JT's Non-Confidential Response to GCRA Consultation – Price Control for Wholesale on-island Leased Lines

11th February 2022

1. Introduction

1.1 JT (Guernsey) Limited ("**JT**") welcomes the opportunity to respond to the price control for wholesale on-island leased lines consultation (the **"Consultation**"). This is a non-confidential response and can be published in full.

1.2 In the Consultation, the GCRA seeks comments on its proposal to regulate the prices of each of Sure's wholesale on-island very high bandwidth lease line products (1Gbps and above) for Guernsey by reference to the wholesale price for the equivalent service provided by JT in Jersey.

1.3 In brief, JT has no strong objection to any aspect of the GCRA's proposal but considers that two aspects should be clarified when the GCRA comes to consult formally. The first is how the implementation of the caps, including the glidepath, relates to the timetable of the BCMR review the GCRA is currently undertaking. The second is how the GCRA would regulate Sure if there were to be any disparity between the wholesale products offered by JT in Jersey and those offered by Sure in Guernsey.

2. Specific Comments

2.1 Timing

2.1.1 The GCRA is consulting informally on these proposals before completing the Business Connectivity Market Review (BCMR) which it commenced in late 2019. JT submitted comments on the GCRA's Draft Decision in March 2021. JT did not agree with many aspects of that Draft Decision and our lack of objection to the current proposal should not be taken either to imply acceptance of any aspect of that Draft Decision or that JT accepts that 'current market review concerns' that are presented in chapter 4 of these proposals are sound or should form the basis for any subsequent Decision by the GCRA in the current BCMR[1]. JT's comments in relation to this informal consultation are therefore without prejudice to any further representations JT may make in relation to the current BCMR

[1] JT accepts that benchmarking of retail and wholesale prices against other countries may provide relevant evidence about whether prices are at competitive levels in the country which is being compared. However, there are many well known issues with such benchmarking exercises including that the comparator countries may have features other than differences in competition which account for legitimate differences in prices (most notably differences in costs), that prices at a particular point in time do not properly reflect the evolution of prices over time and that comparing some prices ignores other prices where the comparison may work the other way and that regulators should avoid 'cherry picking' high prices and ignoring lower prices as if they each exist in isolation of the other.

(including any subsequent formal consultation on the proposals).

2.1.2 It is unusual for a regulator to propose new remedies before it has completed a market review and more common for decisions about market definition and Significant Market Power to be made first, with remedies consulted upon later. The current BCMR is being undertaken to enable to GCRA to determine whether the conclusions it had about the functioning of the market in 2015 remain appropriate and then to consider whether the remedies it adopted then still adequately address the problems it identifies. Without this sequencing there is a risk that the GCRA adopts new remedies that are inconsistent with or which pre-judge and pre-empt its conclusions about the functioning of the market. It may also mean that affected parties like JT are asked to comment on the appropriateness of the remedies without having an opportunity to assess them against the GCRA's full analysis of the issues which those remedies are intended to address.

2.1.3 It is in this context that the GCRA asks in paragraph 6.12 'Do you agree, should a benchmarking approach be adopted for Sure's wholesale VHB (1 Gbps and above) leased lines, its term should be aligned with the market review cycle?'. The GCRA also says that in this case 'circumstances warrant earlier intervention'. In paragraph 6.7 it says 'a cap should be applied in a gradual manner over a 2-year glidepath, in two steps'.

2.1.4 JT understands from this that the GCRA proposal is:

2.1.4.1 The cap would start before the conclusion of the BCMR that the GCRA is currently undertaking, and without regard to the conclusions of that review;

2.1.4.2 The cap would continue after the BCMR the GCRA is currently undertaking has concluded, which suggests that the GCRA anticipates that the conclusions of that review would allow the GCRA to continue to impose a wholesale price cap on Sure;

2.1.4.3 The glidepath would be completed after 2 years, which may be before or more likely after the BCMR the GCRA is currently undertaking has been concluded; and

2.1.4.4 The cap would then be revisited in the next BCMR, following the one the GCRA is currently undertaking. JT notes that in the event that the JCRA were to change its approach to the setting of wholesale price caps in Jersey in the meantime, the GCRA may need to revisit its position before this point.

JT's assessment of the GCRA's proposals has been conducted on this basis.

2.1.5 JT accepts there may be circumstances, which the GCRA say apply here, in which it is appropriate for a regulator to intervene outside of the market review cycle. However, the market review approach is used because investors in telecommunications networks require a degree of predictability if they are to make long term investments. Ad hoc or unpredicted regulatory changes in the midst of a market review cycle are unwelcome and should generally be avoided. The GCRA should only make mid-cycle changes to the way in which regulatory prices are set in exceptional circumstances and should otherwise wait for the next review.

2.1.6 JT recognises that these risks will be mitigated to some extent in this case if the GCRA implements the changes it proposes using a 2 year glidepath rather than an immediate cut in prices to the levels charged by JT in Jersey. JT considers there is a strong case for adopting a 2 year glidepath.

2.2 Structure of benchmarking approach

2.2.1 JT considers that a portfolio approach which allows the operator rather than the regulator to decide for itself how best to recover costs across its product portfolio should generally be the preferred. However, in this case JT agrees with the GCRA that the caps should apply to each of the five products rather than to the portfolio of very high bandwidth products. This is primarily for practical reasons. JT does not see how it would be feasible for the GCRA to compute the portfolio cap for Guernsey by reference to the individual prices charged by JT in Jersey, or how it could easily assess Sure's compliance with it. Any attempt to apply a portfolio cap would certainly increase the complexity of the task being undertaken by the GCRA, contradicting one of the reasons why the GCRA proposes to change to the benchmarking approach.

2.2.2 The obvious risk with this approach is that JT withdraws a wholesale product in Jersey at a later date and so deprives the GCRA of an appropriate benchmark - or that Sure wishes to introduce a new wholesale product in Guernsey which JT does not supply in Jersey and for which there is therefore no equivalent regulated price. The GCRA should anticipate this and explain what it would do in these circumstances. When doing so, the GCRA should aim to ensure that any approach does not inhibit the ability of either JT in Jersey or Sure in Guernsey to adapt or alter their wholesale products to meet the needs of their customers as they evolve. In relation to products that are withdrawn, the approach might be for the GCRA to hold the wholesale price in Guernsey at the level applicable when the equivalent product was withdrawn by JT in Jersey for the remainder of the market review period. It is not immediately clear to us how the price cap for a new Sure product which JT did not offer could be determined.

2.2.3 JT does not object to the GCRA's reasoning or conclusions in relation to 'same/different exchange' differential pricing of Sure's very high bandwidth products.