its response citing all relevant evidence.

7. NEXT STEPS

- 7.1 The Authority will consider responses received and the evidence provided for this call for information to inform its position on Retail Price Controls for JT in Jersey and Sure in Guernsey.
- 7.2 Stakeholders are invited to provide written representations to this Call for Information. In addition, respondents are invited to raise any other matters they consider relevant in the present context when responding to this Call for Information.