PRICE CONTROL FOR WHOLESALE ON-ISLAND LEASED LINES – CONSULTATION PAPER – T1602G

SURE (GUERNSEY) LIMITED NON-CONFIDENTIAL RESPONSE – 11 FEBRUARY 2022

Executive Summary

1. Sure (Guernsey) Limited ("Sure") is pleased to respond to the Guernsey Competition and Regulatory Authority's ("the Authority") non-statutory consultation regarding the pricing of 'very-high bandwidth' ("VHB") wholesale on-island leased lines. We are grateful for the opportunity to comment on, and inform, the Authority's views prior to it entering a statutory process.

2. We are, however, greatly puzzled by, and concerned about, the timing and content of this consultation. Whilst we recognise that the Authority may be under pressure to act now on its concerns, we urge the Authority to reconsider its decision to amend the prevailing price control for the following reasons:
   I. **Timing** - we do not agree that the time is right to amend the prevailing wholesale leased line price control. The Authority is in the final throes of re-assessing the Business Connectivity market and the available evidence suggests that the market has changed significantly since its 2014 assessment (implying a very different outcome). Imposing new remedies so close to the completion of the market analysis is inappropriate. It pre-empts the outcome of the review, putting the proverbial cart before the horse. It may also prejudice the outcome of the Authority's ongoing process as it is likely to be very difficult to 'go back' from any regulatory impositions applied now.
   II. **[✂]** – [✂].
   III. **Appropriate benchmarking** - we cannot agree with the Authority's assertion that simply benchmarking Sure's VHB monthly rental charges ("MRCs") against JT's Jersey MRCs is appropriate. This outlook is too simplistic as it does not sufficiently take account of differentiating factors such as non-recurring charges (which JT charges for many of its products where Sure does not), economies of scale and scope and the prices of lower bandwidth leased lines. Ultimately, the Authority's analysis does not 'compare apples with apples'.
   IV. **Mechanics of the price control** – the mechanics of the Authority's proposed charge control remain unclear and we believe that they would need a considerable amount of

development before they could be implemented. Its proposal to adopt a glide path and basket approach to pricing, principles of which we broadly support, is confusing and contradictory.

3. Notwithstanding the above, we have been pleased with the Authority's positive engagement and observed progress since its 2021 BCMR publication and are keen for this productive dialogue to continue. We are also concerned that this additional regulatory intervention is proving a distraction for the Authority and will further delay completion of its ongoing BCMR.

4. With that in mind, and in the hope that the Authority can move on from this distraction and complete its ongoing BCMR, we are today making the following changes to our wholesale leased lines portfolio:
    I. Removal of the pricing distinction between 'Same' and 'Different' exchange pricing for 1Gbps and 2 Gbps wholesale leased lines (all to be priced at the 'Single' Exchange level); and
    II. A voluntary reduction in the MRC of our 1 Gbps, 2Gbps, 4 Gbps, 8 Gbps and 10 Gbps wholesale leased line products.

5. We explain both our concerns about the Authority's proposals, and our price changes, in more detail below. We have also provided direct responses to the Authority's questions in Annex 1.

6. [✂] is made without prejudice to the outcome of the ongoing BCMR, and market definitions/SMP findings therein. It should not be interpreted as Sure accepting any such market definition, nor any assumptions of SMP in any or all of such markets.

7. Finally, it is important to note that we use the term "VHB" to refer to wholesale leased line products providing capacity equal to and above 1 Gbps in this response only. This is for simplicity and to align with the proposals made by the Authority in its consultation document. For the avoidance of doubt, we do not agree that 1Gbps products should be considered a very-high bandwidth circuit and note that the Authority's position is a departure from international best practice.

Timing

8. We appreciate that the Authority may feel under pressure to act quickly after receiving feedback from OLOs and the States of Guernsey (SOG) that wholesale on-island VHB leased line prices are allegedly 'too high'. However, we are somewhat surprised by the timing of this consultation. The Authority is in the final throes of re-assessing the Business Connectivity market and we expect it to publish its conclusions on market definition and market assessment in the coming months.

9. The Authority is therefore proposing to introduce a new price control under a market review that is about to be superseded. Whilst we recognise that this is the Authority's prerogative, we do not agree that this is an appropriate or proportionate course of action.

10. Firstly, it is inappropriate because the market has changed significantly since the Authority's 2014 BCMR[1]. Evidence clearly shows that the wholesale leased line market has become significantly more competitive. JT's position in both the wholesale and retail market has strengthened significantly, with both wholesale (once self-provision is factored in) and retail market volumes suggesting that the markets are now competitive (and therefore not warranting ex ante remedies).

11. This significant change was reflected in the Authority's 2021 BCMR Product and Market Definition Draft Statement, which departs substantially from the 2014 market definition and SMP determination.

12. Given the feedback regarding 'high prices' has been received within the last 12 months, and given the magnitude of the changes observed in the wholesale leased lines market, it is necessary to re-assess what might be causing these higher prices. We therefore urge the Authority to accelerate completion of its (already ongoing) market analysis before considering the merits of a new price control on VHB wholesale leased lines. This will ensure that any price control remedy is targeted at the source of the alleged market failure (if any), rather than at the market failures observed in 2014.

13. Secondly, we are concerned that the Authority's proposal appears to pre-empt the outcome of its ongoing BCMR. Again, this would be highly inappropriate. The Authority is in the process of completing its ongoing BCMR, and it is unclear whether it has yet undertaken the necessary analyses to know how markets will be defined or who will be found to have SMP, much less conclude the appropriate price regulation for any SMP markets identified. And yet,

[1] Please seen **Annex 2** for more information about how the market has changed over the last review period.

simultaneously, the Authority is proposing to implement its benchmarked price control via a two-year glide path that will likely overlap with its new regulatory framework. This appears not only pre-emptive but could cut across market definition and SMP decisions resulting from the ongoing BCMR. Unless the Authority's ongoing BCMR delivers a broadly similar outcome to the 2014 BCMR, which we contend is highly unlikely given observable market developments, then there is likely to be a conflict between this glide pathed benchmark price cap and any future pricing remedies resulting from the ongoing BCMR.

14. Furthermore, there is a risk that imposing pre-emptive regulatory obligations might, in fact, prejudice the outcome of the Authority's ongoing process. This is because it will be extremely difficult to 'go back' from any regulatory impositions applied now. To avoid pre-empting, and possibly prejudicing, the outcome of its ongoing BCMR, we urge the Authority hold off imposing substantial pricing changes just before it is due to complete its ongoing review.

[✂]

15. We are also somewhat bemused by the timing and content of this consultation because it is ultimately unnecessary. It will not achieve the desired outcome any quicker than if the Authority were to simply finalise and publish the conclusions of its ongoing BCMR. [✂].

16. For some time now, and on numerous occasions to the Authority, we have [✂]:
    I. [✂]; and
    II. [✂].

17. We welcome [✂] feedback about the [✂] and note that no other respondent raised the issue of pricing of wholesale VHB prices in response to this Request for Feedback. [✂].

18. [✂]. We require the regulatory certainty of the new framework before any other commercial decisions can be taken, including [✂]. Making significant changes to our pricing curve shortly before further pricing obligations are implemented, including the reimposition of the highly restrictive retail-minus price control, is likely to be highly distortive, both of our pricing curve and the market.

19. This has been explained to the Authority with the belief that it would encourage it to complete its BCMR in a timely manner. We believe [✂] presents the Authority with a quick and pragmatic solution to its perceived problem. The Authority can simply focus on completing the ongoing BCMR as soon as possible, rather than working to complete two interwoven consultations in parallel, [✂].

Appropriate benchmarking

20. We support the Authority's proposal to remove the restrictive retail-minus price control on VHB services and to avoid imposing a complex cost-orientation obligation. We also agree that price benchmarking against other small jurisdictions, in the context of a complete and forward-looking market assessment, is the correct starting point for establishing an appropriate on-island price for Guernsey.

21. However, we do not agree with the Authority's assertion that simply benchmarking Sure VHB leased line MRCs against JT's Jersey MRCs is appropriate. This outlook is overly simplistic and does not take sufficient account of differentiating factors, such as non-recurring charges (connection and other one-off charges), economies of scale, economies of scope and the prices of lower bandwidth leased lines. We consider each of these issues below.

22. In our view, an adjusted benchmark, starting with the JT Jersey price and then taking account of the aforementioned factors, would be much more appropriate. It would ensure that the Authority was actually 'comparing apples with apples'. We estimate that, once relevant differentiating factors have been appropriately and cumulatively considered, the wholesale price for on-island leased lines in Guernsey would – and indeed should - sit higher than equivalent services in Jersey.

Non-recurring charges (NRC)

23. The Authority's benchmarking analysis only appears to compare the MRC charged by operators in each jurisdiction, rather than both MRC <u>and</u> NRC. This is a key consideration because JT Jersey charges NRCs on many of its VHB wholesale leased lines where Sure does not.

24. NRCs usually refer to connection charges (and other one-off charges) paid by the customer when entering into an agreement with a new provider. These connection charges are paid upfront and

in full, and as a result are not included in the MRC. For example, whilst Sure's wholesale MRC is higher than JT's Jersey MRC for 1Gbps leased lines, JT Jersey also charges new customers a £2000 NRC. A similar structure can be observed on equivalent 2Gbps services, whereby JT Jersey charges a £2400 NRC, whereas Sure Guernsey does not charge an NRC. A similar discrepancy can be observed for lower bandwidth 10Mbps and 100Mbps wholesale leased line services.

25. This additional revenue, that is earned by JT in Jersey but not by Sure in Guernsey, ought to be factored into future price controls. This implies that, in the absence of Sure introducing its own NRC, Sure's future VHB leased line MRCs ought to sit slightly higher than equivalent JT MRCs.

Economies of scale and scope

26. Whilst Guernsey and Jersey are 'similarly sized jurisdictions' and rivals in key economic sectors (e.g., the financial sector), this does not mean that there are no differences between the islands. Rather, in our view, JT enjoy advantages in economies of scale and scope that enable it to price its wholesale on-island leased line products lower than is possible in Guernsey. Again, these differences imply that Sure's VHB leased lines ought to sit slightly higher than equivalent JT MRCs.

27. In its consultation, the Authority correctly acknowledges that JT does, in fact, benefit from economies of scale in Jersey when compared with Sure in Guernsey. However, it then, rather inexplicably, does not account for these economies of scale when setting a proposed benchmark price.

28. We believe that these economies of scale are relevant and justifies a higher price. For example, over the last review period, the Jersey retail leased lines market has been between 17% and 45% larger than the equivalent Guernsey market. There are also almost twice the number of businesses in Jersey (17,579 in Guernsey and approximately 33,000 in Jersey). This enables JT to allocate its fixed costs (including the likes of multiplexers, chassis, and other core network components), which constitutes a large proportion of the costs of providing wholesale leased lines, over a significantly larger customer base. This, in turn, reduces the MRC because the per customer contribution needed to cover fixed costs is smaller.

29. Similarly, JT Jersey benefits from economies of scope not currently available to Sure in Guernsey. JT Jersey has been able to utilise its ubiquitous point-to-point fibre broadband network to provide wholesale and retail on-island leased line services. Sure has obtained evidence of this being the case. This reduces the incremental cost of providing new leased lines, and therefore

enables a lower NRC and MRC, because it is less likely to need to dig, lay fibre to, and obtain wayleaves for the customer's premises. It has also enabled JT to deliver leased line solutions to locations, and at prices, [✂].

Price of lower bandwidth leased lines

30. Finally, we do not believe it is appropriate or proportionate for the Authority to only address disparities between Guernsey's and Jersey's wholesale VHB leased line prices, and not do the same for lower bandwidth products within the same market.

31. In Guernsey, the majority of Sure's leased line customers continue to purchase lower bandwidth leased lines[2]. Sure considers its wholesale on-island leased line portfolio as a whole, [✂].

32. This has resulted in Sure's wholesale leased line prices for lower bandwidth services being significantly below equivalent JT Jersey prices[3]. However, [✂]. JT Jersey has been able to offer lower priced wholesale VHB services primarily because it charges its wholesale customer base a much higher price for its lower bandwidth services.

33. A consistent and fair approach to benchmark pricing should enable Sure to charge broadly similar prices as JT Jersey (accounting for NRCs and economies of scale and scope) across the entire portfolio of wholesale leased lines. Failure to do this would deny Sure the opportunity to appropriately rebalance its pricing curve (and revenues) in a manner afforded to JT in Jersey[4]. Once again, simply comparing the price of VHB leased lines in Guernsey and Jersey, without considering the additional revenues made by JT on its lower bandwidth services, would not be 'comparing apples with apples'.

34. We believe this is relevant and should be considered when setting an appropriately adjusted benchmark price for wholesale VHB leased lines. The Authority should take account of the lower bandwidth pricing disparity by allow Sure to offset this 'lost' revenue from its higher bandwidth customers[5].

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[2] In 2020, [✂].

[3] Sure's wholesale price for 10Mbps wholesale leased lines is 53% lower than JT's equivalent price and 20% cheaper than equivalent 100Mbps services in Jersey. Furthermore, JT charges a £1000 and £2000 NRC respectively, which Sure does not.

[4] Over the course of the last review period, we estimate that Sure would have made an additional [✂] had it priced at the MRC charged by JT in Jersey and implemented an equivalent NRC.

[5] Whilst a direct benchmarking approach would see Sure increase its lower bandwidth wholesale prices to the JT Jersey pricing level (and implement an appropriate NRC), [✂].

Mechanics of the price control

35. Whilst we are broadly supportive of the principle of using a glide path and product basket to guide price setting, we are unclear as to how the Authority's proposed glide path and 'grouping' will apply in practice. In our view, these proposals would need a considerable amount of development before they could be implemented.

Glide path

36. The Authority has proposed to reduce prices over the course of a 24-month period. However, we note that the Authority is in the process of reviewing the Business Connectivity market and has already published a preliminary market definition and market power assessment. We expect the Authority to complete its market review within the next 12 months, and as such, any ex-ante pricing remedies imposed as part of that review would supersede any remedies introduced now under the current BCMR decision.

37. It is unclear how the Authority proposes to align its glide path to benchmarked pricing with any forward-looking remedies imposed as part of its ongoing BCMR. There is a risk that imposition of a new price control, followed by the prospect of another, distinct price control (if warranted), could destabilase the market. This risk will be particularly acute where the proposed benchmark price reduction and any future pricing regulation convey conflicting pricing signals.

38. However, and for the avoidance of doubt, it would be highly inappropriate for the Authority's forward-looking assessment to be prejudiced by the imposition of new ex-ante remedies that are superseded by a new regulatory framework.

39. If the Authority decided to proceed with its proposals, we urge the Authority to further develop and explain its glide path proposals, setting out how it will interact with any remedies imposed under the ongoing BCMR.

Price regulation at a basket level

40. We are unclear about how the Authority's proposed 'speed grouping' will work in practice. The Authority proposes to implement a 'speed-based grouping price control' – *"a separate maximum price for any lines falling into the 1, 2, 4, 8 and 10 Gbps product groups"*. We interpret this to mean that each technology delivering the same speed product must be priced at the level of the benchmarked price cap. For example, MPLS Ethernet, Direct Ethernet and Fibre Channel 1Gbps

services must all be priced at the same level, or in a manner that does not exceed the cap. In the absence of more detail from the Authority, it is not clear to us whether this is the correct interpretation.

41. In our view, this position is confusing and somewhat contradictory. The Authority has set out its desire to attain the benefits of taking a basket approach – 'greater simplicity and flexibility for the incumbent to meet consumer demand' – but has then proceeded to, in effect, apply a product level cap. Based on our understanding of the Authority's proposals, Sure would not have any flexibility to price products (e.g. MPLS Ethernet, Direct Ethernet and Fibre Channel) within a speed product group (e.g. 1Gbps) at different levels.

42. Even if flexibility within a speed group were allowed, it is unclear as to how the Authority would calculate the average price within a speed group. Would the Authority calculate the average on a weighted basis, whereby products with higher volumes hold a larger weighting in the average calculation? Similarly, would Sure be allowed to introduce new products into the basket, or would that require permission from the Authority? Should the Authority wish to allow greater flexibility within speed groups, it would need to establish a mechanism for collating volume, pricing and/or revenue data to establish compliance within a given period. Absent this mechanism, it is unclear what pricing flexibility is actually available to Sure.

Our proposal

43. Notwithstanding the above, we welcome the Authority's positive engagement and progress since its 2021 BCMR publication, and we are keen for this productive dialogue to continue. However, we are concerned that this additional regulatory intervention, prompted by recent feedback from OLOs and SOG, is proving a distraction for the Authority and will further delay completion of its ongoing BCMR. We hope that, by voluntarily reducing prices for wholesale VHB services (albeit not to the extent considered as part of our full pricing curve review), the Authority will no longer have to divert resources from the BCMR process to address its short term VHB pricing concerns.

44. Furthermore, we are keen to remind both the Authority and the market that we are receptive to feedback from OLOs and have a track record of providing price reductions and new products when reasonably requested. For example, in 2016 we introduced a new wholesale LanLink 500Mbps Ethernet product following feedback that an OLO could not readily afford a 1Gbps

service at the time. Similarly, in 2018, we reduced the price of our wholesale LanLink 10Gbps Ethernet service by 30% following an OLO request.

45. With that in mind, we have made voluntary price reductions to the products and services set out in Table 1 below. A notification is being sent today to relevant stakeholders and the Authority to notify them of these price reductions.

Table 1: A summary of Sure's price changes for its wholesale ≥1Gbps leased lines

Capacity (Gbps)	Exchange 'Type'	Current Annual Price (£)	New Annual Price (£)	Reduction
1	Same Exchange	22,907	19,929	-13%
1	Different Exchange	41,232	19,929	-52%
2	Same Exchange	25,452	25,452	0%
2	Different Exchange	45,814	25,452	-44%
2	High Speed Ethernet	37,884	25,452	-33%
4	All	42,096	36,624	-13%
8	All	59,496	51,762	-13%
10	All	61,044	57,076	-6%

46. The effect of these price reductions is twofold; it removes the pricing distinction between 'Same Exchange' and 'Different Exchange' for VHB wholesale leased lines, and it provides OLOs with a material reduction in the price of VHB wholesale leased line products (~13%). These lower prices will be available for all wholesale VHB leased lines as soon as the regulatory notification period has elapsed.

47. Again, once the outcome of the BCMR is known, [✂] is contingent on the Authority's conclusion in its ongoing BCMR and the extent to which Sure continues to be able to set wholesale prices on a commercial basis. [✂].

Annex 1

Q1. Do you agree with the GCRA's view that Guernsey VHB (1 Gbps and above) leased lines prices are excessive? The GCRA is especially keen to hear from business users of leased lines in Guernsey.
We do not agree that with the Authority's assertion that Sure has engaged in excessive pricing, nor has it established this to be the case from a competition law standard. The Authority has simply demonstrated that certain elements of Sure's wholesale VHB leased line pricing is higher than some comparator jurisdictions. This is ultimately insufficient to conclude that prices are "excessive" and falls far short of the standard required by competition law. Notwithstanding the above, Sure [✂]. See paragraphs 15 – 19 for further detail.
Q2. Do you agree that benchmarking Sure's wholesale VHB (1 Gbps and above) leased lines is an appropriate mechanism to remedy excessive prices? If not, what alternatives do you suggest?
Whilst we agree that price benchmarking may be an appropriate starting point for establishing the pricing of wholesale VHB leased lines, it is overly simplistic and the Authority's proposals would lead to market distortion. Direct benchmarking against comparator jurisdictions fails to take into account important differentiating factors such as non-recurring charges, economies of scale and scope, demand profiles and the prices of other wholesale leased line bandwidths. Failing to take these differences into account would suggest that the Authority's analysis does not 'compare apples with apples'. Rather, an *adjusted* benchmark is a more appropriate mechanism for addressing pricing concerns. See paragraphs 20 – 34 for further detail.
Q3. Should a benchmarking approach be adopted for Sure's wholesale VHB (1 Gbps and above) leased lines, do you agree that it should apply by VHB speed category?
We do not object to the principle of a benchmarked price control being applied to a speed-based group. However, as described in paragraphs 40 – 42, the Authority's proposals are unclear and require a considerable amount of development before they could be implemented. This includes clarifying whether it wishes to allow pricing flexibility within the speed category and describing the mechanism by which compliance within the speed category is assessed. We note that, following today's notification of price reductions, all of Sure's wholesale VHB leased line products are now priced at the same level for each speed category (see Table 1). For the avoidance of doubt, we do not support the imposition of new benchmarked pricing under the current BCMR prior to the conclusion of the Authority's ongoing BCMR.

Q4. Should a benchmarking approach be adopted for Sure's wholesale VHB (1 Gbps and above) leased lines, do you agree that it should be applied gradually?
We are broadly supportive of the principle of using a glide path. However, we do not support the imposition of benchmarked pricing, whether via a glide path or otherwise, prior to the conclusion of the Authority's ongoing BCMR. See paragraphs 36 – 39.
Q5. Should a benchmarking approach be adopted, do you agree that differential pricing for Sure's VHB (1 Gbps and above) wholesale leased line products should be eliminated?
We do not object to differential pricing for 'Same Exchange' and 'Different Exchange' products being removed. As the Authority can see in Table 1, we have now removed such pricing differentials from our wholesale VHB leased line portfolio. [✂].
Q6. Do you agree that, 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? If not, what alternatives do you suggest?
Yes, we agree that any future benchmarked pricing (suitably adjusted for local market conditions) should be aligned with the market review cycle and only imposed once an appropriate SMP determination has been made.
Q7. Do you agree that Sure's wholesale price list for all leased lines should be made public?
The Authority has stated that Sure ought to be required to publish its wholesale price list 'in the interest of transparency', but the Authority has not explained what they mean by this, nor what outcome it hopes to achieve. The Authority should further explain what it hopes to achieve by making this information publicly available. However, we do not object to <u>regulated products</u> on the Sure wholesale leased line price list being published. As such, we intend to make our wholesale leased line price list available on the Sure Business website in the following area: https://business.sure.com/products-and-services/telecoms-solutions/connectivity/carrier-services/. This webpage is publicly accessible.

Annex 2

Market development

A.1 Evidence shows that the Guernsey leased lines market has changed significantly since the Authority's last market assessment, predominantly driven by JT Ltd ("JT") continuing to develop and build out its own fibre network in Guernsey.

A.2 In response to the Authority's October 2019 Call for Information ("our submission"), we provided evidence of this being the case[6]. For example, following its ongoing success in the SOG connectivity tender, JT has been able to substantially increase its fibre footprint in St Peter Port, St Sampson and St Martin. Subsidised by this powerful anchor tenant (which constitutes approximately 29% of retail market leased lines and covers a substantial area on-island), JT has also been able to build out to, and subsequently win contracts to serve, many of Guernsey's largest business sites. This has resulted in JT's estimated retail market share increasing to [✂]. We also estimate that JT has a significantly higher market share of retail VHB on-island leased lines.

A.3 JT's increasingly strong market position could be observed in 2018 wholesale market statistics. In our submission, we noted that, during the review period, Sure's wholesale market share had diminished from [✂] at the start of the review period (2014) to [✂] by mid-2018 (volume). However, we explained that this outlook, which excluded self-provision wholesale leased lines[7], materially underestimated JT's true wholesale market share. JT now provides the majority of its retail services on-net. To deliver retail leased line connections to support its very high market share [✂], JT will be self-providing a substantial number of wholesale leased lines. This was evidenced by a significant growth in the size of the retail leased line market (~54%) and corresponding reduction in the wholesale market (which excluded self-provision) (~46%) between 2014 and 2018.[8] Factoring in this self-provision leased lines will, therefore, radically change the wholesale market share distribution.

A.4 Guernsey market statistics indicate that these trends have continued in 2019 and 2020[9]. Based on 2019 and 2020 *Telecommunications Statistics and Market Reports*, Sure's retail market share has

[6] Sure's response to CICRA's Business Connectivity Market Review – Call for Information – page 6 & 7
[7] This is a departure from CICRA's approach taken in market reviews whereby self-provision leased lines are usually included in wholesale leased line market statistics. For the avoidance of doubt, we agree that it is appropriate to include self-provision, which aligns with regulatory best practice.
[8] Sure's response to CICRA's Business Connectivity Market Review – Call for Information – page 9
[9] Please note, 2021 market statistics are not yet available.

reduced further to [✂] ([✂]) and its wholesale market share (excluding self-provision) now sits at [✂] ([✂]). These are illustrated in Figure 1 and Figure 2.

Figure 1: [✂]

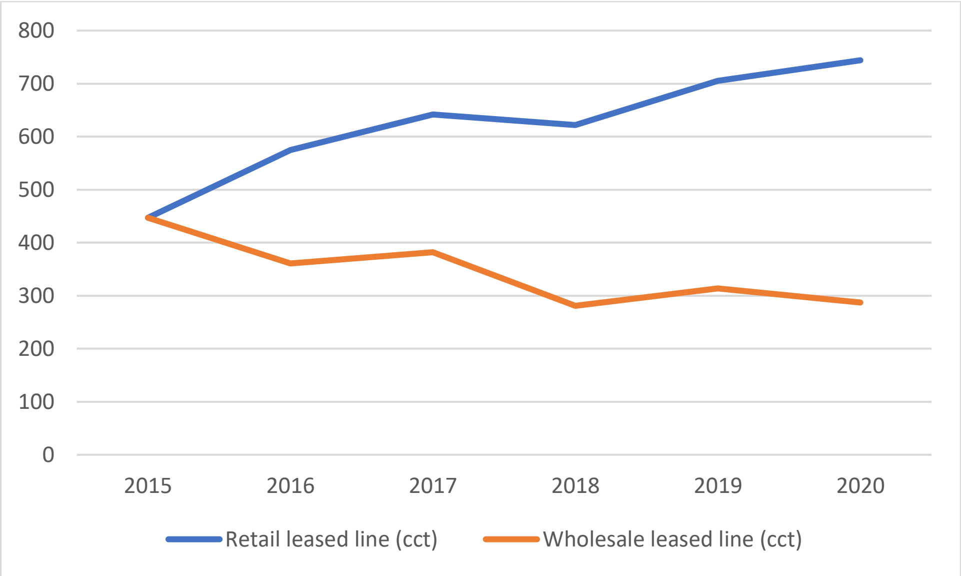
[✂]

Figure 2: [✂]

[✂]

A.5 Similarly, the retail leased line market in Guernsey has grown by 66% since 2015. Conversely, the wholesale leased line market has contracted by 36% over the same period (see Figure 3).

Figure 3: Changes in the size of the Guernsey retail and wholesale leased lines market (circuits)



A.6 Given the above, it is clear that the market has rapidly and significantly changed in comparison to the Authority's 2014 BCMR conclusions. JT's position in both the wholesale and retail market has strengthened significantly, with both wholesale (once self-provision is factored in) and retail market volumes suggesting that the market is now competitive (and therefore not warranting ex ante remedies).

A.7 This is reflected somewhat in the preliminary findings of the Authority's 2021 BCMR Product and Market Definition Draft Decision. Here, the Authority has identified *eight* distinct retail and wholesale markets, in which Sure and JT hold a position of SMP in different markets. This sits in stark contrast to its 2014 market definition and assessment, which concluded that there was a single retail market and corresponding wholesale market. Revealingly, the Authority has provisionally designated JT as having SMP in the retail market for VHB circuits in St Peter Port, St Sampson and St Martin. It has only designated Sure as having SMP in the corresponding wholesale market on the fallacious assumption that JT does not provide wholesale leased line services[10]. As set out in our April 2021 response[11], we thoroughly disagree with the Authority's approach to conducting this market review and with conclusions drawn from its market analysis. However, whilst the analysis itself is fundamentally flawed, we believe that the underlying market share data remains highly relevant and should be further assessed by the Authority.

Demand for VHB products

A.8 Available evidence suggests that [✂], and thus observed higher prices for VHB products could reflect [✂].

A.9 For example, we have observed just a [✂], and a [✂]. Similarly, we have seen only limited interest in our lower priced 500Mbps retail and wholesale leased line products, with only [✂].

Figure 4: [✂]

[✂]

Figure 5: [✂]

[✂]

[10] Figure 2 clearly indicates that JT do provide some wholesale services to OLOs. Whilst not operating a wholesale model, JT's now extensive fibre network would provide an effective supply-side constraint to Sure's wholesale services.

[11] Sure's response to the GCRA BCMR Product and Market Definition Draft Decision - T1480GJ – 1 April 2021.