GUERNSEY COMPETITION & REGULATORY AUTHORITY

BUSINESS CONNECTIVITY

T1621G

Final Decision - Wholesale On-Island Leased Line Pricing

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Executive Summary

- **High Leased Line Prices:** The GCRA's review has identified that Sure's wholesale on island leased line prices are too high. Leased lines are key building blocks for businesses relying on telecommunications connectivity. Retailers who provide these products to businesses are almost wholly dependent on Sure to serve these customers when they require them, while at the same time competing with Sure for the same customers.

- **GCRA's Intervention:** The GCRA is therefore intervening to address a symptom of this lack of competition by requiring Sure to reduce its wholesale leased line charges significantly. This reduction is expected to enable retailers to lower their prices and offer more competitive rates to their customers because their costs would have fallen. It will also lower the cost of providing mobile networks as leased lines are used to support mobile networks.

- **Price Control Implementation:** The price control is implemented on a product-by-product basis. This decision is based on concerns about Sure's discretion to adjust individual prices that favour its commercial interests over its competitors, which would harm market competition and consumer interests.

- **Methodology:** The decision-making process and methodology are consistent with international methodology. The GCRA was assisted by its advisors, Frontier Economics, who are specialists in creating costs models for the telecommunication industry. The decision ensures that Sure's charges are based on the reasonable costs of providing leased lines to retailers.

- **Protection of investment** - Despite the reduction in charges, the GCRA has ensured that Sure can fund its investment in leased line infrastructure and earn a reasonable return. The GCRA conducted an extensive review, accounting for Sure's costs and revenues in the coming years to ensure that the reduction in charges still enables Sure to recover its efficient costs and does not undermine Sure's ability to finance its investment programme.

- **Outcome and Implementation Timeline** – Having considered the representations made to the Second Proposed Pricing Decision, the GCRA has decided in this **Final Decision** to reduce the individual prices for wholesale leased line products over the 2024-2028 price control period by **23%**. This is estimated to reduce Sure's annual wholesale leased line revenues from £3.6million in 2023 to £2.9million by 2025 (the first full year of the price control), an effective **0.7million reduction**. By 2025, the average annual price of Sure's wholesale on-island leased lines is estimated to reduce to £6,297/year, compared to £7,795 in 2023. If these price reductions were passed on to retail customers, the average charge would be £1,498 less in 2025.

- **Compliance Requirements:** Sure is required to submit compliance statements within two months from the end of each calendar year for the control period. Unforeseen circumstances beyond Sure's control could lead to deviations from the price cap, in which case enforcement actions may not be pursued.

1. Background and Policy context

1.1 In accordance with section 2 of the Telecommunications (Bailiwick of Guernsey) Law 2001 (the **Telecoms Law**), the Guernsey Competition and Regulatory Authority (**GCRA**; **Authority)** may grant a licence authorising any person to establish, operate and maintain a telecommunications network or to provide telecommunications services of any class or description specified in the licence. Sure (Guernsey) Limited (**Sure**) holds a telecommunications licence for the provision of Licenced Telecommunications Services[1] in Guernsey (the **Licence**).

1.2 Under the terms of the Licence[2] and of the Telecoms Law, the GCRA may regulate the prices that may be charged by a licensee which has a dominant position in a relevant market. Pursuant to section 22 of The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (the **Utilities Law**), the definition of a dominant position in relation to a relevant market "*shall be construed as it would be in the UK under the Competition Act 1998"* (UK Competition Act). There is no statutory definition of a dominant position under the UK Competition Act. Rather, the concept has been developed in EU and UK case law.[3] According to that case law, a dominant position is a position of economic strength affording the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers, thus preventing effective competition.[4] The concept of Significant Market Power (SMP) is equivalent to a dominant position and will be used interchangeably in this decision.[5]

1.3 On 19 August 2022, pursuant to s.5(3)(b) of the Telecoms Law, the GCRA published its business connectivity market review: Market Definition & Competitive Assessment Final Decision (**2022 Decision**) finding that Sure held significant market power/dominant position in the wholesale provision of leased lines, as defined in that 2022 Decision.[6]

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1 Telecommunications services are defined in section 31, Telecommunications (Guernsey) Law, 2001.

2 Sure Licence Condition 26.1(d).

3 Once the relevant market is defined, the next stage is to determine whether any firm, singly or jointly, holds a position of Significant Market Power, which is equivalent to a dominant position, defined in the 2018 EU SMP Guidelines (paragraph 52) as 'a position of economic strength affording [the firm] the power to behave to an appreciable extent independently of competitors, customers and consumers'. Also see T1480GJ – BCMR Proposed Decision – Market Definition & Competitive Assessment, 12 April 2022.

4 Case 1001/1/01 *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading [2002]* CAT 1 para 156, citing para 38 of Case *85/76 Hoffman La Roche v Commission* EU:C:1979:36.

5 Article 4, Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Electronic Communications Framework Directive).

6 **2022 - T1480GJ** – BCMR – Market Definition & Competitive Assessment – Final Decision, 19 August 2022.

1.4 Effective regulation to deliver the telecommunications services that Guernsey requires at appropriate prices supports the aims of the States of Guernsey. **2021 - States of Guernsey** - Policy and Resources Committee – Policy Letter – 'Delivering Next Generation Digital Infrastructure':

"*Critical outcomes for the delivery of next generation digital infrastructure are …:*

- *Telecoms infrastructure delivered at the best possible cost for consumers and business users through the promotion of retail competition and transparent and effective regulation*."[7]

1.5 The GCRA has therefore considered whether it would be appropriate to introduce a new control for the prices that Sure charges for the wholesale provision of leased lines.

[7] **2021 - States of Guernsey** - Policy and Resources Committee – Policy Letter – 'Delivering Next Generation Digital Infrastructure', paragraph 3.9.

2. Consultation Process

2.1 GCRA consulted with Sure and the other licenced operators (**OLOs)**, to inform its decision-making process through requests for information, a roundtable discussion, correspondence, and multiple bilateral meetings with Sure in particular.

2.2 The analysis undertaken by the GCRA of the information provided and the cost modelling, supported by Frontier Economics, indicated that Sure's wholesale on-island leased line prices were not justified by their costs.[8]

2.3 The level of prices were of concern notwithstanding the existing retail-minus price control on Sure's wholesale on-island leased lines products in place since 2015. It suggested reliance on competition at the retail level to indirectly control wholesale on-island leased line pricing levels had not been a strong enough constraint on Sure's pricing. The GCRA has therefore considered a different form of regulatory price control to deliver better outcomes for competition and consumers.

2.4 On 31 March 2023, pursuant to s.5(2)(b) of the Telecoms Law, the GCRA published a proposed decision to regulate the prices charged by Sure for the wholesale provision of leased lines **(First Proposed Pricing Decision**). The First Proposed Pricing Decision proposed a cost-oriented price control remedy to reduce the price of Sure's wholesale on-island leased line products by **18%,** compared to the prices that would have applied if current prices increased with inflation from current levels.[9]

2.5 The GCRA received written representations from Sure, JT (Guernsey) Limited (**JT**), Guernsey Airtel Limited (**Airtel**) and from members of the public (collectively, the **Respondents**). Having considered those representations, the GCRA adjusted the underlying costing model to reflect amendments and adjustments suggested by the Respondents. In addition to those changes, the underlying model was modified following adjustments made to its share of common costs for reasons set out in its Second Proposed Decision.

2.6 Because of the adjustments to the underlying cost model, on 5 October 2023, the GCRA published a Second Proposed Pricing Decision for Wholesale On-Island Leased Lines (**Second Proposed Pricing Decision**). Applying those adjustments resulted in the GCRA then proposing a reduction in the price of Sure's wholesale on-island leased line products of **23%**.

2.7 In response to the Second Proposed Pricing Decision, the GCRA received written representations from Sure, JT and Airtel[10] and where reasonable and evidenced, the GCRA has amended its approach and adjusted the costing model accordingly.

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8 The findings evidenced in the cost modelling also support the initial findings in the benchmarking study reported in the GCRA Information Paper published in March 2022 (**2022 Price Review**).

9 T1621G - Wholesale On-Island Leased Line Pricing. First Proposed Pricing Decision, 31 March 2023.

10 The GCRA's written responses to those representations are provided in Annex 1 to that document.

2.8 The Final Decision directs Sure to reduce the prices of its wholesale leased line products as per the direction set out in Section 6. Those price reductions to Sure's wholesale on-island leased line products represent a **23%** reduction over the period 1 April 2024 to 31 December 2028 when compared to the prices that Sure would have applied if prices increased with inflation from the current levels.

2.9 Appendix 1 provides a summary of the GCRA's legal and licensing framework Appendix 3 evidences the GCRA's engagement with the representations by parties in response to the Second Proposed Decision.

2.10 Throughout the consultation process the GCRA has held discussions with telecommunications providers to ensure the review was conducted transparently, and that the process allowed all interested parties to provide feedback on the review's objectives, information relied on to the extent feasible, proposed timelines and proposed remedies. Thus stakeholders were offered the opportunity to provide all evidence they considered relevant to the review.

2.11 For Sure, the extensive consultation period also gave it the opportunity to provide its costing, and pricing information and the opportunity to engage in rounds of discussions with the GCRA and Frontier Economics, the GCRA's advisors for this analysis. Those discussions and information exchanges allowed Sure the opportunity to provide detailed submissions on its historical cost systems, cost allocations, and internal systems. Given that process, the costing model developed, which is central to its assessment of pricing in the wholesale leased line market, reflects the data the GCRA was provided during the consultation period and is the best information available to it.

2.12 Finally, the price reduction is designed to address Sure charging excessive prices in a market where it has a dominant position. The assessment is not confined to Sure's interests alone. The impact of excessive prices on stakeholders and the wider Guernsey community, other licensed operators and businesses is also a relevant consideration for the GCRA. To achieve a fair reduction to those excessive prices, the underlying cost model allows the GCRA to identify the prices for wholesale leased lines that need to be set over the review period to allow Sure to both recover its efficient-incurred costs, and make a reasonable return, as defined by its weighted average cost of capital **(WACC).**

3. Price control

Overview

3.1 A GCRA objective is to ensure that all licensed operators have non-discriminatory access to the wholesale network at reasonable prices, which supports effective competition at the retail level.[11]

3.2 Excessive pricing refers to a situation where the prices charged by a dominant undertaking are not closely related to the value to the consumer and/or the cost of producing or providing the relevant service.[12] Concerns about excessive pricing can arise where, absent regulation, price levels are likely to be persistently high with no effective pressure (e.g. from new entry or innovation) to bring them down to competitive levels over the period of the review. Given that Sure is dominant on the relevant wholesale leased lines market, it is appropriate to consider whether Sure's charges are excessive, and if so, whether they are likely to remain so. In markets where such conditions exist and are expected to continue, OLOs/retailers are subject to a cost of providing a service that is higher than it needs to be and end users then face a greater cost of doing business in Guernsey. These risks are even greater in market conditions where there is vertical integration, and the supplier of the essential upstream wholesale services is also the downstream retail competitor (which is the case in Guernsey).

Need for new price control structure

3.3 In its 2015 price control decision (**2015 Price Control**),[13] the GCRA implemented a retail-minus form of price control. The structure of that retail-minus price control was informed by the information at the time, in particular it was evident that JThad made inroads into the retail leased lines market in Guernsey providing an alternative choice to businesses for these services and appeared to pose an increasing challenge to Sure's position.

3.4 The GCRA supported its 2015 Price Control with several additional conditions and measures (see Appendix 2), with the aim that Sure, as the dominant wholesale provider of on-island leased lines, would be constrained in its ability to harm competition and in particular, set excessive prices. The GCRA concluded at the time that the retail-minus approach was the most appropriate and proportionate regulatory means of meeting the objectives.

3.5 Given the evidence and information analysed in the current review, which is covered in further detail in subsequent sections, the GCRA has concluded that the existing retail-minus price control, with its associated conditions and obligations, has not been sufficient to constrain excessive pricing of wholesale on-island leased lines and a new form of price control is necessary.

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11 **2023** - **GCRA 2023 Work Programme.**

12 **1978** Case C 27/76 United Brands v. Commission, [1978] ECR 207, [1978] 1 CMLR 429, paragraph 250. In United Brands the Court of Justice of the European Union held that: '…charging a price which is excessive because it has no reasonable relation to the economic value of the product supplied would be… an abuse'.

13 **2015 - Document 15/16**. BCMR - Final Decision 19 May 2015.

Alternative price control structures

3.6 Businesses that rely on leased lines for connectivity will become less competitive in the markets in which they compete if the prices that they are charged for leased lines are excessive. Leased lines or business connectivity services are in many cases vital inputs for telecoms retailers. Reliance for such critical services on a dominant provider represents commercial risk, because in Guernsey they are reliant on a vertically integrated supplier that also competes with them for the same customers. The case for ensuring there a suitably robust regulatory oversight that protects competitors and end users in Guernsey is therefore apparent.

3.7 The GCRA has considered alternative methodologies such as benchmarking analysis, and cost modelling to assess whether wholesale leased line prices are excessive.

Benchmarking

3.8 The GCRA undertook a 2022 Price Review using a benchmarking analysis to compare prices across a peer group of countries (Iceland, Isle of Man, Luxembourg, and Jersey) to establish whether there were any significant issues with pricing to inform a more considered price control assessment. The benchmarking analysis identified some significant issues with the level of prices and Sure's pricing curve.

3.9 In that review, the GCRA presented a wholesale benchmarking analysis which showed that prices for Sure's very high bandwidth (**VHB**) leased line products in particular were significantly higher than comparable jurisdictions, and substantially greater than UK wholesale products.[14] It therefore contemplated an urgent intervention but after engagement with Sure in response to that consultation, Sure agreed to voluntarily reduce the more extreme outlier (wholesale VHB leased lines) prices from 28 March 2022 by as much as 44% and 52%.[15] Whether resolving those significant anomalies addressed all concerns was a matter to be determined in the future.

3.10 While the 2022 Price Review benchmarking approach delivered positive changes by addressing extreme pricing outliers, a more in-depth assessment of whether the Sure's prices for wholesale on-island leased lines are justified is more challenging when relying only a benchmarking approach. These challenges include: identifying appropriate "peer group" countries; identifying product categories to compare; taking account of time (it is essentially a snapshot of pricing at a given point in time); and securing reliable data, as not all pricing data is publicly available and even where figures are available, they may not be directly comparable to a level that satisfies the requisite legal standard for setting regulated prices given the facts relevant to this decision.

3.11 Despite Sure's voluntary reduction in wholesale prices, it did not accept that its wholesale on-island leased line pricing were excessive overall:

> *"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*

14 **Case T1602G:** *Price control for wholesale on-island leased lines: Information Paper & Conclusion* [para. 2.3].

15 **Case T1602G**: *Price control for wholesale on-island leased lines - Media Release.*

conclude that prices are "excessive" and falls far short of the standard required by competition law."[16]

3.12 The GCRA has concluded that a more detailed analysis was required to determine whether Sure's pricing is higher than justified by efficient costs across all its wholesale on-island leased line products and not just the VHB services, and that benchmarking with similar jurisdictions was unlikely to fully support the States of Guernsey's policy with regard to pricing of these services.

Retail-minus approach

3.13 A retail-minus price control sets the wholesale prices of products within the market by reference to the associated retail price, minus a margin that is considered sufficient for a reasonably efficient operator to compete profitably in the downstream market. The establishment of a retail-minus control requires information and a judgment about the costs of providing a retail service. For the approach to be fully effective generally requires that there is robust competition at the retail level.

3.14 The retail-minus approach has the benefit of ensuring that the OLO/retailer can provide services only if it is at least as efficient as the dominant operator in producing its retail offer and so the risk of encouraging market entry by an inefficient operator is minimised. The main disadvantage of this approach is that it does not directly address prices in the wholesale market, which could be an issue if the dominant operator is charging excessive wholesale prices.[17] The imposition of a retail-minus control in the wholesale market is therefore only an indirect constraint on wholesale prices relying as it does on the robustness of competition in the downstream retail market to constrain wholesale prices.

3.15 In the GCRA's analysis of Sure's wholesale pricing in its '*Price control for wholesale on-island leased lines'* Consultation paper. It suggested:

> *"…that the retail-minus price control has been less effective in restraining excessive pricing for the VHB leased line products than for lower speed products. A retail-minus approach will lead to cost-oriented 'efficient' wholesale prices if retail prices are themselves cost-oriented and the retail costs subtracted from the retail prices are accurately estimated. There are a number of reasons why retail-minus may not have worked effectively in this case. The GCRA previously identified two. The first is that it relies on competitors actively seeking to compete and grow market share. The second is that it does not directly address prices in the retail market, which could be an issue if the SMP operator is charging a retail price which is above marginal cost."*[18]

3.16 Given the historic evidence of the inability of the existing retail-minus control to constrain excessive prices at the wholesale level, the GCRA has concluded that an updated or remodelled price control based on retail-minus would not best serve the interests of end users and

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16 **Case T1602:** Sure response*: Price control for wholesale on-island leased lines - consultation.*

17 A finding that no operator holds no SMP at the retail level carries with it the conclusion that no operator (or operators) has the ability to set its prices independently of its competitors in the retail market.

18 **Case T1602G**. *Price control for wholesale on-island leased lines: Consultation*, 14 January 2022, paragraph 4.9.

competitors in the relevant markets.

Cost orientated price control

3.17 Cost orientation ensures that the prices of goods and services are based on the actual costs of production, including reasonable profit margins. This approach helps in preventing monopolistic pricing and exploitation, making prices fair and accessible to consumers is a key mechanism for regulatory authorities that are tasked with setting prices for entities who hold dominance in a relevant market. The implementation of a cost orientation obligation requires cost modelling because it is possible that a dominant operator, such as Sure, will have costs that are not efficiently incurred. This means that a cost-oriented control cannot simply rely on Sure's stated costs without considering the need to make efficiency adjustments.

3.18 The overarching aim of a cost-oriented price control is to develop an estimate of prices based on Sure's efficiently incurred costs, whilst ensuring Sure has the opportunity to earn a reasonable return on its investment.

3.19 By linking price to the cost of providing the service, the principle of cost orientation is a fair and reasonable way of ensuring that Sure as the dominant operator does not use its market power to price in a way which is detrimental to its competitors and ultimately end-users. Various pricing remedies have been considered; however, the drawbacks of these outweighed the benefits to be had. Although the cost-oriented pricing approach has some inherent weaknesses, it is the most reasonable and proportionate approach to price setting given the overall value and importance of broadband to Guernsey households and businesses.

3.20 The GCRA is therefore setting the regulatory price control based on cost orientation.

Form of cost-orientated price control

3.21 The GCRA has considered several potential approaches to setting regulated cost-oriented prices for wholesale leased lines. The costing model variants being: the top-down approach, discounted cashflow modelling approach and the bottom-up approach.

3.22 **Top-down Approach** - This models the actual network of the operator. Under this approach the cost-based price would reflect the actual costs incurred by the operator in building and maintaining that network, using regulatory accounting data.[19] The capital costs within a cost model are based on the current value of the assets of the operator being modelled, the "Regulatory Asset Base" **(RAB)**, from the accounts of that operator. Estimates of costs in future years are developed by "rolling forward" this Regulatory Asset Base, under the general assumption that the network of the operator is in a "steady state", i.e. that the future investment in the assets will largely reflect the replacement of existing assets in the network, rather than

[19] In response to Sure's representations on this point, the GCRA can confirm that in referring to the "top-down modelling" approach, it is referring to the "top-down Regulatory Asset Base" approach.

extending the network or developing a new network.

3.23 **Discounted Cashflow Modelling Approach (DCF)** - This involves calculating the future cashflows generated by the regulated products, based on forecasts of the relevant costs and revenues from those products. Under this approach the cost-based wholesale prices would be set in such a way that the return made on these future cashflows is consistent with a reasonable rate of return (i.e. cost of capital), or in other words, the "*net present value*" of the future cashflows when discounted using an appropriate rate of return is zero. The net present value of zero indicates that Sure is expected to generate returns to cover its costs for doing business in addition to a reasonable return. A net present value higher than zero indicates that Sure will be making excessive returns. This approach was used in assessing wholesale broadband prices in Guernsey in 2006. The calculation of cashflows can be based on a hypothetical operator or aim to reflect the actual network of the regulated operator.

3.24 **Bottom-up Approach** - This models the hypothetical network of an operator based on current best in class engineering practices and design for a network to provide the services being modelled. It involves forecasting the efficient level of demand and identifying the specific network assets that would need to be deployed by an operator to service that demand. The objective of this approach is to proxy the "competitive level" of prices, which would then send the appropriate "build-or-buy" signals to alternative operators choosing between buying wholesale services or building a network themselves.

Conclusion

3.25 Based on its assessment of these options, the GCRA has decided that the DCF modelling using forecasts based on Sure's actual demand and cost data is the appropriate cost modelling approach. This is because Sure's Fibre to the Premises (**FTTP**) network, which will be used in part to support Sure's wholesale on-island leased line services, is currently in the process of being built and the DCF approach is an appropriate approach to determining cost-based prices in markets where networks have not yet been fully deployed. There are also significant shared costs between leased line and broadband service provision as part of the FTTP network build, and as the GCRA is using the DCF modelling approach to inform Sure's wholesale broadband product price control,[20] a shared modelling approach is therefore more appropriate. Using this approach is considered a proportionate approach given the size of the jurisdiction rather than building different models for each price control.

3.26 The GCRA however recognises that the use of forecast data based on Sure's actual costs may exceed the efficient level of costs and has therefore reviewed the cost data and made adjustments to account for expected efficiency gains.

3.27 The assumptions used to develop the model are outlined in Section 4. An overview of the GCRA's remedies is set out in Section 5, and the Final Pricing Decision in respect of the prices that Sure

20 **Case T1652** - Proposed Decision – Wholesale Broadband Access Pricing, 23 May 2023.

will be permitted to charge for wholesale leased-line products is set out in Section 6.

4. Analysis and assumptions

Overview of modelling process

4.1 The model allows the GCRA to identify the level of wholesale on-island leased line prices for each product that would need to be set over the defined periods[21] to allow Sure to recover its efficient-incurred costs, that is, make a return on its cashflows equal to a reasonable return, as defined by its weighted average cost of capital (**WACC**).

4.2 To populate the model, the GCRA requested and obtained a substantial data set from Sure, including Sure's historical costs, forward looking investment in its fibre and legacy networks, and consumer demand for different leased line products. The GCRA has also supplemented the data received from Sure with data from other sources, such as the OLOs' demand forecasts.

4.3 The GCRA's cost modelling assessment, which was based on the information and data provided by Sure and OLOs, has found that if wholesale on-island leased line prices were to evolve with long-run rate of inflation from current levels, these would be **on average 23% higher over** the price control period (2024-2028) than would be expected if these reflected the level of Sure's efficiently incurred costs. The GCRA's view is that, absent a price control intervention, Sure would have insufficient incentive to act to reduce its wholesale product prices to efficient levels in the wholesale market to the ultimate detriment of customers and effective competition in the market.

4.4 The model developed calculates the "*operational cash flows*" related to wholesale on-island leased line products over time corresponding to the assets' life, calculated as its expected wholesale revenues from these products minus its expected efficiently incurred capital and operating costs. In practice, these are the level of prices that mean that the sum of Sure's discounted cashflows (**DCF**) for wholesale on-island leased line services equal to zero, when using its WACC as a discounting factor.

4.5 In developing the cost allocation approach, the GCRA aimed to identify a justifiable set of allocation keys drawing on available data, whilst ensuring the approach was proportionate given the size of the jurisdiction, and with a view on the burden of data provision.

4.6 In doing this, the GCRA engaged extensively with Sure on the cost allocation approach during the development of the model, in which Sure had the opportunity to make suggestions on the appropriate allocation keys and provide data to inform those. Based on this, for Sure cost categories for which there is a clear driver of the costs, the GCRA aimed to use specific allocation keys reflecting these drivers for the most material cost items, where data to inform those keys

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[21] The defined periods for the price control means 1 April to 31 December in 2024, and for each of the years 2025, 2026, 2027 and 2028, it means 1 January to 31 December.

was available. This was the case for Sure's staffing costs, which account for over 60% of the estimated Sure's operating costs each year of the modelled period.

4.7 The GCRA made limited use of "cost-causal" allocation keys from Sure's 2014 cost allocation model, where it was deemed that value of these keys were likely to still be a reasonable reflection of the appropriate allocations today and going forwards. Together these costs represent less than 8% of the costs allocated to wholesale broadband and wholesale leased line services in the model in each year of the modelling period.

4.8 Beyond these, the remaining costs were then allocated based on "more general" cost allocation keys, such as the split of current subscribers or revenues between services. The GCRA considers that these allocation keys still result in an appropriate allocation of costs between services (see further below). The approach is proportionate given data on subscribers and revenues were readily available from Sure, and in-line with approach in other jurisdictions (again see further detail below). This is particularly the case for pure "common costs" (such as corporate overheads), which by definition do not relate to the provision of specific services, and therefore for which there is no "cost-causal" allocation of costs between services.

4.9 In relation to allocating costs based on revenues, the GCRA considers that revenues by service reflect a reasonable proxy for the efficient allocation of costs. This is because overall, an efficient allocation of costs should take account of both "supply side" factors (such that costs are recovered from the services that drive those costs), but also "demand side" factors, whereby a greater share of costs is recovered from services for which there is a high willingness to pay. Current prices, and therefore revenues, are a reasonable way to capture these factors, as its reasonable to expect that an operator sets prices both to reflect the underlying cost of providing them, and relative to what customers are willing to pay for them. This is shown by the fact that prices of wholesale leased line products tend to be significantly higher than for wholesale broadband products (as is the case for Sure) despite these being offered primarily over the same network. This in part reflects that wholesale leased line products are purchased primarily by businesses (as opposed to residential customers), which are expected to have a greater willingness to pay for connectivity.

4.10 The GCRA acknowledges that there is some degree of "circularity" in the use of revenue allocation keys in a cost model, given this means revenues are used to determine the costs to be recovered from different services, which are then used to determine the appropriate level of prices and thus revenues. However, the GCRA still considers that the current set of prices and in turn split of revenues between services is likely to be a reasonable proxy of an appropriate revenue split for Sure, and in turn of an efficient cost allocation. Therefore, on balance, the GCRA considers that its use of revenue-based allocation keys is a reasonable, proportionate approach to allocating costs in the absence of alternative data.

4.11 The GCRA also notes that its approach is consistent with the approach used in cost models in other similar-sized jurisdictions. For example, in Jersey, the Jersey Competition & Regulatory Authority's

(**JCRA**) cost model used to inform cost-based wholesale broadband prices of JT in its 2021 wholesale broadband access pricing review, the JCRA used the split of subscriber lines and revenues between services to allocate costs in a number of cost categories, including the cost of JT's access network, software, infrastructure, and common costs. In Jersey, Sure agreed with the specification of the JCRA's cost model in the representations it provided during the pricing review consultation, and within those representations it did not raise any concerns regarding the set of allocation keys used by the JCRA.

4.12 In addition, the GCRA undertook a thorough consultation process, in combination with its advisors Frontier Economics, and with Sure during the development of the cost model to identify appropriate allocation keys, and data that could be provided and produced to inform these.

4.13 In particular, Frontier Economics shared an initial set of proposed allocation keys with Sure on 10 November 2022 based on its understanding of available data and the cost allocation keys available within Sure's 2014 cost allocation model. This included proposals to use demand and revenue-based allocation keys for certain cost categories. The GCRA invited Sure to provide its views on the proposal, and to recommend alternative keys where it considered these were more appropriate and where data to inform those alternative keys was available or could be generated.

4.14 In response, Sure provided feedback which was then taken into account by Frontier and the GCRA, including the provision of staff timesheet data, which was then used to allocate Sure staffing costs.[22] Given this, the GCRA considers that it conducted a thorough process with Sure to identify appropriate allocation keys, in which Sure was given ample opportunity to provide its input on the use of revenue-based (and other) allocation keys and to suggest alternatives. The GCRA provided Sure with the GCRA's cost model both as part of the First and Second Proposed Pricing Decisions which explicitly sets out the cost allocation key used for each cost category, the data used to calculate the cost allocation key, and the source of that data. The same applies for the other data used in the cost model. The GCRA therefore considers that there was a clear audit trail for the cost allocation approach, and the other data used in the model.

4.15 To summarise, the GCRA considers that its cost allocation approach is reasonable and proportionate to the size of the Guernsey jurisdiction, taking account of the data available to it and the process of engagement it undertook with Sure, and is in line with international precedents including that of the JCRA in Jersey.

4.16 To provide a clear and transparent explanation on how the model has estimated the appropriate pricing level, the GCRA has set out its approach to each of the key assumptions deployed in the model and why the GCRA considers each assumption to be reasonable. This reflects the changes

22 See details of staffing costs discussions in Appendix 3.

made following the representations provided by parties in response to the First and Second Proposed Pricing Decision (which are also set out in accompanying Appendices).

Analysis and Key assumptions

4.17 Key assumptions that inform the price control model, which is in the form of an excel spreadsheet, are discussed below.

4.18 **Assumption 1: Duration of modelling period:** The GCRA sets a duration period of 40 years, which is assessed as a reasonable lifespan to account for the longest-lived assets in Sure's network (poles and ducts) and which is consistent with the approach in cost models in other jurisdictions.

4.19 **Assumption 2: WACC:** The GCRA invited Sure to produce its own WACC report, which Sure instructed Oxera to produce and was provided to GCRA on 9 January 2023.[23] The GCRA evaluated Sure's submissions and considered that most of the parameters in capital asset pricing model were reasonably well evidenced. The report findings were summarised as follows:

> *"We present a summary of Oxera's estimates of CAPM input parameters and the estimated WACC range in pre-tax nominal terms, arriving at a midpoint estimate of 9.1%,"*

4.20 The GCRA agreed with the overall approach used to determine the expected returns on capital investments, however, there are two areas of the approach (an uncertainty premium and a forward rate adjustment) that the GCRA was not persuaded of. As a result, the GCRA proposed to use a WACC of 8.8%, which represents the mid-point of Oxera's estimated range of 8.32% to 9.32% once these two adjustments have been removed.

4.21 In reply to the First Proposed Pricing Decision, Sure made further representations to support one of the rejected adjustments. These were considered but again not found to be persuasive by the GCRA.[24] Therefore, GCRA chose to keep the WACC at 8.8%, in line with its previous decisions.

4.22 **Assumption 3: Inflation rate.** The expected inflation rate is used to forecast Sure's future costs (except for staff-related costs, where wage growth is used). The GCRA is applying the most recent inflation rate of 6.3%[25], based on the latest quarterly actual and forecast RPI-X inflation rates produced by the State of Guernsey. The GCRA then assumes that this will decline over time to reach a long-run rate of 2.2% by 2026 and remain at that level thereafter. The proposed long-run

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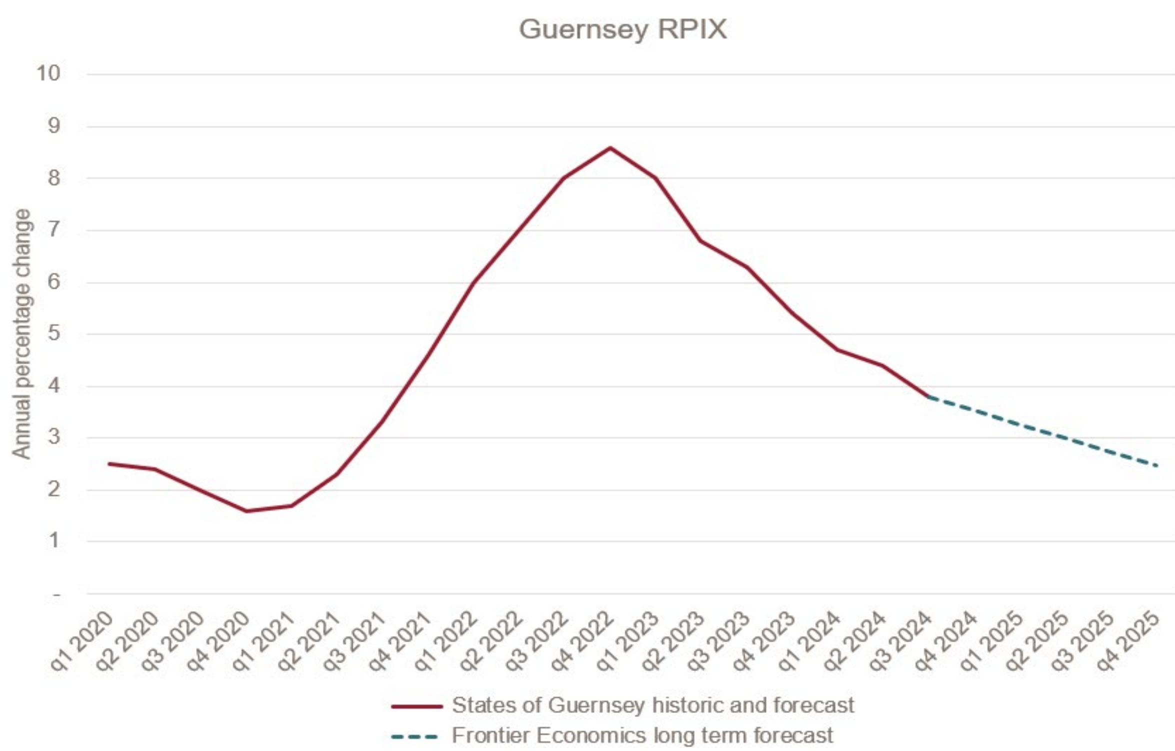
23 **2023 Oxera Report**, Estimating the WACC for Sure's Guernsey business, 9 January 2023.

24 In Sure's response the Proposed Decision, it sought to argue that WACC be increased to 9.0% in line with the analysis in report Oxera prepared for them. However, the GCRA does not consider that Sure has provided sufficient regulatory precedent to persuade the GCRA that an uncertainty premium should be included in the WACC calculations. In particular, Sure's proposed approach departs significantly from BEREC's recommendations to national regulators on WACC calculations ("*BEREC Report on WACC parameter calculations according to the European Commission's WACC Notice (WACC parameters Report 2022*"). Therefore, the GCRA does not accept Sure's submissions on this point. The GCRA has also addressed Sure's submissions on WACC calculations in **Annex 1 – GCRA Replies to Sure's Responses to the First Proposed Pricing Decision.**

25 **2023** State of Guernsey Strategy and Policy Unit, Guernsey Inflation Forecast bulletin, published 24 October 2023 (this has been updated to reflect Sure's representations on the updated RPI figures).

rate of 2.2% is based on Guernsey RPIX average between 2016 and 2019 (pre-covid), which is consistent with Bank of England's long-term target to "*set monetary policy to achieve the Government's target of keeping inflation at 2%*", which has an influential role on the Guernsey inflation rate.[26]

Guernsey RPIX – Historic and Future Inflation Rate



4.23 The model estimates future costs based on the expected inflation profile but sets the evolution of wholesale prices at the long-run rate throughout the 40-year modelling period in order to smooth the current inflation peak for end users.[27]

4.24 In reply to the First Proposed Pricing Decision, Sure and the OLO's made representations that the most updated inflation figures should be used in the costing model to reflect the increase in overall prices. The GCRA agreed with this approach and has since incorporated the most recent inflation figures into the cost model.

26 The GCRA accepts Sure recommendations to adjust the inflation figures to reflect the newest available published version of Guernsey's RPIX and has also addressed Sure's comments on the 'Inflation Assumptions'.

27 Note that this still ensures that the proposed prices are reflective of Sure's costs. This is because as noted above, the prices over the 40-year modelling period (taking account of the assumed inflation) are set such that Sure's wholesale revenues for leased line services will equal its actual expected efficient costs i.e. the return on its cashflows over the 40 year period will be equal to its WACC.

4.25 **<u>Assumption 4:</u> Wage growth.** The expected wage growth is used to forecast Sure's staff-related costs. The GCRA's assumption is based on data from Guernsey Annual Electronic Census Report. Overall remuneration growth was estimated at 3.1% in nominal terms during 2016 to 2019, when inflation was 2.2% (so 0.9% in real terms). The GCRA accepts that the data does not identify whether the growth is due to more employees earning higher salaries. However, the GCRA assumes it was driven by higher salaries, and assumes that wage growth will continue at the same rate in real terms going forward as it did over 2016 to 2019, i.e. wages grow at forecast inflation + 0.9%.

4.26 **<u>Assumption 5:</u> Efficiency gains.** In the cost model, the assumed growth in costs due to inflation and wage growth is reduced to reflect expected cost savings over time due to expected efficiencies. This approach is consistent with that used by regulatory authorities in other jurisdictions when setting cost-orientated prices. The applied rate of cost savings due to efficiencies differs by type of cost, and over time. On average, across the whole cost base, proposed efficiency rates applied range between 2.3% in 2023 and 1.6% from 2028 onwards. This glide path reflects the fact that efficiencies reduce over time, as Sure continues to move the provision of leased lines services from its copper to its fibre network**,** with less scope for efficiencies on new technologies. The level of efficiencies achievable have been set using three main sources of data.

4.27 First, there is an estimate of Multifactor Productivity (MFP) produced by the UK's Office of National Statistics (ONS), which provide an estimate of the annual efficiency gain for the ICT sector, which is 2.4%. This rate is applied to Sure's costs relating to IT, Billing and datacentres.

4.28 Second, Ofcom's Fibre-to-the-Premises (FTTP) model developed as part of its Wholesale Fixed Telecoms Market Review Decision. Ofcom explicitly assumes annual efficiency gains of 1.5% for OPEX including repair and maintenance, power, and general management costs. This rate is applied to Sure's general OPEX as well as core and leased line specific OPEX (reflecting the GCRA's understanding that this OPEX relates to assets that are already fully fibre).

4.29 Third, Ofcom's estimate of efficiency gains for Openreach's network costs used in its RAB model developed as part of its 2020 Wholesale Fixed Telecoms Market Review Decision was 4.5%, which relates to Openreach's legacy copper network. This rate was applied to network specific costs, with an assumption of 3.5% in 2023 reflecting that Sure's network will still be largely copper-based in this year, reducing to 1.5% by 2027, once Sure's FTTP project is completed (i.e. consistent with the efficiency gain rate assumed by Ofcom for Openreach's FTTP network).

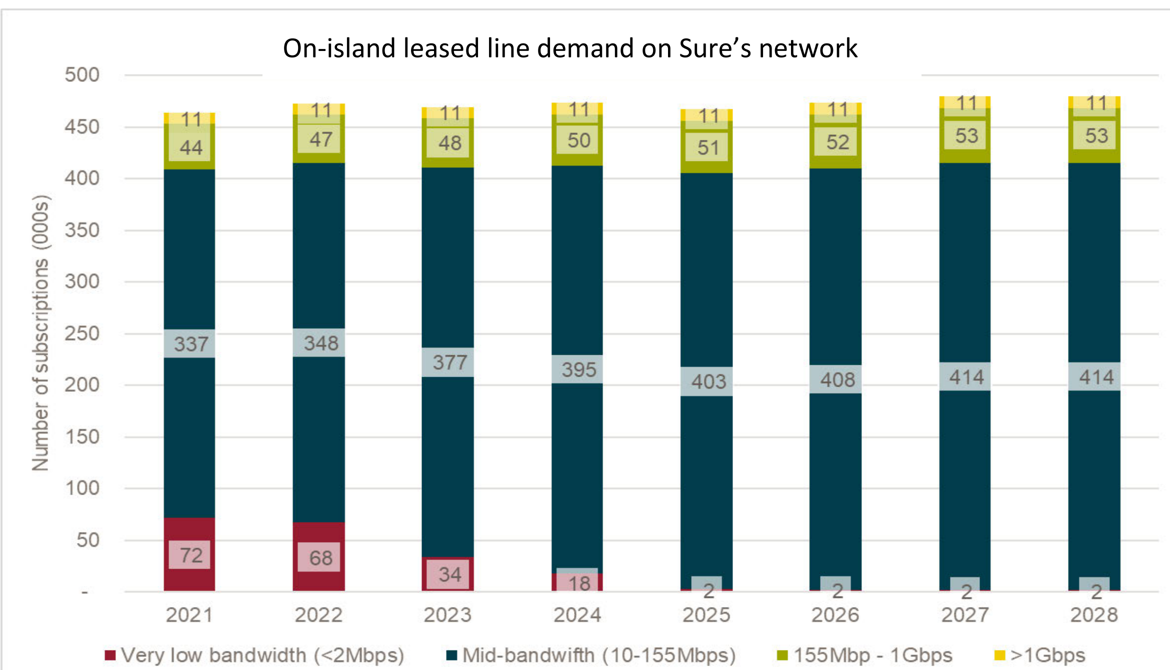
4.30 **<u>Assumption 6</u>: Management fee costs:** The GCRA does not propose to allow management fees to be included in the cost model, as it does not consider that these have been sufficiently evidenced or justified by Sure in its submissions.

4.31 **<u>Assumption 7:</u> Cost allocation to wholesale on-island leased lines:** The model needs to allocate to wholesale on-island leased lines products a portion of forecast "shared costs", which support both the provision of wholesale on-island leased line services and other Sure services (including other wholesale services such as broadband and fixed voice, but also Sure's fixed retail services, mobile services and other activities). Where data was available, the costs relating to certain cost categories have been allocated on the basis of specific data on the underlying activities driving those costs (e.g. staff timesheet data for staffing costs). Where "direct" data relating to the activities underlying costs was not readily available, the cost allocation keys reflect allocation keys from Sure's previous regulatory accounting system, and other considerations such as the split of subscribers or revenues across services, which is a common approach used in cost models in other jurisdictions, such as Jersey and the UK.

4.32 The allocation of costs based on revenues across services was amended as part of the Second Proposed Pricing Decision and this Decision reflects the corrected historic prices and revenues for some services that are used to calculate the revenue split, and to ensure that the wholesale broadband revenues used when calculating the split included Wholesale Line Rental (WLR) charges paid by wholesale broadband customers.

4.33 This approach informed the modelling calculations for this Decision and requires Sure to adjust its charge for wholesale broadband, such that the revenues it generates from wholesale broadband customers covers the efficient cost to Sure.

4.34 **<u>Assumption 8</u>: Wholesale on-island leased line demand:** The product demand on Sure's network is projected to be static over the review period. A change is expected in the mix of demand across products over time, with the gradual removal of very low bandwidth products and their replacement with higher speed products as Sure's FTTP network is rolled out. These forecasts reflect the forecasts from Sure and OLOs.



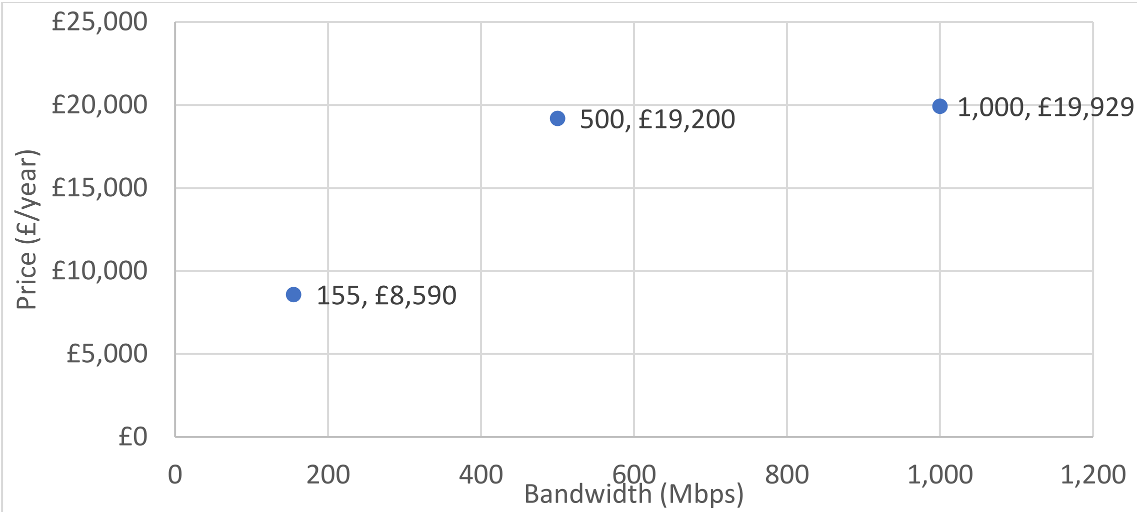
4.35 **<u>Assumption 9</u>: The "price relativities" between each wholesale leased line product** (i.e. the "pricing curve"). To calculate total revenues from wholesale on-island leased line products, the model multiplies the forecasted demand for each product with the wholesale price for each product. Given this, in order to determine the package of prices that ensures that these are reflective of cost overall, the GCRA needs to consider the appropriate "relativity" in prices between different products (i.e. how much the price of one product should differ from another, given the differences in their characteristics such as differences in bandwidth). To do this, the GCRA will keep the relativities in prices between Sure's products as per its current prices, but with some adjustments to address two apparent anomalies in Sure's current pricing for particular wholesale on-island leased line products.[28]

- First, Sure's current prices for its Ethernet and Fibre Channel products are the same at some bandwidths (i.e. 1Gbps and 2Gbps), but different at others (4Gbps and 8Gbps). The GCRA understands that there is no difference between the specifications of these products that would justify the prices being different at some bandwidth but not others.
- Second, the price of Sure's Lanlink 500Mbps product in relative terms appears very large compared to the prices of products that are closest to it in terms of bandwidth (i.e. the Lanlink 155Mbps and Lanlink 1,000Mbps products). Sure provided no compelling explanation for this, including in its written response to the First Proposed Decision. In particular, the differential between the current 500Mbps price and the price of the 1,000Mbps product is not consistent with the differences in bandwidth (see **Figure A** below): the 500Mbps product has circa three times higher bandwidth than the 155Mbps product but with the price less than doubling; the 1,000Mbps product is then two times the bandwidth of the 500Mbps product, but with only a marginally higher price (3%).

Figure A – Current rental price differences

(between Lanlink 155Mbps, 500Mbps, and 1,000Mbps products)

28 In its response to the First Proposed Decision, Sure has challenged the GCRA approach to the 'Pricing Curve'. The GCRA does not accept Sure's representations in relation to the 'Pricing Curve'. The 'Pricing Curve' adopted in the Second Proposed Decision, reflects the current set of wholesale leased line products which have remained stable over the period of the previous review and there is no imposed restriction that prevents Sure from introducing new wholesale leased line products. This Decision allows for the curve to be adjusted appropriately within the years 2025-2028 of the price control period.



4.36 To address the future risk of these anomalies to fair pricing, the GCRA will make the following adjustments to the price curve.

4.37 First, the GCRA will set the price of 4Gbps and 8Gbps Fibre Channel products at the same level as the Ethernet products with the same Bandwidth (High Speed Ethernet 4Gbps and High Speed Ethernet 8Gbps respectively), consistent with Sure's pricing for the 1Gbps and 2Gbps variants of these products.

4.38 Second, the GCRA will 'shift down' the price of products with bandwidths of 500Mbps and above, with a small shift for those with bandwidths greater than 500Mbps, and a bigger shift for the 500Mbps product. The intention is to ensure a more consistent relationship between the incremental price and bandwidth of different products than there has been (or would otherwise be). As the bandwidth of products increases, the associated increase in prices is more consistent with these increases in the bandwidth than is the case in Sure's current price list. The resulting "price curve" is set in **Figure B** in Section 5 below.

5. Remedies

Overview

5.1 Pursuant to Licence Condition 26.1(d) and 26(2) of the Licence,[29] and having the procedure set out in section 5 of the Telecoms Law, the GCRA considers it appropriate to impose a price control.[30]

Price Control – overall reduction in pricing levels

5.2 Given the key assumptions and the modelling analysis undertaken, the level of Sure's wholesale on-island leased line prices has been found to be higher than justified by its costs. In particular, the analysis finds that over the 2024-2028 price control period, the estimated level of Sure's prices (if these reflected the efficient level of costs) would on average be **23%** lower than Sure's current prices, assuming they increase from current levels in line with the estimated long-run rate of inflation (2.2%). For example, the average estimated cost-based price of Sure's wholesale on-island leased lines in 2024, reflecting the expected mix of customers across the different leased line products in that year, would be **£6,101/year;** the average price of Sure's current prices increased by 2.2%/year in 2024 would be **£7,966.**

5.3 To address this, from 1 April 2024, this Decision reduces Sure's current prices of wholesale on-island leased line products to the efficient cost-based level.

5.4 Given that Sure's retail competitors must purchase wholesale on-island leased lines from Sure to compete in the downstream retail market, there are risks in giving Sure the same discretion as the previous price control to set individual prices. The GCRA is also mindful of the fact that competitors rely on Sure for backhaul to support their mobile services for example (another market where Sure's charges impact significantly on the costs of some of the OLOs/retailers, its competitors), which is provided through Sure's leased lines. There are therefore conditions where, without necessarily contravening non-discrimination requirements, the overall or average level of prices may comply with an aggregate price control, but Sure has incentives and the means to choose to set higher levels of wholesale prices for some services than others if the overall impact is more negative for its competitors than its own commercial businesses. As an *ex ante* regulatory

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29 The GCRA also has the ability to impose price controls under Licence Condition 31 of the Licence.

30 In addition to the risk of excessive prices other types of competition problems may also arise, such as:

- Refusing to provide network access to other downstream service providers (or refusal to provide access on reasonable terms, conditions, and charges), which could restrict competition in the provision of retail services to the detriment of consumers.
- Discrimination in favour of its downstream retail businesses to the detriment of competition in retail leased line services (including by price and/or non-price discrimination), and ultimately to the detriment of end users.
- Engaging in a margin squeeze.

framework is commonly understood, the GCRA is expected to ensure regulatory controls mitigate reasonably foreseeable risks from the incentives and ability of a provider that has a dominant position.

5.5 In the First Proposed Pricing Decision, the GCRA determined that on balance, given the presence of unexplained historic price differentials, it was appropriate for the price control to be implemented on a product-by-product basis.

5.6 In response to the First and Second Proposed Pricing Decisions, Sure made submissions objecting to the GCRA's decision to impose the price control on a product-by-product basis, arguing that the approach does not provide sufficient flexibility for Sure to adjust its prices to market changes over time, which could be to the detriment of consumers and the market. Sure's representations in response to the Second Proposed Pricing Decision and the GCRA's replies are set out in detail in Annex 1 of this document.

5.7 First, the GCRA is mindful that a price control must be structured in a way that is effective to address concerns and risks to all parties, including those of OLOs and Sure. The presence of unexplained historic price differentials between products by Sure in this market, where it is in a dominant position, give rise to concerns that a control that is not imposed on a product-by-product basis would be less effective. The evidence more recently available and the subject of a parallel investigation also suggests that through non-compliance of its existing leased lines price control Sure's competitors may already have materially overpaid for wholesale leased lines despite a price control being applied.

5.8 Second, the GCRA accepts that, in principle, setting a price control for each individual Sure product does reduce the flexibility of Sure to change its prices over time in response to market circumstances and changes in customer preferences. However, the GCRA also notes that, historically the wholesale leased line market is a relatively static market in terms of changes to the product portfolio and to date cannot be described as one characterised by material changes in the portfolio of services offered by Sure. This is therefore not a market where a great deal of dynamism has been present in the past and the GCRA has received no compelling evidence in response the First or Second Proposed Decisions that have altered that assessment.

5.9 Therefore, whilst the GCRA acknowledges there are benefits to providing a commercial business with flexibility to change prices over time to respond to changes in the market, it also considers that Sure has not fully addressed itself to the concerns identified. The interests of Sure need to be weighed against the risks to those significantly reliant on Sure who in some cases are also its competitors. When Sure's interests in this respect are considered as well as:

- the need for an effective price control balancing all party risks as discussed in paragraphs above.
- that leased lines are a key building block for businesses relying on telecommunications.
- OLOs are significantly dependent on Sure to support their commercial business offers to their own customers while at the same time competing with Sure.

The GCRA considers that on balance, the risks to OLOs and consumers of the flexibility Sure seeks outweigh the downside to Sure of being required to comply with a product-by-product price control.

5.10 The GCRA is therefore imposing a price control that for Years 1-5 of the Price Control (1 April 2024 to 31 December 2028), would be set on a product-by-product basis i.e. would set out a defined price for each of Sure's products, and reflecting an "*adjusted price curve*" which removes the identified current anomalies in price differentials across products as set out in paragraph 4.21 above.

5.11 **Table A** in Section 6 sets out the defined cost-orientated price for each individual product over the relevant period.

5.12 The defined list of product-by-product prices in Table A includes the fractional speed products that Sure has informed they are currently considering introducing. The GCRA confirms that this would not obligate Sure to introduce these products during the price control period. However, if Sure is to introduce these products during period of the price control period, it obligates Sure to introduce these with rental prices as set out in Table A. The GCRA has assumed the chosen rental price of these products would be consistent with the prices of products with similar bandwidths (as is the case in the defined 2024 prices). The prices would be assessed by the GCRA once Sure has notified it of the proposed product introduction, in-line with current notification process in place for new products.

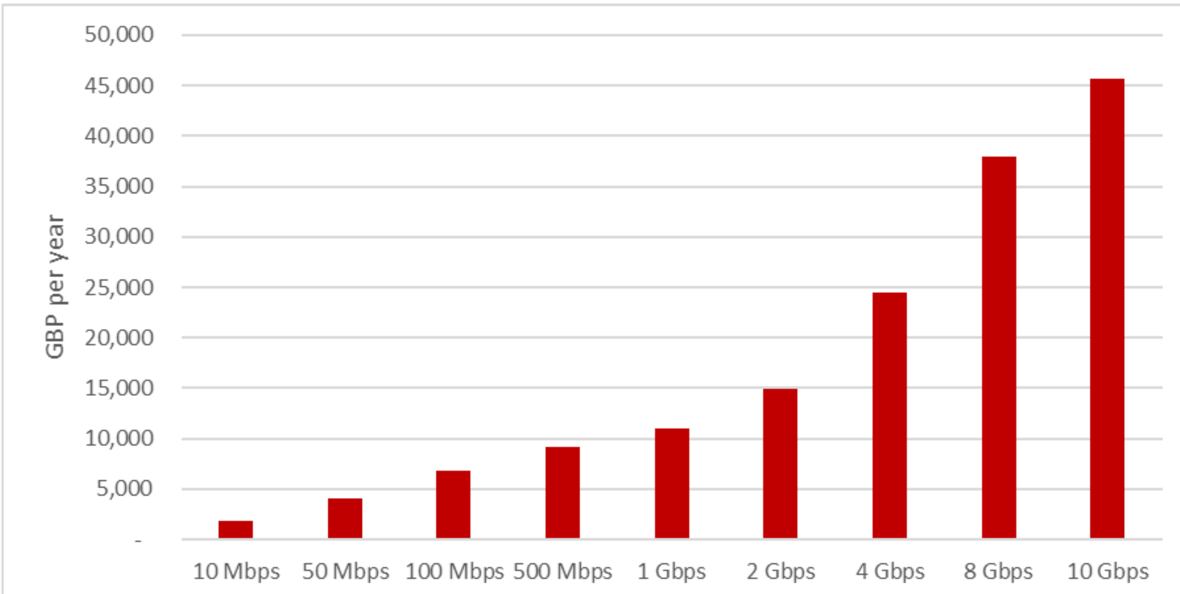
Compliance

5.13 Sure will be required to submit regular reporting statements to formally confirm compliance with the price control. The compliance statements will be submitted to cover each Defined Period of the price control and will include the following details:

- The number of and bandwidth for all wholesale leased line products sold.
- Details of the contract term (length of time) for each wholesale leased line product.
- The prices (net of any discounts) charged to customers for all wholesale leased line products.
- Revenues earned from the sale of all wholesale leased line products.
- Full details of any promotional offers or any term discounts and how they comply with the price control.
- Full details of any new products added to the wholesale leased line portfolio
- Full details of any products removed from the wholesale leased line portfolio.

5.14 The GCRA will provide a template compliance statement to assist with compliance should that be sought by Sure. The Authority recognises there may be extraneous circumstances which may cause Sure's prices to deviate from the cap set by this control. Where these are beyond Sure's control and were not reasonably foreseeable, the Authority would not expect to take enforcement action.

Figure B: The Defined Pricing Curve for leased line products in 2024



6. Statutory Notice of the Final Leased Line Pricing Decision

Pursuant to s.5(3)(b) of the Telecoms Law), for the reasons set out in this Final Pricing Decision, & pursuant to Licence Condition 26.1(d) of the Licence, the GCRA makes the following determination (the Decision) to set the prices that may be charged by Sure for wholesale leased lines:

Decision

1. This Decision shall apply from 1 April 2024 and shall remain in force until 31st December 2028.

2. For the purposes of this Decision:

"**Authority**" means the Guernsey Competition and Regulatory Authority

"**Compliance Statement**" means a statement to be provided by Sure to the GCRA containing each of the Particulars of Compliance.

"**Defined Periods**" means for 2024, 1 April to 31 December 2024, and for each of 2025, 2026, 2027 and 2028, means 1 January to 31 December.

"Particulars of Compliance" means:

(a) The number of and bandwidth of all Products sold.

(b) Details of the terms of each agreement pursuant to which the Products are sold.

(c) The prices (net of any discounts) charged to customers for each of the Products.

(d) Revenues earned by Sure from the sale of the Products.

(e) Sufficient information on any promotional offers or any term discounts applied to the Products to enable an assessment of the impact on compliance with the terms of the price control..

(f) Full details of any new products added to the Wholesale Leased Line Portfolio.

(g) Full details of any products removed from the Wholesale Leased Line Portfolio.

"**Product**" means the wholesale on-island leased line products set out in Table A.

"**Maximum Price**" means, in respect of each Product, the maximum price that Sure may charge for each Product as specified in Table A.

"**Sure**" means Sure (Guernsey) Limited.

"**Table A**" means the table set out in the Schedule to this Decision labelled Table A specifying the Maximum Price that may be charged by Sure for each of the Products.

"**Wholesale Leased Line Portfolio**" means all on-island wholesale leased line products offered in compliance with its licence obligations, as well as any trialled products, over the period of the price control.

3. For each Product sold by Sure on or after 1 April 2024, and over the Defined Period, the price to be charged by Sure for that Product shall not exceed the Maximum Price.

4. Within two months from the end of each of the Defined Periods, Sure shall provide to the Authority a compliance statement containing the Particulars of Compliance in respect of each Product sold by Sure in the prior Defined Period of the price control. The Particulars of Compliance shall be provided in the form specified in the Template Compliance Statement should Sure seek such guidance.

Table A: Price for leased lines products

	2024	2025	2026	2027	2028	2024-2028 average
Wholesale on-island leased line average price	6,101	6,297	6,435	6,559	6,703	**6,419**
Guernsey on-island						
Same Exchange Area, 2 Mbit/s	1,139	1,164	1,190	1,216	1,242	1,270
Different Exchange Areas, 2 Mbit/s	2,050	2,095	2,141	2,188	2,236	2,285
Lanlink 10 Mbit/s (Ethernet, RJ45)	1,823	1,863	1,904	1,946	1,989	2,033
Lanlink 25 Mbit/s (Ethernet, RJ45)	2,654	2,712	2,772	2,833	2,895	2,959
Lanlink 50 Mbit/s (Ethernet, RJ45)	4,038	4,127	4,218	4,311	4,406	4,503
Lanlink 75 Mbit/s (Ethernet, RJ45)	5,423	5,542	5,664	5,789	5,916	6,046
Lanlink 100 Mbit/s (Ethernet, RJ45)	6,807	6,957	7,110	7,267	7,427	7,590
Same exchange area, Lanlink 155 (PT, 1300Nm)	7,595	7,762	7,933	8,108	8,286	8,468
Lanlink 250 Mbit/s (Ethernet, RJ45)	7,673	7,842	8,015	8,191	8,371	8,555
Lanlink 500 (Ethernet RJ45)	9,116	9,317	9,522	9,731	9,945	10,164
Lanlink 750 Mbit/s (Ethernet, RJ45)	10,076	10,297	10,524	10,755	10,992	11,234
Lanlink 1000 (Ethernet, RJ45)	11,035	11,278	11,526	11,780	12,039	12,304
Lanlink 1000 (PT 850Nm/1300Nm)	11,035	11,278	11,526	11,780	12,039	12,304
Lanlink 10 Gbit/s (Ethernet, RJ45)	45,581	46,583	47,608	48,656	49,726	50,820
Fibre Channel 1 Gbit/s	11,035	11,278	11,526	11,780	12,039	12,304
Fibre Channel 2 Gbit/s	14,874	15,201	15,535	15,877	16,226	16,583
Fibre Channel 4 Gbit/s	22,550	23,047	23,554	24,072	24,601	25,143
Fibre Channel 8 Gbit/s	37,904	38,738	39,590	40,461	41,351	42,261
High Speed Ethernet 2Gbps	14,874	15,201	15,535	15,877	16,226	16,583
High Speed Ethernet 4Gbps	22,550	23,047	23,554	24,072	24,601	25,143
High Speed Ethernet 8Gbps	37,904	38,738	39,590	40,461	41,351	42,261
Within Bailiwick						
Guernsey - Herm, 2 Mbit/s	2,775	2,836	2,898	2,962	3,027	3,094
Guernsey - Alderney, 2 Mbit/s	9,283	9,487	9,696	9,910	10,128	10,350
Guernsey - Sark, 2 Mbit/s	9,283	9,487	9,696	9,910	10,128	10,350
Alderney - Sark, 2 Mbit/s	18,567	18,976	19,393	19,820	20,256	20,702
Guernsey - Herm 10 Mbit/s Ethernet	6,907	7,058	7,214	7,372	7,535	7,700
Guernsey - Alderney 10 Mbit/s Ethernet	14,059	14,368	14,684	15,007	15,337	15,675
Guernsey - Sark 10 Mbit/s Ethernet	14,059	14,368	14,684	15,007	15,337	15,675
Guernsey - Alderney 20 Mbit/s Ethernet	20,542	20,994	21,456	21,928	22,410	22,903
Guernsey - Sark 20 Mbit/s Ethernet	20,542	20,994	21,456	21,928	22,410	22,903

Key Features of the Final Pricing Decision

The GCRA Final Pricing Decision is based on the following key elements that inform its control:

i. From 1 April 2024 to 31 December 2028, Sure to adjust its prices for each of its wholesale on-island leased line products to those set out in Table A.

ii. The DCF modelling using forecasts based on Sure's actual cost data is the appropriate cost modelling approach.

iii. Duration of the modelling period is 40 years.

iv. WACC of 8.8%.

v. Inflation rate in 2023 of 6.3% to decline over time to reach a long-run rate of 2.2% by 2026 and remain at that level thereafter.

vi. Wage growth inflation as inflation rate + 0.9%.

vii. Applied rate of cost savings due to efficiencies differs by type of cost, and over time. On average, across the whole cost base, efficiency rates applied would range between 2.3% in 2023 and 1.6% from 2028 onwards. **See relevant section for discussion on specific subcategories of efficiency gains proposed.**

viii. Management fees are disallowed.

ix. That where data was available, the costs relating to certain cost categories are allocated on the basis of specific data on the underlying activities driving those costs. **See relevant section for discussion on specific subcategories of efficiency gains proposed.**

x. The product demand on Sure's network is projected to be static over the review period. A projected change is the expected mix of demand across products, (see figure in paragraph 4.20).

xi. "Price relativities" between each wholesale leased line product (i.e. the "pricing curve") are set based on the product "price curve" in **Figure B** in Section 5 and set out in **Table A** in Section 6.

xii. The price control would continue from 1st April 2024 to 31st December 2028 unless formally revoked by the GCRA or replaced.

Reference Documents

GCRA References

Sure (Guernsey) Limited Fixed Telecommunications Licence
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Appendix 1: Legal background and licensing framework

Legal background

1. *The Regulation of Utilities (Bailiwick of Guernsey) Law 2001* (**the Regulation Law**) sets out the general duties which the States and the GCRA must take into account in exercising their functions.[31] These include the requirement to protect consumers and other users in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services; to ensure that utility services are provided in a way which will best contribute to economic and social development; and to introduce, maintain and promote effective and sustainable competition.[32]

2. *The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012* sets out six principles of economic regulation, summarised below: [33]

    i. Accountability – regulate within the framework of duties and policies set by the States.

    ii. Focus – focus on protecting consumer interests through competition where possible, or a system replicating competitive outcomes if not, with a focus on outcomes.

    iii. Predictability – provide a stable and objective regulatory environment.

    iv. Coherence – develop frameworks that are a logical part of States broader policy context and priorities.

    v. Adaptability – evolve as circumstances change.

    vi. Efficiency – make proportionate, cost-effective, timely and robust interventions and decisions.

3. Section 5(1) of *The Telecommunications (Bailiwick of Guernsey) Law, 2001* (***the Telecoms Law***) provides that the GCRA may include in licences such conditions as they consider appropriate, having regard to *objectives* set out in Section 2 of the Regulation Law, and the enforcement of the Regulation Law and the Telecoms Law.

4. The *Telecoms* Law[34] specifically provides that the GCRA may include in any licence conditions that are:

    i. intended to prevent and control anti-competitive behaviour[35], and

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31 Section 2 of the Regulation Law.

32 These broad objectives were maintained in the transfer of functions and responsibilities to GCRA, as set out in the *Guernsey Competition and Regulatory Authority Ordinance, 2012*.

33 The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012

34 The definition of dominance and abuse of dominance is not explicit in the Telecoms Law. However, the *Competition (Guernsey) Ordinance, 2012* sets out the States' approach to defining abuse of dominance and anti-competitive practice.

35 Section 5(1)(c) of the Telecoms Law.

ii. regulate the price premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market.[36]

5. The *GCRA* is obliged[37] to publish notice:

    i. of a proposed decision as to whether a person has a dominant position in a relevant market and of the conditions, if any, proposed to be included in the licence granted or to be granted to that person in relation to the control of that dominant position;

    ii. of a proposed decision to regulate the prices, premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market; and

    iii. of a proposed decision to include quality of service conditions in any licence.

Licensing framework

6. *Licences* are issued to fixed telecommunications providers under Part I, Section 1 of the Telecoms Law. All *fixed* and mobile telecommunications licences include a Part which addresses conditions applicable to dominant operators.[38] If the GCRA has found that a licensee has a dominant position in a relevant market, the provisions of this Part of the licence may apply.

7. The *provisions* which are applicable to dominant operators include (but are not limited to) measures addressing *the* availability and associated terms of Other Licensed Operator (OLO) access to networks and services,[39] the requirement not to show undue preference or to exercise unfair discrimination,[40] the requirement not to unfairly cross subsidise,[41] supported by accounting processes to demonstrate compliance; regulation of prices, and transparency around pricing.[42]

8. In addition, the fixed telecommunications licences include conditions specific to the provision of leased lines,[43] which apply where a licensee has been found to be in a dominant position. The conditions applicable to the supply of leased lines refer to the retail and wholesale markets, and require that a dominant provider offers lines on publicly advertised and non-discriminatory terms, and in compliance with quality standards and at prices determined by the GCRA.

9. The *fixed* telecommunications licences also include a Part which directly obliges the licensee not to engage in *any* practice which has the object or likely effect of preventing, restricting or

36 Section 5(1)(f) of the Telecoms Law.
37 Section 5(2) of the Telecoms Law.
38 Part IV, Fixed telecommunications licences.
39 Condition 24, Fixed telecommunications licences.
40 Condition 29, Fixed telecommunications licences.
41 Condition 28, Fixed telecommunications licences.
42 Condition 31, Fixed telecommunications licences.
43 Condition 26, Fixed telecommunications licences.

distorting competition in the establishment, operation and maintenance of telecommunications networks and services.[44]

10. The *form* and implementation of the price control are addressed in Part IV of Sure's Fixed *Telecommunications* Licence and with licence condition 26.1(d) specifying Sure's obligation to set prices for leased lines that do not exceed levels determined from time to time by the GCRA.

44 Part V, Fair competition, Fixed telecommunications licences.

Appendix 2: Current wholesale market remedies and licence conditions

Existing Price control

1. Following the 2014 market review, the GCRA put in place a retail-minus price control on Sure's wholesale on island leased lines from 1 July 2015.[45]

2. The price control details are:
   - the control is set on an ex-ante basis, applies to all wholesale on-island leased lines and is applied on a product-by-product basis;
   - for each retail leased line product offering, a wholesale equivalent product must be offered at a price that complies with the proposed control;
   - the control shall be set at retail-minus 20 per cent;
   - the term of the price control will be aligned with the market review cycle;
   - Sure to provide a regular compliance statement, to facilitate increased transparency around pricing and costs of wholesale and retail leased lines, including details of prices, number of lines sold, revenues earned, and promotional offers made for all retail and wholesale on-island leased lines, by bandwidth.

Licence Conditions

3. Having been designated *with* SMP in the 2014 BCMR, Sure has a number of licence conditions that relate to its wholesale on-island leased lines obligations. [46] These include:

Sure Licence condition 26 Leased Circuits

26.1 The Licensee shall offer to lease out circuits for any lawful purpose:

a) on publicly advertised conditions and on non-discriminatory terms. This is without prejudice to discounts that are in accordance with Condition 31;

b) within a reasonable and published period of time from any request;

c) so as to meet the quality standards required under the Conditions; and

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[45] GCRA (2015). *Review of the price control for wholesale on island leased lines: Guernsey, Final Decision and Response to Consultation and Draft Decision*, CICRA 15/16, 19 May 2015: https://www.gcra.gg/media/2088/t1097gj-price-control-for-wholesale-on-island-leased-lines-guernsey-final-decision.pdf

[46] Sure (Guernsey) Limited Fixed Telecommunications Licence

d) at prices that do not exceed levels determined from time to time by the GCRA.

26.2 The Licensee shall offer to lease out circuits to other licensed operators on terms that are no less favourable than those on which the Licensee makes equivalent leased circuits available to its Associated Companies or its own business divisions

26.3 The Licensee shall not be obliged to provide, and may cease to provide, leased circuits to Users in cases in which:

a) use of the leased circuits in the manner proposed would harm the integrity, security or interoperability of the Licensed Telecommunications Network or Licensed Telecommunications Services in a material way; or

b) the leased circuits will be connected to Customer Premises Equipment that is not approved for connection to the Licensed Telecommunications Network.

26.4 If the Licensee refuses to provide leased circuits or intends to terminate the provision of a leased circuit service on grounds that the User of the leased circuits is acting in a manner set out in Condition

26.3, the Licensee shall immediately give its reasons in writing to the User, and submit a copy to the GCRA. The GCRA may consider whether the reasons given for the refusal or the intention to terminate the leased circuit are justified and issue directions accordingly.

26.5 The Licensee may include in its agreements with Users of leased circuits, reasonable restrictions consistent with Condition 26.3.

Licence condition 28 - Cross Subsidisation

28.1 The Licensee shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Telecommunications Network or Telecommunications Services.

28.2 To enable the GCRA to evaluate where any unfair cross-subsidisation or unfair subsidisation is taking place, the Licensee shall record at full cost in its accounting records any material transfer of assets, funds, rights or liabilities between a part and any other part of its business, and between it and any Associated Company, and shall comply with any directions issued by the GCRA for this purpose.

Licence condition 29 - Undue Preference and Unfair Discrimination

29.1 The Licensee shall not show undue preference to, or exercise unfair discrimination against, any User or Other Licensed Operator regarding the provision of any Licensed Telecommunications Services or Access. The Licensee will be deemed to be in breach of this Condition if it favours any business carried on by the Licensee or an Associated Company or Other Licensed Operator so as to place Other Licensed Operators competing with that business at an unfair disadvantage in relation to any licensed activity.

Licence condition 31 - Price Regulated Services

31.2 The GCRA may determine the maximum level of charges the Licensee may apply for Licensed Telecommunications Services[47] within a Relevant Market in which the Licensee has been found to be dominant. A determination may:

a) provide for the overall limit to apply to such Licensed Telecommunications Services or categories of Licensed Telecommunications Services or any combination of Licensed Telecommunications Services;

b) restrict increases in any such charges or to require reductions m them whether by reference to any formula or otherwise; or

provide for different limits to apply in relation to different periods of time falling within the periods

[47] As defined in section 31, Telecommunications (Guernsey) Law, 2001.

Appendix 3: Engagement with parties

Below is a detailed account of interactions and exchanges with parties relevant to the information gathering and modelling process.

3.1. In December 2014, the GCRA published its previous BCMR Decision which concluded that Sure held SMP in the market for on-island wholesale leased lines in Guernsey.

3.2. In May 2015, the GCRA published its Remedies Decision and Price Control for Sure's wholesale on-island leased lines in Guernsey (Annex 2).

3.3. In October 2019, the GCRA issued a Call for Information at the start of its current BCMR in Guernsey.

3.4. In March 2021, the GCRA consulted on a Draft Decision on markets and SMP. In that consultation, the GCRA set out its views on the definition of the retail and wholesale markets for business connectivity, assessed the level of competition in the defined markets and came to proposed SMP findings. Responses to that consultation were received from the JT, Sure, Newtel Guernsey Limited (**Newtel)** and Airtel.[48]

3.5. In June 2021, the GCRA issued a Direction to Sure and JT requiring the provision of additional information to inform the BCMR market definition and market power assessments. Sure and JT provided further information related to their leased line businesses between August and October 2021, to support further analysis.

3.6. In April 2022, the GCRA consulted on an a further Proposed Decision on Market Definition & Competitive Assessment, and responses to that consultation were received from received from the JT, Sure, Newtel and Airtel.[49]

3.7. On 29 July 2022, the GCRA wrote to Sure and all the other licenced operators (**OLO**) to notify them that it was conducting a BCMR Stage 2 consultation and was considering appropriate remedies for operators with market power in the relevant markets; and that remedies may include price regulation for the relevant wholesale on-island leased line services.

3.8. On 13 September 2022, information requests (RFI) relating to the GCRA's review were sent to Sure and to the OLOs. The information requests were set out in two separate documents, one was a letter with specific questions for the operators to answer and the second part was a GCRA spreadsheet, with specific tables which the operators were required to complete.

3.9. On 26 September 2022, Sure provided its initial response to the RFI by partially completing the spreadsheet with the requested information and requested a meeting with the GCRA to discuss the request in further detail.

[48] **Case T1480G -** *Business Connectivity Market Review, responses to March 2021* consultation.

[49] **Case T1480G -** *Business Connectivity Market Review, responses to April 2022* consultation.

3.10. On 30 September 2022, a meeting was held between GCRA, Frontier Economics (instructed by the GCRA to assist with the project) and Sure to discuss the information request responses and the various matters raised by in correspondence by Sure.

3.11. On 6 October 2022, JT provided its response to the information requests and on 7 October 2022, Airtel provided its response to the information requests.

3.12. On 10 October 2022, the GCRA held its round table discussion with the OLOs (JT, Airtel) and Sure and the discussion addressed the purpose of the project (GCRA), a high-level approach to the project (Frontier) and follow ups from the parties.

3.13. On 11 October 2022, the GCRA provided the operators with the PowerPoint slides from the roundtable meeting and the presentation from Frontier.

3.14. On 21 October 2022, the GCRA had a meeting with Sure to address specific questions relating to OPEX values, split by requested categories in the GCRA spreadsheet template (e.g. DSL specific, FttH specific, etc.). Sure used the meeting to provide an update to the GCRA on its General Ledger analysis and cost allocation data analysis. And on the same day Sure provided answers to the GCRA's written questions, additional information, costing data from it management accounts and an updated version 4 of the GCRA spreadsheet template.

3.15. On 25 October 2022, after conducting a preliminary assessment of the data provided by Sure in response to Information Request, the GCRA provided Sure with a list of information that had been received and that remained outstanding.

3.16. On 25 October 2022, the GCRA followed up with further and additional questions to JT and Airtel following the information both OLO had previously provided. Those questions focused on the following topics:

- Forecast of demand for Sure wholesale on-island leased line products.
- Demand for additional wholesale on-island leased line products.

3.17. On 25 October 2022, the GCRA followed up with additional question to Sure on the information it had provided.

3.18. On 27 October 2022, Sure provided an updated 'version 5' GCRA spreadsheet template with additional information.

3.19. On 28 October 2022, Sure provided the latest backing information which reflect its version 7 of the GCRA spreadsheet template.

3.20. On 3 November 2022, JT provided further detailed and supplemental information in response to the request on 25 October 2022.

3.21. On 8 November 2022, the GCRA wrote to Sure asking for further information and clarification on the data that had been provided in the consultation. And, Sure was also asked to highlight the specific systems where historical data had been extracted from to populate the template spread sheets provided to the GCRA.

3.22. On 8 November 2022, there was a further meeting with Sure to discuss outstanding data and related questions. The discussions covered the following topics:

- Sure confirmed it was continuing its work to provide additional data to break down costs to appropriate granularity for the GCRA's analysis (on CAPEX and staff costs in particular).
- Sure confirmed it would provide clarifications on the outstanding questions.
- Sure confirmed it was instructing external consultants to provide its assessment regarding its Weighted Average Cost of Capital (WACC).
- Discussion to validate categorisation, allocation and forecast rationales.

3.23. On 10 November 2022, Sure was provided with a populated spreadsheet, included the initial analysis of the Sure's 'Management Pack' which detailed the GCRA's work-in-progress on categorisation and allocation of OPEX.

- *"Raw data from management packs is in green tabs;*
- *We have proposed refined categories in Cost categories tab. We did this using ledger codes documentation from 2014 CP Visio and 2014 DAM documents + our understanding of items labels. There are a few comments to explain our choices. Happy to discuss if you see things differently;*
- *In the OPEX tab we have organised all OPEX in line with our initial template and have included consistency checks between different sources of data;*
- *The Allocation tab is a work in progress. The main input here will be your timesheet data to allocate staff costs. Depending on available data and buckets of shared costs we can envisage allocation in one or more steps. Also happy to have your views on this."*

3.24. On 10 November 2022, Sure confirmed that it was happy to review the proposed refinements and would respond in a few days. Sure confirmed that it was coordinating and working on the outstanding questions and would also respond on timesheet data categorisation to inform the appropriate allocation of staff-related costs between services.

3.25. On 14 November 2022, Sure provided responses to the GCRA's questions along with an alternative version 7 of the spreadsheet template, which showed the source system data.

3.26. On 18 November 2022, the GCRA provided further clarification questions to assist Sure in its review and provision of relevant OPEX data.

3.27. On 22 November 2022, Sure provided two additional information spreadsheets, on its 2016 to 2022 Department Report Analysis and its Guernsey staff costs per department from 2016 to 2021.

3.28. On 25 November 2022, Sure provided a response the GCRA's questions and its OPEX and CAPEX related data requests. In an email from Sure's regulatory Team, they confirmed that they had created a pivot table in the data request spreadsheet to allow them "*to readily see the materiality of each category and therefore the expected focus for the upcoming process of apportionments. As expected, staff costs is the largest category and hopefully our recently provided spreadsheet will be of material help in that process."*

3.29. On 1 December 2022, a further meeting was held with Sure to discuss outstanding issues with information required from Sure on its OPEX categories and allocation. The following is a summary of the discussions:

- Frontier asked clarifications on the WLR product, clarification on one-off revenues and the underlying demand (reactivation of fibre ONT and new fibre connection).
- Frontier/Sure reviewed staff cost analysis and Sure confirmed it accepted the GCRA's proposed refinements.
- Frontier/Sure discussed the allocation drivers for biggest shared cost buckets (buildings, data centre, general OPEX, fixed access network).
- Frontier/Sure discussed whether the revenue or the Equi-Proportional Mark-Up (EPMU) approach should be preferable, that the approach was not settled, Frontier explained when these approaches should be preferred and Sure was agreeable with the rationale.
- Sure agreed to provide more up to data information on data centre space occupied by fixed core network equipment.
- Sure raised questions on the proposed modelling approach for leased line revenues, and forecasts which were addressed by Frontier.

3.30. On 9 December 2022, Sure confirmed that it had instructed external consultants to undertaking the work on its WACC report and it would be finalised report by 23 December 2022.

3.31. On 9 January 2023, Sure provided the Oxera produced report on its WACC.

3.32. On 10 January 2023, Sure provided further information on its billing costs, and an updated version 8 of the GCRA's spreadsheet.

3.33. On 12 , 13 January 2023, Sure provided answers to outstanding written questions on:

- Leased line Capex.
- CAPEX forecasts for "*access network capex (e.g. ducts / poles, buildings)*" and "*core network CAPEX (transport network and core functions)*".
- Space occupied by fixed network equipment racks in data centres and buildings.
- Reinvestments.
- Billing Costs.

- Voice only subscriptions.
- Leased line prices.

3.34. On 16 January 2023, Sure provided its 'Fixed Asset Review' and version 9 of the GCRA's spreadsheet.

3.35. On 18 January 2023, Sure was asked "*One additional question on management fees: can you describe what type of costs this encompasses? Is there a rationale to support that a share of these should be allocated to BB or LL products?*" and Sure was asked for that information on management fees again on 9 February 2023.

3.36. On 15 February 2023, Sure confirmed it was unable to provide the required clarifications on its management fee questions. It confirmed that "*Unless we're able to provide an update to you by then, we'd probably need to use the cost driver values from 2014*".

3.37. On 31 March 2023, the GCRA issued the First Proposed Pricing Decision for Wholesale On-island Lease Line.

3.38. On 12 May 2023, Airtel Vodafone and JT (Guernsey) Ltd. submitted their written representations on the Proposed Decision.

3.39. On 19 May 2023 Sure submitted its written representations on the First Proposed Decision.

3.40. On 9 June 2023 officers of the GCRA met with JT to discuss the written representations made on the First Proposed Decision.

3.41. On 21 June 2023 officers of the GCRA met with Airtel Vodafone to discuss the written representations made on the First Proposed Decision.

3.42. On 23 June 2023 officers of the GCRA met with Sure to discuss the written representations made on the First Proposed Decision.

3.43. On 3 August 2023 officers of the GCRA sent a letter to Sure pertaining to the inclusion of the weighted average price cap in the price control. On 3 August, Sure wrote to the GCRA in response to the letter on weighted average prices, stating that the inclusion of the weighted average price cap is a fundamental change to the approach Sure sets its prices.

3.44. On 4 August 2023, GCRA officers responded to Sure clarifying that the concept of the weighted average price cap was implied in the Proposed Decision because prices for each leased line product was set. The weighted average price cap is a derivative of the set prices. The weighted average price has been explicitly presented in the Final Decision.

3.45. On 8 August 2023, the GCRA confirmed that it would provide Sure with an updated version of the cost models which would be a "combined model" which calculates the cost-based prices for both wholesale broadband and wholesale on-island leased lines.

3.46. On 11 August 2023, Sure replied to the GCRA's letter on the Weighted Average Price cap listing three main concerns with the inclusion of remedy in the price control. Sure strongly disagreed with both the proposal and the manner in which the GCRA was seeking to fundamentally change its position.

3.47. On 16 August 2023, GCRA responded to Sure addressing its concerns listed in its email sent on 11 August 2023.

3.48. On 4 October 2023, the GCRA held a meeting with Sure to brief it on the headline figures that would be presented in the Second Proposed Wholesale Broadband Pricing Decision.

3.49. On 5 October 2023, the GCRA published the Second Proposed Wholesale Leases Line Pricing Decision. Sure was also provided with the GCRA's cost model which was used to produce the proposed price cap level for the products defined in Section 6 (above).

3.50. On 9 October 2023, the GCRA offered JT, Airtel and Sure meetings to discuss the Second Proposed Wholesale Pricing Decisions, during the week being 23 October 2023.

3.51. On 10 October 2023, Sure wrote to the GCRA requesting an extension to the deadline for its written representations, from 3 November 2023 until 30 November 2023.

3.52. On 11 October 2023, Airtel asked the GCRA to extend the response time for written representations.

3.53. On 12 October 2023, the GCRA wrote to Sure to address its request for an extension to the deadline to submit written representations and amongst other comments, the GCRA confirmed the following.

3.54. On 17 October 2023, in a letter from its lawyers, Sure made a second request for an extension from 3 November 2023 to 24 November 2023 in which to provide its written representations to the GCRA, the letter confirmed that Sure had instructed external advisors to assist with preparing its written representations.

3.55. On 25 October 2023, following correspondences between the GCRA and Sure, the GCRA confirmed that the purpose of its planned meeting with Sure, was not to facilitate an exchange of views between economic advisers on the merits or otherwise of the approach adopted or to have an open-ended discussion about the economic model which was used to set the proposed pricing. Instead, the meeting would give Sure the opportunity to share any observations that it had on the content of the Second Proposed Pricing Decision before it submitted written representations. And to indicate whether there were any points in the proposed decision that Sure considered were unclear. The GCRA would then take those away (unless they could be answered quickly and easily during the meeting) and respond as appropriate. Further, the GCRA confirmed that if Sure and its advisers considered that the approach that the GCRA had adopted in the proposed decision was incorrect, then they could explain that reasoning in the written representations.

3.56. On 26 October 2023, the GCRA held discussions with Sure's regulatory team and its external advisors, Oxera Consulting and GOS Consulting, to discuss the Second Proposed Decisions

(Wholesale On-Island Leased Lines and the Wholesale Broadband). And, following that meeting, Sure provided follow up questions and comments to the GCRA.

3.57. On 26 October 2023, the GCRA provided its response declining Sure's request for an extension to the deadline to submit written representations. . However, the GCRA confirmed, that should the external specialists, instructed by Sure to review the model, identify any material errors in the price control model, then the GCRA would accept those specific representations by 10 November 2023.

3.58. On 27 October 2023, the GCRA provided a number of answers to Sure questions from its email on 26 October 2023 and confirmed it was reviewing the remaining questions.

3.59. On 27 October 2023, the GCRA held discussions with Airtel's regulatory team to discuss the Second Proposed Wholesale Decisions. And, following that meeting, Airtel provided additional questions and information for the GCRA to consider.

3.60. On 27 October 2023, in a letter from its lawyers, Sure submitted a third request for an extension to the deadline in which to provide its written representations.

3.61. On 30 October 2023, the GCRA provided the remaining answers to Sure questions from 26 October 2023, with only one issue remaining, which Sure was required to provide evidence to substantiate.

3.62. On 30 October 2023, the GCRA provided its response which declined Sure's third request for an extension to the deadline in which to provide its written representations. The GCRA's response confirmed that in its view, Sure's submissions were not within the parameters on which extensions to the deadline would be considered and that its letter of 27 October 2023 raised no issues which materially satisfied those parameters nor any issues which has not already been addressed by the GCRA.

3.63. On 1 November 2023, in a letter from its lawyers, Sure confirmed that it would provide its written representations by the stated deadline of 3 November 2023.

3.64. On 2 November 2023, Airtel wrote the GCRA requesting an extension of the deadline to submit written representations to the to Second Proposed Decisions to 6 November due to Airtel's employees being affected by storm Ciaran, which had crossed the Channel Islands on 1 and 2 November 2023.[50] And, on the same day, the GCRA granted the requested extension to the deadline from 3 November 2023 to 6 November 2023.

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[50] https://www.metoffice.gov.uk/binaries/content/assets/metofficegovuk/pdf/weather/learn-about/uk-past-events/interesting/2023/2023_09_storm_ciaran.pdf

3.65. On 2 November 2023, the GCRA wrote to Sure and JT to offer an extension of the deadline to provide written representations to the Second Proposed Decisions from 3 November 2023 to 6 November 2023.

3.66. On 3 November 2023, JT accepted the offer for the extension of deadline to submit written representations from 3 November to 6 November 2023.

3.67. On 6 November 2023, Sure, JT and Airtel provided their respective responses to the Second Proposed Wholesale On-Island Pricing Decision.

3.68. On 10 November 2023, Sure assisted by its external consultants, Oxera Consulting, provided additional comments and representations on the cost model. These matters were considered by the GCRA and are addressed in Annex 2 to this document.

Appendix 4: Product by Product Price Reduction

WLL Price Reduction Per Product (Yr 1 Price Control)	2023 WLL Price	2024 WLL Price	Reduction in Price (£)
Guernsey on-island			
Same Exchange Area, 2 Mbit/s	1,288	1,139	149
Different Exchange Areas, 2 Mbit/s	2,318	2,050	268
Lanlink 10 Mbit/s (Ethernet, RJ45)	2,062	1,823	239
Lanlink 25 Mbit/s (Ethernet, RJ45)	3,002	2,654	348
Lanlink 50 Mbit/s (Ethernet, RJ45)	4,567	4,038	529
Lanlink 75 Mbit/s (Ethernet, RJ45)	6,133	5,423	710
Lanlink 100 Mbit/s (Ethernet, RJ45)	7,699	6,807	892
Same exchange area, Lanlink 155 (PT, 1300Nm)	8,590	7,595	995
Lanlink 250 Mbit/s (Ethernet, RJ45)	8,678	7,673	1,005
Lanlink 500 (Ethernet RJ45) (diff exchange)	19,200	9,116	10,084
Lanlink 750 Mbit/s (Ethernet, RJ45)	11,395	10,076	1,320
Lanlink 1000 (Ethernet, RJ45) same exchange	19,929	11,035	8,894
Lanlink 1000 (PT 850Nm/1300Nm) same exchange	19,929	11,035	8,894
Lanlink 10 Gbit/s (Ethernet, RJ45)	57,076	45,581	11,495
Fibre Channel 1 Gbit/s (Same exchange)	19,929	11,035	8,894
Fibre Channel 2 Gbit/s (Same exchange)	25,452	14,874	10,578
Fibre Channel 4 Gbit/s	36,624	22,550	14,074
Fibre Channel 8 Gbit/s	51,762	37,904	13,858
High Speed Ethernet 2Gbps	24,452	14,874	9,578
High Speed Ethernet 4Gbps	36,624	22,550	14,074
High Speed Ethernet 8Gbps	51,762	37,904	13,858
Within Bailiwick			
Guernsey - Herm, 2 Mbit/s	3,138	2,775	363
Guernsey - Alderney, 2 Mbit/s	10,499	9,283	1,216
Guernsey - Sark, 2 Mbit/s	10,499	9,283	1,216
Alderney - Sark, 2 Mbit/s	20,999	18,567	2,432
Guernsey - Herm 10 Mbit/s Ethernet	7,811	6,907	904
Guernsey - Alderney 10 Mbit/s Ethernet	15,900	14,059	1,841
Guernsey - Sark 10 Mbit/s Ethernet	15,900	14,059	1,841
Guernsey - Alderney 20 Mbit/s Ethernet	23,232	20,542	2,690
Guernsey - Sark 20 Mbit/s Ethernet	23,232	20,542	2,690

Annex 1 – GCRA reply to Sure's written representations in response to the Second Proposed Decision

GCRA EMBEDDED RESPONSES TO SURE SUBMISSION

Sure response to Business Connectivity Market Review: T1621G - Second Proposed Pricing Decision – Wholesale On-Island Leased Line Pricing

6 November 2023

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Executive Summary

1 Sure is pleased to comment on the GCRA's Second Proposed Decision for the wholesale leased lines (the WLL PD)[1], but has concluded that the GCRA's analyses, conclusions and proposals are unsafe and not fit for purpose.

2 With regards to the substance of the WLL PD, Sure has identified a number of material flaws and weaknesses in both the GCRA's approach and its factual analyses. These can be summarised as follows:

- The GCRA is proposing to impose a price control that is so prescriptive that it entirely removes Sure's ability to engage commercially in the market. The GCRA's attempts at justifying this approach are misguided –
- That Sure's current pricing curve is not rational, so it is necessary to prescribe the pricing curve by regulating each product price – Sure's current pricing curve is a result of recent changes made to only the very high bandwidth services, at the direct request of the GCRA. The GCRA is aware that it is Sure's intention to normalise its WLL pricing curve upon the completion of this market review process. Apart from the anomaly caused by the GCRA's recent request for price changes, Sure has no history of irrational pricing behaviour.
- Anchor-pricing is not appropriate as the WLL prices were not reduced as a result of the existing retail-minus price control – retail-minus price controls are not designed to reduce wholesale costs but to ensure that there is sufficient space between retail and wholesale prices to enable downstream competitors to compete with the SMP provider by purchasing upstream wholesale products. If the GCRA imposed retail-minus regulation with the objective of reducing wholesale prices, then that was misguided. Anchor pricing is a price control that seeks to control wholesale price levels and therefore cannot be compared to retail-minus controls.
- Therefore, there appears to be no economic or fact-based rationale to justify the very intrusive price control proposed by the GCRA.

3 The level of change in WLL pricing proposed by the GCRA is not factually justified –

[1] www.gcra.gg/media/43xay4zi/t1621g-second-proposed-pricing-decision-wholesale-on-island-leased-line-pricing.pdf

- The GCRA has chosen to impose a cost-based price control on Sure, despite having decided in 2016 that Sure should no longer produce and maintain the accounting and costing data necessary to populate a model to calculate cost-based prices. The GCRA's model uses Sure data, up to 10 years old, which it has modified by broad-brush assumptions and therefore cannot be considered reliable or fit for purpose.

(A) GCRA Response

The cost model built to assess Sure's wholesale leased line pricing makes very limited use of Sure's 2014 allocation keys (<8% of costs). Instead, the significant allocation keys make use of the available data provided by Sure, such as, timesheets for staff costs, revenue and demand shares which are reasonable and in-line with regulatory precedent (including Jersey). Much of the relevant financial and costs information came from the 'Management Packs' provided by Sure, which it uses to product financial report for its ultimate shareholder, Beyon, (formally Batelco). Therefore, the GCRA's cost allocation approach made use of other available data to allocate costs such as the split of subscribers or revenues across services, which is a common approach used in cost models in other jurisdictions, such as Jersey and the UK.

- The GCRA has used modelling techniques that fail the GCRA's own quality parameters (as explicitly applied to Sure in the past) by more than a factor of 5. By allocating 57% of the WLL costs using 'revenues' as the cost allocation key, the outcome is unreliable.

(B) GCRA Response

The GCRA's rationale for utilizing revenue for cost-allocation purposes is appropriate and in-line with small island precedent. Prices (and in-turn revenues) for a given service provide a reasonable and proportionate proxy for the efficient allocation of costs between services, with higher prices/revenues for a given service suggesting that it is efficient for more costs to be recovered from that service. This approach was used by the Jersey Competition & Regulatory Authority (JCRA) in Jersey for which around 40% of wholesale broadband costs were allocated using revenue allocation keys.

The combined WBB and WLL model has exposed the fundamental flaws in the model design through the material impact on WLL unit cost output from the model resulting from the (erroneous) inclusion of WLR revenues in the WBB market. WLR and WLL are entirely distinct and not related or even complementary products. The inclusion of WLR should have nothing more than minimal impact on WLL unit costs and the very material impact seen in the GCRA's model is irrational and highlights that:

a. The GCRA has failed to conduct any impact analysis.

i. The GCRA does not consider the impact on Sure's commercial viability of the significant price reductions proposed.

ii. In addition to substantive impacts, the GCRA has failed to consider the appropriate means of implementing any decision it reaches, and in particular does not consider the (common regulatory) approach of using a 'glide-path' over the five-year market review period so as to gradually reduce Sure's WLL prices to the level the GCRA (acting properly) considers reflective of Sure's efficiently incurred costs.

(C) GCRA Response

GCRA did consider Sure's commercial viability as a key objective of the price review was to ensure that Sure has the opportunity to make a reasonable return on its investment. The model that has been developed to determine the appropriate prices then reflects this. The model explicitly includes Sure's forecasted costs associated with providing wholesale on-island leased line services and determines the level of prices that allows Sure the opportunity to generate revenues that cover these costs plus a reasonable rate of return. The GCRA is cognisant of its regulatory obligation and is accountable for its actions and regulates within the framework of its duties and policies set by the States. In conjunction with setting a fair price for Sure, the GCRA also focuses on protecting consumer interests through the pricing review and the proposed price changes which help to achieve these goals. The impact of excessive prices for stakeholders and the wider Guernsey community is the relevant consideration for the GCRA and a decision to delay the reduction of costs in order to maintain Sure's higher return to its shareholders for longer is not a persuasive submission. Therefore, the suggestion of a glide-path approach is not acceptable and would mean that customers pay excessive prices for longer.

4 Sure considers that the GCRA's consultation approach and process falls significantly short of international regulatory practice [as applicable in Guernsey] and of what can be considered reasonable and proportionate. This especially so given the materiality of the GCRA's proposal both in its own right and relative to the proposals in the First Proposed Decision – Wholesale On-Island Leased Line Pricing issued by the GCRA on 31st March 2023 because:

The WLL PD was issued in parallel with the Second Proposed Pricing Decision – Wholesale Broadband (the WBB PD)[2]. Both documents ran to approximately 130 pages, yet stakeholders were allowed only four weeks[3] to respond to both.

[2] Sure comments separately on the WBB PD.
[3] Of which one was school half term, with several key Sure employees away on annual leave.

(D) GCRA Response

Under s.5(3) of the Telecoms Law, the minimum statutory consultation period that the GCRA is required to give is seven days. And, as per its requirements under s.5(3)(a), the GCRA will consider any representations it receives from interested parties before making a decision. Due to the nature of the changes made to the pricing model from the First Proposed Pricing Decision to the Second Proposed Pricing Decision, it is the GCRA's view that four weeks was an appropriate and sufficient timeframe for Sure to provide its representations on the Second Proposed Decisions. Additionally, eight out of the ten adjustments to the model (from the First Proposed Pricing Decision to the Second Proposed Pricing Decision) had either immaterial impacts on the model or the adjustments were a direct result of Sure's representations on the First Proposed Pricing Decision. Therefore, it is the GCRA's view that these changes were clear and uncontroversial.

- The two PDs were accompanied by a new combined Excel model.

(E) GCRA Response

The cost model the GCRA provided to Sure alongside the Second Proposed Pricing Decision is not fundamentally different from the individual models provided as part of the First Proposed Pricing Decision - there only a small number of changes to the calculations in the model versus the separate models, all of which were set out clearly in sheet "Updates since Consultation" in the combined cost model along with the location in the model where the changes were made. Therefore, what is "new" represents quite small adjustments to the actual functionality of the model.

- The GCRA only made itself available for a meeting with Sure, for Sure to seek clarification on the content of both PDs, during the third week of this very short consultation period.

(F) GCRA Response

The First Proposed Pricing Decision for Wholesale On-Island Leased Lines was published on 31 March 2023 and Sure was given seven weeks to provide its written representations to that document. The underlying costing model was also provided to Sure. An additional 13 weeks of engagement continued after that formal consultation process ended and subsequent communications are also recorded in the Second Proposed Decision. Whilst the headline values of the proposed price reductions from the First Proposed Pricing Decisions to the Second Proposed Pricing Decisions have changed, save for the adjustments applied because of Sure's representations and the arithmetic effect of including WLR revenue, the costing model is substantively the same. Therefore, the GCRA deemed 4-weeks a sufficient timeframe

to allow Sure to review the Model and Second Proposed Decisions and provide substantive representations to same. The meeting was held in week three of the consultation to allow Sure to develop its representations in advance of the meeting and then to discuss those with the GCRA.

- Upon Sure stating at the outset of the consultation period that it would not be able to fully analyse and respond to the two parallel consultations within the four week timeframe, the GCRA twice encouraged Sure to request an extension to the response deadline, but on both occasions denied those requests unfairly and without proper consideration of the justifications Sure had provided.

(G) See GCRA Response (F) above.

5 The GCRA proposes to implement the new regulated prices for both WBB and WLL on January 1st 2024. Given Sure's notification obligations, implementation on this date will only be possible if the GCRA publishes its Final Decisions within a week of receiving stakeholder comments[4]. Sure has serious concerns that one week does not allow sufficient time for a full consideration of stakeholder inputs, especially when the GCRA will receive substantive comments across a range of aspects of the PDs, including detailed comments on the new combined Excel model.

The GCRA has acknowledged those representations, has taken the time it needs to fully consider them and is implementing the price controls with effect from 1 April 2024.

6 Sure urges the GCRA to take the necessary time to fully review the contents of this document and Sure's WBB PD response. Each response stands on its own, but due to the GCRA's approach and blending of data as between the two decisions, Sure considers that it is imperative both documents are read together. This is particularly so because neither of these Sure documents are as comprehensive as Sure would want them to be, given the compressed response window imposed by the GCRA. Having regard to the stated timetable, the GCRA is also urged to ensure that it allows sufficient time to explore the facts and issues identified by Sure in full - it would surely be better to get to the right decision, rather than one which is rushed but wrong. Indeed, the potential consequences of the proposals in the WLL PD are of a magnitude that it would be reckless to implement the PD *without* due process and rigorous and transparent analysis.

(H) See the previous Response (G) above.

7 To that end, the GCRA needs to recognise that its combined WLL and WBB model is not fit for purpose, due to its significant overreliance on the use of revenues as a cost allocation key and the

[4] Which, as a result of the GCRA accepting Airtel's request for a short extension to the deadline, is now the 6th November 2023.

inappropriately material impact that the GCRA's inclusion of WLR has on WLL. In addition, the proportion of WLL costs driven by revenue is excessive. Based on these deficiencies, we believe that the following steps should be undertaken:

a. The GCRA should revert to the use of its separate WLL cost model (relating to its First PD) – where no WLR costs could inappropriately materially influence the proposed WLL charges.

b. On a temporary basis (if necessary), the GCRA could align the regulated WLL charges with those shown in the First PD.

c. A revised WLL specific model should be created, alongside a Third Proposed Decision and Sure would assist the GCRA (and its consultants) to design and create additional relevant cost drivers to limit the erroneous exposure to the use of revenue as a driver.

(I) GCRA Response

It is disappointing that Sure has seen it appropriate to use the opportunity to provide substantive responses to a balanced decision by portraying it as 'unsafe, and not fit for purpose'. The basis for the GCRA's views and evidence it has weighed up, have been presented through two public consultation processes, one in March and the other in October of this year, accompanied by cost models that set out the analyses in detail and transparently at each stage of the process. When new information informed the GCRA's decision to alter its First Proposed Decision it accorded Sure, among others, an additional opportunity to respond to its reasons for doing so in a transparent cost model accompanied by a document setting out its reasoning.

The evidence gathering and assessment was also supported throughout by a highly regarded international economic advisor, Frontier Economics, who are specialist in this subject matter and modelling of such controls. The GCRA has followed the law in giving all parties opportunity to respond to its assessment not just during the consultation period itself, but in Sure's case, bilaterally given the commercially sensitive nature of some of the information and in consideration of the impact on Sure. Importantly, where Sure's views are found to be persuasive then the GCRA's modelling has been adjusted in response.

Sure has therefore been accorded a great deal of engagement but maintains a portrayal of the approach. While Sure as the incumbent has reason to seek a better regulatory price control settlement through advocacy and evidence, it has a responsibility to do so by engaging with the explanations put to it and the evidence given to it by its regulator, which is the purpose of the consultation process. It is unfortunate that Sure has in many respects chosen rather to not engage directly with the explanations already given to it but simply repeat its original position.

These will be public documents and key stakeholders have a right to a fair representation of arguments and positions being exchanged. Sure's views on specific aspects of the control are addressed below but it is felt necessary to preface these with the above observations.

Confidentiality

8 Sure has highlighted in this document any information that it considers to be confidential and not to be included in the published version of its response, or shared with any other parties apart from the GCRA and its appointed advisers, Frontier Economics, without Sure's express permission.

9 Sure would be pleased to provide the GCRA with a redacted version of this response.

Introduction and background

10 The Second Proposed Decision for the wholesale leased lines (WLL) market (the WLL PD) covers the remedies stage of the WLL market review. The PD was published and is being consulted on in parallel with the Second Proposed Decision for remedies in the wholesale broadband market (the WBB PD) and the GCRA has created a shared model to assess the costs for each of the relevant services in those markets, using a discounted cashflow model (DCF) approach.

11 The PDs were issued on 5th October 2023 for consultation, with the GCRA giving stakeholders a concurrent four week period to respond to both proposed decisions. Sure has provided reasoned requests for extensions of time on both decisions but these have been refused by the GCRA.

12 The WLL PD and the WBB PD propose a reduction in Sure's wholesale revenues of 23% and 32% respectively in the two markets. For 2024, the WLL PD is forecast to reduce Sure Guernsey's revenues by £[redacted]k ([redacted]% of total revenue), with the WBB PD affecting £[redacted]M of revenues ([redacted]% of total revenue)[5]. The forecast total impact, across the five years of the GCRA's proposals, is £[redacted]M.

13 The WLL PD does not pose specific questions that consultees should address, and Sure has therefore responded to the main points and proposals made by the GCRA. The fact that Sure has not responded to a specific point should not be interpreted as Sure agreeing with or conceding

[5] Measured on an arm's-length basis, in alignment with the GCRA's cost modelling methodology.

that point. Rather, the consequence of the extremely short timeframe for responding to the two substantive decisions, the very limited time allowed by the GCRA to produce this response and the lack of clarity and uncertainty surrounding the process has necessitated that Sure prioritises its analysis and resources on what it has understood to be the main themes and principles underlying the GCRA's Proposed Decision. Had the extensions that we sought been granted, Sure would have been able to provide a fuller response including details of precedents from other jurisdictions and a full review of the model.

14 Sure has made extraordinary efforts - efforts beyond what should be reasonably be expected of it - to analyse and process the GCRA's documents and model and to produce reasoned and factually supported responses to those. This has involved near-24-hour shift working between Sure's in-house team and their legal and economic advisors including over weekends and it resulted in the Sure's legal and regulatory Director cancelling long-planned personal leave.[6] These facts are mentioned to demonstrate the pressure which the GCRA's timeline has placed on Sure and which was, on any view, out of the ordinary and unlike anything Sure has ever experienced before, in any of its regulated jurisdictions.

15 Despite these extraordinary efforts, this document and the accompanying response to the WBB PD do not provide full and comprehensive analysis of all issues identified (and may not have identified all relevant issues), nor do they provide the full supporting collateral that would be expected for a well-reasoned and -supported regulatory submission, and which are the usual feature of Sure's submissions.

16 Below is a summary of some content that Sure would have included in its response, had it been afforded the necessary and appropriate time to do so:

- A full analysis of possible unintended consequences resulting from the inclusion of WLR revenues in the WLL product profitability analysis.
- A comprehensive analysis of the GCRA combined WBB and WLL Model. In this response we have had to limit our analysis to issues that were most obvious and (we hope) of most material importance to the resulting unit costs and regulated prices.
- Research into examples of good regulatory practice in the setting of principles for cost modelling and sharing of assumptions and detailed modelling working prior to reaching conclusions for implementation.

[6] A full representation of the efforts applied to produce these documents can be supplied on request.

17 The GCRA has published separate documents setting out the WBB PD and the WLL PD and Sure has produced a response to each of those. There is, however, significant overlap and interdependencies between the two PDs and it is necessary, therefore, for Sure to occasionally address WBB-related issues in this document and vice versa for our response to the WBB PD. As the same concerns apply to the two PDs, some parts of the two Sure response documents will be similar or identical.

18 Sure would welcome the opportunity for follow-up discussions with the GCRA to explain the points and analyses set out in this response document and to produce follow-up documentation and analyses should that the GCRA will require in order for the GCRA to make a fully reasoned, evidence-based decision.

(J) GCRA Response

The modelling of wholesale leased lines and wholesale broadband costs/prices share a great degree of similarity given the extent of shared costs supporting broadband and leased line provision; the associated calculation mechanisms and data are consistent with this. It is therefore important to underline that the review of those models by Sure did not in practice require entirely separate reviews of two models. Sure was given a period of time to review the models when the First Proposed Decisions were issued (31 March to 12 May for wholesale leased lines and 23 May 2023 to 14 July 2023 for wholesale broadband) and subsequently had the ability to familiarise itself with both models up to October when the Second Proposed Decisions were issued after which it was given four weeks to review a single common model with a structure and data it would at that stage have been very familiar with.

In several parts of Sure's response it comments on the issue of time to respond. Sure was provided with information to assist in its response to both the March and October Proposed Decisions, in particular the Second Proposed Decision. The extent to which it was guided is apparent from the dedicated tab in the model providing explanations and references to the specific changes made from the model in March to the model in October; highlighted in each sheet of the model were the specific changes made. The extent of these changes was not large. This assistance is a matter of record but because no reference is made in its response to the considerable assistance given to Sure, to summarise:

As explained in detail in correspondence to Sure, there were ten changes in the October 2023 version of the model from the model Sure had received in March 2023 relevant to the wholesale leased lines control.

Eight of those were made at Sure's request and were minor. These could easily be verified by Sure and there is no dispute that these were minor.

The final two changes had a large impact on the headline price reduction because an

additional revenue stream was included, previously omitted. This was the revenue Sure received from OLOs for wholesale line rental when OLOs rented wholesale broadband rental products from Sure so that they can retail a broadband service. The reasons for including it are explained in paragraph 4.19 of the Second Proposed Decision. The additional revenue changed the output of the model in terms of average level of charges that were needed to cover costs (18% average price reduction changed to a 23% reduction), but the complexity of the model had not altered to any material extent. Sure has not addressed itself to the specifics of why these ten changes required an even longer period for it to respond than the time given.

From the instructions given to its advisors, Sure then decided to undertake a root and branch review of the model at a very late stage in the overall process even though it had access to the model since March 2023 and had considerable time to familiarise itself with the methodology up to October 2023.

The purpose of a regulatory consultation process is to give opportunity to engage with the assessments made and evidence used in a timely manner. Because other stakeholders bear the considerable costs of delay where charges are excessive, the impact is not solely about the incumbent's interests. In this context, a risk was an unnecessary and material delay in the reduction to the cost of business to OLOs and the related benefits to Guernsey's competitiveness as a jurisdiction. It was also reasonable to expect that with reduced wholesale costs these would be reflected in retail prices, reducing the cost of leased lines for businesses in Guernsey.

Given the changes from the First Proposed Decision, which were explained in detail to Sure, there is difficulty understanding the rationale for the lengths to which Sure felt it necessary to go to address the ten changes to a model it was already familiar with. These did not require the amount of time and effort to examine and respond compared to earlier consultations, particularly given the signposting provided by the GCRA through highlighting and explanatory tab intended to assist Sure.

The proposed price regulation

19 As expressed already on our response to the First proposed Decision, Sure considers the GCRA's detailed price control excessively prescriptive and considers that it is likely to stifle commercial innovation in the market at both retail and wholesale levels.

20 The GCRA criticises Sure's existing pricing curve,[7] but appears to forget that the anomalies

[7] Paragraph 4.21.

identified are a direct result of the price reductions that Sure made to its very high bandwidth leased lines, in response to a direct request from the GCRA. The issue began with a letter from the GCRA on 3rd December 2021, in which the GCRA gave 'advance notice of our intention to seek approval from the Authority to amend Sure's May 2015 wholesale leased line price control'. The letter referred to concerns that had been expressed by other licensed operators about Sure's wholesale pricing levels for its 1Gbps and higher bandwidth leased lines – i.e. those of a very high bandwidth (VHB). It went on to say that "*in order to address this problem in a timely, pragmatic and proportionate manner, we are recommending to the Authority that the retail-minus price control be removed on VHB leased lines and replaced with a price cap, which we believe should be benchmarked against JT (Jersey) Limited's wholesale prices".*

21 As was also indicated in the GCRA's letter, "*should the Authority approve our recommendations, then we propose to follow our standard consultation process, commencing with the publication of a proposed decision*". On 14th January 2022, the GCRA published a consultation paper, entitled 'Price control for wholesale on-island leased lines'.

22 Sure submitted its response to the consultation on 11th February 2022, reminding the GCRA, in a section we headed 'Restructuring our price curve', that we had "*repeatedly stated to the Authority that we wish to make changes to the pricing levels and structure of our* <u>*entire*</u> *wholesale leased line portfolio*". We closed the section by stating "*The Authority's concerns, therefore, are likely to be addressed voluntarily, and without the need for regulatory intervention, once the ongoing BCMR has been completed.*"

23 We referred to the fact that we saw the GCRA's focus on this matter as causing it a distraction from completing its ongoing Business Connectivity (Leased Lines) Market Review. To reinforce our concerns over the GCRA's distraction and remove what we saw as a cherry-picking focus on the niche (VHB) part of our wholesale leased lines portfolio, we 'voluntarily' agreed to make significant price cuts to those services, thereby, under duress, breaking the pricing curve[8]. The break is most noticeable between our 500Mbps leased line price (which was unaffected by our 'voluntary' price reduction) and the 1Gbps leased line (which, after we applied the material price drop, was only marginally more expensive).

24 We therefore refute the appropriateness of the GCRA's position, as set out in Section 5.7 of the WLL PD, that not having a control imposed on a product-by-product price basis would raise concerns about the price regulation being less effective. This view was arrived at, primarily, it

[8] Sure notified the GCRA and other stakeholders of our reduced wholesale charges for VHB services in its regulatory notice of 11th February 2022.

would seem, because of what the GCRA saw as '*unexplained historic price differential between products by Sure in the WLL market*'.

25 We cannot fathom how the GCRA could view the outcome of a process that it instigated, which placed pressure on Sure to reduce its VHB wholesale leased line charges, to be considered to be 'unexplained'. We trust that the above clarification (one which we have provided before) will leave the GCRA in no doubt that Sure did not initiate a change to its pricing curve for any commercial or self-benefitting purpose.

26 Sure has consistently told the GCRA (in writing and verbally) that it intends to review the WLL price curve, but that it can only do so meaningfully once the current business connectivity market review (BCMR), of which the WLL PD is the third and final step, is concluded.

27 It is therefore neither reasonable nor proportionate to use the shape of the current price curve as justification for why it is necessary for the GCRA to micro-manage Sure's prices.

28 Sure considers that an overall price cap (within which Sure would be free to set individual product prices) or direct regulation of a single (popular) anchor product would be more reasonable and proportionate to the potential market failures that could result from the GCRA's finding that Sure enjoys a position of SMP in the WLL market. The GCRA should note that past behaviour of the SMP provider is a parameter highlighted by the European Commission as important in the design of remedies to prevent abuse of an SMP position within the ex-ante regulatory framework. And there is no evidence that Sure's past behaviour justifies the remedy proposed.

29 The GCRA refers to its assessment of the effectiveness of the retail-minus price control currently applicable to Sure's WLL prices as a rationale for why the use of anchor product pricing would not be effective and achieve the desired effect.[9] That comparison seems at best spurious as retail-minus regulation and anchor product pricing are fundamentally different and would typically be used in very different situations. Sure is, for example, not aware of retail-minus price regulation being a recommended approach to achieve reduction in price levels, whether at retail or wholesale levels. Anchor pricing, however, can be used effectively to constrain prices of products higher up the price curve than the regulated anchor product, this has been proven to be effective in a number of situations. Given more time to perform the necessary research, Sure could provide examples of this, but the very compressed response

[9] Pages 15 and 16 of Annex 1

timeline has not allowed for that. It is concerning that the GCRA should consider the two types of price regulation comparable.

30 However, if the GCRA maintains the proposed detailed price regulation, Sure asks, as an absolute minimum, that the GCRA allows a margin of variance for individual prices to deviate within the current price curve and also the possibility for Sure to seek the GCRA's consent to depart from the pricing curve if there are good reasons for doing so. Such a reason could, for example, be the need to incentivise customers to migrate to new products in order to rationalise and modernise the WLL product portfolio.

(K) GCRA Response

Sure representations ignores the GCRA finding that the 500Mbps leased line product is excessively priced and the price control will reduce its cost from £19,200 to £9,116. The GCRA repeats the assumptions set out in the First Proposed Decision, paragraphs 4.18 to 4.21, and the Second Proposed Decision paragraphs 4.21 to 4.22 and the Final Decision paragraphs 4.35 to 4.38 for its justification on the pricing curve. Further, as was explained in the GCRA's response to Sure's paragraphs 13, 14 and 16 of its written representations in response to the First Proposed Decision:

"The pricing curve reflects the relative prices across products within Sure's current pricing for wholesale on-island leased line products, with that product portfolio. The GCRA proposals do not prevent Sure from introducing new products, or from setting the prices of existing products below the defined price cap, which gives Sure some flexibility to react to market changes. See paragraphs 5.5 to 5.12 in the Second Proposed Price Control Decision. The pricing curve reflects the current set of products which have remained stable over the period of the previous review and there is no unreasonable restriction that prevents Sure from introducing new products." [para 13]

"As addressed in paragraphs 4.21 to 4.22, the pricing curve is set to smooth the transition from product to product along the curve, as Sure's existing 500Mbit products prices potentially act as barrier for customers to move to higher bandwidth products. Sure is able to introduce new products during the price control period, and to set prices of existing products below the defined price cap, which gives Sure some level of flexibility to respond to market conditions. However, the GCRA will consider initiating price controls for new products should their introduction raise concerns." [para 14]

"Sure has the freedom to introduce new products during the price control period, and to set prices of existing products below the defined price cap, which gives Sure some flexibility to

respond to market conditions. However, given Sure's 'dominant position' designation the GCRA will consider initiating price controls for those new products should their introduction raise concerns in relation to compliance with the price control." [para 16]

The GCRA reiterates as per paragraph 5.12 of the Second Proposed Pricing Decision, that there is no imposed restriction on Sure's ability to introduce new products and/or services to respond to its customers specific commercial requirements. Also, see Footnote 22 in the Second Proposed Price Control Decision. The GCRA recognizes that it is also necessary to allow Sure to adjust its offering to reflect the market developments that could benefit the market and customers but as set out in further detail on the Second Proposed Decision, the interests of the wholesale market are not limited to Sure's interests alone (see for example paragraph 5.9). [para 17]

"As set out in paragraph 5.14, in the compliance section of the Second Proposed Pricing Decision, the GCRA is willing to consider reasonable reasons given for non-compliance with the proposed price control in the short term in circumstances beyond Sure's control which may cause deviation from the cap. The requirement for Sure to submit for prior approval any new products and the process of consultation set out in the First Proposed Pricing Decision have not been included in the Second Proposed Pricing Decision as the GCRA can rely on other regulatory tools to mitigate against the market risks outlined in the decision." [para 19]

"...Further, the GCRA takes the view that a defined product portfolio is appropriate for this market but also recognizes that is also necessary to allow Sure to adjust its offering to reflect market evolutions that could benefit the market and customers. For example, Sure could consider introducing additional products over the price review period to react to changes in technology or customer preferences or upgrade the bandwidths of all existing products with no increase in price, if technological developments enable this to be done at no/negligible additional cost. Therefore, the mandated approach allows Sure the flexibility to introduce new products, or to adjust the specification of existing products along with maintaining the current range of products." [para 22]

Sure's request for a margin of variance was addressed in the Second Proposed Decision and is repeated in paragraph 5.14 of the Final Decision. "The Authority recognises there may be extraneous circumstances which may cause Sure's prices to deviate from the cap set by this control. Where these are beyond Sure's control and were not reasonably foreseeable, the Authority would not expect to take enforcement action.

In summary, the Final Decision, confirms the GCRA's view that there is sound economic rationale for setting maximum prices for individual products which is based on Sure's 'dominant position' designation in the wholesale on-island leased line market. The GCRA notes that Sure has the freedom to introduce new products during the price control period,

and to set prices of existing products below the defined price cap[10], which gives Sure flexibility to respond to market conditions.

The GCRA's approach to cost-orientation

31 Sure has consistently alerted the GCRA to the fact that it does not collect and generate costing data and analysis to support the setting of cost-based charges. Sure stopped doing that in 2016, when the GCRA withdrew the cost accounting obligation,[11] and the last year for which Sure completed separated accounts work was for its 2014 accounting period.

32 In its 2016 Decision "Reducing the burden of regulation" the GCRA explains that the separated accounts: "*are a bespoke arrangement designed specifically for the regulator and produced in- house annually by both Sure [and JT[12]; they provide greater transparency on the financial performance of the telecom operators in key areas of activity as compared to public reports*". Further, that: "*It's a good step in the right direction to be honing the information required by CICRA and allowing the operators to use existing information when reporting their financials for regulatory purposes*".

33 As a consequence of this GCRA Decision, Sure now only produces standard statutory accounts. As such it neither holds the data nor retains the systems to produce costing data for individual products or activities.

34 Astonishingly, and despite its own decision, the GCRA has served information requests on Sure that can only be discharged by Sure if Sure was to re-establish a process and systems to produce separated accounts, underpinned by a detailed costing system.

35 The process of garnering the necessary data now, from scratch, in order to supply the information that the GCRA requested earlier this year during the data collection process to populate its costing model, would take approximately 24 months – the forecast timeframe required to reestablish a costing (and separated accounts) model. It would require the definition of costing categories, cost drivers and cost allocation keys and then collection of the necessary data to produce the separated accounts. The GCRA's approach to this is wholly unacceptable, especially now that it seeks to impose remedies of such considerable magnitude against Sure on the back of its analysis that Sure asserts is not fit for purpose.

10 **GCRA Footnote – pages 58 Appendix 1, GCRA replies to Sure's representations to First Pricing Decision.**

11 https://www.gcra.gg/blog/reducing-the-burden-of-regulation/

12 This Decision was issued together with the JCRA (as CICRA) and applied to Sure in Guernsey and JT in Jersey.

36 In the absence of those processes and systems, the GCRA has asked Sure to produce inputs to the GCRA model. That model relies heavily on cost drivers and cost allocation keys from 2014. For these, Sure has had to estimate the source data (because that data is no longer collected by Sure). The GCRA now seeks to pin its decisions to that data, despite Sure highlighting to the GCRA consistently since the GCRA's first proposal to abandon the remedy (to produce separated accounts), that it would not be in a position to supply reliable data to support any attempt by the GCRA to set cost-based regulated charges. This is grossly unfair.

37 In response to Sure's comments on the First Proposed Decision on WLL that the GCRA has used unreliable data for its modelling, the GCRA states:
"it has consistently been communicated to Sure in communications over several years that Sure is expected to maintain adequate detailed records in respect of its licensed telecoms activities as required by its licensing obligations."[13]

38 That statement is both puzzling and worrying and, arguably, disingenuous given the GCRA's own 2016 Decision. It is entirely unclear what the GCRA means when it refers to maintaining "*adequate detailed records in respect of its licensed telecoms activities as required by its licensing obligations*". Having told Sure to step away from the records that it previously maintained at the regulator's direction, what exactly is Sure supposed to do other than that which it has done, namely, to ensure accounts prepared in accordance with all statutory requirements? Quite simply, Sure does not know which licence obligations the GCRA refers to here nor what the GCRA had expected Sure to do, especially in light of the 2016 Decision to remove the requirement for producing separated accounts.

39 Sure notes that in the WLL PD Annex 2: "Licence Obligations for Licensee with dominant position" the GCRA has included Condition 27.1, which the GCRA explicitly disapplied in its 2016 Decision. This is a clear error. Further, the GCRA cites Conditions 28.1 and 28.2, but they address unfair subsidisation. They do not require the creation or maintenance of separated accounts for defined regulated markets and/or individual products and therefore offer no support for the GCRA's stance on this. The GCRA cites no other licence conditions and Sure is not aware of any such conditions that could impose accounting separation or detailed cost accounting obligation on Sure (and, if there were any, would have expected the GCRA to identify these, which it has not).

40 For the avoidance of doubt, Sure does not object to the introduction of cost-based charges which it considers may be of use in respect of some regulated products in Guernsey. What it does object to is

[13] Page 12 of Appendix 1.

the imposition of regulated charges that purport to be cost-based but which are not, and instead are based on an elaborate set of assumptions by the GCRA, building on data estimates for which there is no solid foundation nor indeed any audit trail.

41 In the limited time available, Sure has set out below some very significant concerns over the input data. In the time available and with the lack of transparency over the input data used by the GCRA, this is by no means a comprehensive statement of the concerns. It is simply the best that Sure can do within the time available. It sets out what we believe to be the direct results of the GCRA model being built on insufficient and unreliable data and the excessive use of proxies. Some of these issues have been highlighted by the combination of the WBB model with the WLL model, which has for example – and significantly - exposed the excessive reliance on revenue as a cost allocation key.

42 Whilst the excessive reliance on revenues is the most obvious of the issues identified in the modelling outputs, it is clear that the outputs in the model will only ever be as good as the inputs used and that the fundamentally flawed approach to assessing forward-looking costs in a network which is currently under construction is unlikely to produce outcomes on which the sustainability of two of Sure's significant product groups can be based.

43 As already noted, whilst below we present some details identified as part of our review of the GCRA's model, we must particularly highlight in this section the effect of the very short response time allowed to this consultation. This is likely to have resulted in an incomplete analysis of that model and therefore potentially significant issues remain un-discovered. Whilst the GCRA has allowed Sure an additional week to provide specific comments on the GCRA's cost model, it is unsatisfactory for the GCRA to ignore the fact that any points that may come to light in that additional week should properly be reflected in Sure's written response – which will be impossible given the GCRA's insistence that this must be submitted a week earlier.

(L) GCRA Response

On 26 August 2016, in a letter headed 'Separated Accounts / Regulatory reporting' the GCRA conveyed its position that the relaxation of Sure's requirement to submit a full set of yearly audited regulatory accounts, was only on the proviso that Sure maintained adequate detailed records in respect of its licensed telecoms activities, and subject to agreement from Sure that it would provide an appropriate form of alternative annual financial reporting to be agreed with the GCRA. The GCRA has, since that date, communicated its concerns about the adequacy of the information systems Sure has put in place to comply with the above agreement, and its obligations under Condition 4 of its fixed telecommunications licence.

However, during the consultation, Sure's initial inability to provide the requested data was overcome by the GCRA submitting multiple targeted requests for information, and these requests ultimately led to Sure providing its 'Management Packs' which was a comprehensive spread sheet of its business revenues, costs and financial information. Those 'Management Packs' included all the necessary data required to populate the cost orientated model.

While it is correct for Sure to submit that it is not required to maintain or submit a full set of yearly audited regulatory accounts, it is incorrect for it to claim that is does not possess the required information which allowed the GCRA to build and populate its costs model.

Further, Sure's statement that the GCRA model relies heavily on cost drivers and cost allocation keys from 2014 is factually incorrect. The GCRA recognised that Sure's 2014 cost driver information may not fully reflect the current situation in Guernsey, and as such, it made limited use of that information in the model. As outlined in more detail below, the 2014 cost driver data was only used as allocation keys for two cost categories (Buildings and Electricity), and they allocate less than 8% of the estimated wholesale leased lines and wholesale broadband costs in each year of the modelling period. As such, the GCRA considers that the use of the 2014 cost driver data in the model is reasonable, proportionate and does not have a significant impact on the estimated cost-based prices.

The GCRA acknowledges Sure's representations regarding the cost allocation approach used in the GCRA cost model. However, it continues to be of the view that its approach is reasonable and proportionate given the small size of the Guernsey jurisdiction and is consistent with international precedent including in Jersey. See section 5, Overview and modelling, in the Final Decision, for the GCRA's comprehensive approach to assessing and setting the assumptions used in the modelling process.

Given this, the GCRA considers that it has already conducted a thorough process with Sure to identify appropriate allocation keys, in which Sure was given ample opportunity to raise concerns regarding the use of revenue-based (and other) allocation keys and to suggest alternatives. See Annex 3 of the Final Decision which outlines in detail the collaborative consultation process and engagement between the GCRA and Sure.

Finally, the GCRA is unclear as to the basis of Sure's statement that the cost allocation approach lacks any audit trail. The GCRA provided Sure with the GCRA's cost model both as part of the First and Second Proposed Decisions, which explicitly sets out the cost allocation key used for each cost category, the data used to calculate the cost allocation key, and the source of that data. The same applies to the other data used in the cost model. The GCRA therefore considers that there is a clear audit trail for the cost allocation approach, and the other data used in the model.

Comments on the GCRA's model

44 Sure is submitting separate responses to the WLL PD and the WBB PD, but for the modelling analysis, there is inevitably a significant amount of overlap between the two responses. This is a result of the GCRA's decision to create a single model for both the WLL and the WBB.

45 As a result of the materially impacting errors and omissions relating to the two separate cost models for WLL and WBB, which were provided alongside the First PDs, Sure set out in its response to those First PDs what it saw as necessary corrections and improvements to the models. For each model, we proposed five changes (and provided associated financial impact values), with the GCRA accepting all but one amendment in each case – that being our suggested WACC uncertainty premium adjustment.

46 What could not be seen from these separate cost models at the time Sure commented on the First PDs, was the impact that each agreed input value change to one model would have on the output values of the other model. For this reason, we requested that the GCRA provided a single model, encompassing WLL and WBB. This it did, at the time of publication of its Second PDs, with the output values of that single combined model matching the revised wholesale charges that the GCRA is now proposing.

(M) GCRA Response

Sure could have used the models to test from the separate cost models the impact of changes to agreed input values in one model on the output values in the other model. This is because the two models where structured in an identical way, contained almost the same data inputs, and with the models containing almost identical intermediary calculations. For example, the calculation of the costs to be recovered from Wholesale Broadband customers in the Wholesale Broadband model, and the Wholesale Leased Lines costs in the Wholesale Leased Line model, where calculated from the same raw data, and using the same set of allocation keys. It was therefore possible to make the same changes in both models to see the impact on the estimated cost-based prices.

47 Our first sight of the single model (on 5th October 2023) revealed the huge impact of the GCRA proposed its late inclusion of WLR revenues. This was in stark contrast to our previous

expectations, based on the proposed changes made by Sure, which had been accepted by the GCRA, during the review process that followed the submission of our responses to the First PDs. Whilst the GCRA appears to treat the inclusion of WLR as a simple matter, with little impact on the model structure, what quickly becomes evident on scrutiny is the extent to which the addition of WLR revenues inappropriately influences the model's dynamics.

48 One of the key reasons for this is the disproportionately large percentage of costs associated with WLL and WBB that are apportioned based on the revenue that they are forecast to provide. To explain the extent of the issue – during the years in which Sure was required by the GCRA to create and submit annual separated accounts, the GCRA placed a requirement on Sure that within each model the maximum percentage of unattributable costs[14] that could be apportioned across our product ranges, was 10%. For prudence and to align with best practice, we set our operational target for the apportionment of such costs at 5% of total costs. In almost all years, from 2008 to 2014 we met this 5% target. Had we gone above 10%, according to the GCRA's own rules, our submission would not have been compliant.

49 A major deficiency with the GCRA's (single) cost model can be evidenced through the calculation of the percentage of shared costs (i.e. costs not specific to either WLL or WBB) that are apportioned between WLL and WBB based on the revenue that these products are forecast to produce.

50 Oxera, our external advisors for the detailed review of the GCRA's new combined WLL and WBB model, undertook this analysis on our behalf. In the case of WBB, 99% of costs in the GCRA's model are treated as shared[15]. Of that, 28% are driven based on the revenue that WBB is forecast to produce. Based on the GCRA's 10% cap rule that it applied to Sure's separated accounts models, a figure as high as 28% would have failed the compliance test – i.e. **the model would not be considered fit-for-purpose**.

51 Oxera also looked at the costs calculated by the GCRA in relation to WLL. In that instance, 83% of its costs were treated as shared, with 57% of that proportion being driven to the WLL

[14] These are costs that have no clear or directly relevant basis for apportionment (one input to many outputs) or allocation (one input to one output) within the model.

[15] A value of 99% shared costs is unacceptable for the purposes of cost modelling and is a core weakness in the GCRA's model. This level of shared costs stems from the GCRA's inappropriate expectation that Sure can identify shared and direct costs for individual products from its statutory accounts, which is simply not possible. This again portrays the GCRA's lack of understanding of how different forms of accounting work and of the consequences of it having in 2016 removed the obligation on Sure of producing separated accounts.

products, based on the revenue that WLL is forecast to produce. Again, applying the GCRA's own 10% cap rule, **the model would not be considered fit-for-purpose**.

(N) GCRA Response

As Sure notes, the 10% cap rule was part of the of requirements on the production of Sure's separated accounts, that no longer apply. The GCRA considers that imposing such a cap on "non-attributable" costs on a forward-looking basis would not be appropriate given the nature of telecoms networks and businesses and could in fact lead to a distortion in the appropriate allocation of costs.

In particular, the vast majority of network costs cannot be direct attributed to any given service, given a large number of assets within a network support the provision of multiple services: Most of the equipment in access networks (such as access network cabling and supporting infrastructure) support the provision of broadband, voice, and leased lines to end users, and in the core network, equipment also supports mobile services. This means that, for example, Sure's FTTP network deployment, which represents over £38m of investment over 2021-2026, is not attributable to a single service.

In addition, there are pure "common costs", such as corporate overheads, that are by definition not related to the provision of individual services (so are "not-attributable"), but it is reasonable to include an allocation of these to individual services to ensure Sure is able to recover these costs.

Given this, depending on the specific breakdown of Sure's costs in a given year, it could reasonably be the case that the share of costs that should be recovered from a given service that are "non-attributable" is greater than 10%. It follows that limiting this share to 10% could set artificial limits, and in turn result in incorrectly adjusting cost allocations in order to meet this threshold. The GCRA therefore considers that making a comparison of the share of costs that are considered non-attributable to a 10% threshold does not represent a reasonable test of whether a cost model is fit-for-purpose.

In addition, the above points also mean that by extension, its reasonable that a large share of costs with the model should be considered as "shared", so this being the case in the GCRA's model is expected.

52 The reason these excessive apportionments, based on revenue, are so important is that they provide clear evidence that the GCRA's model lacks specificity and is materially flawed – both in its design and application. Whilst these flaws existed in the models used by the GCRA for its First PDs, the materiality of the impact of the flaws went undetected, for two reasons:

1. The calculations for the pricing of the WLL and WBB products existed in isolation (i.e. the relevance of the methodologies applied to one product had no measurable impact on the

other product, as the models were not linked); and

2. The combination of the two models showed that the materiality of the size of WLR revenues very visibly inappropriately skews the forecast profitability – not only of WBB (which the GCRA believes is directly relevant, for the reasons set out elsewhere in this response), but of WLL (a product that could never have any relevance to WLR). So even if the GCRA were correct in claiming that WLR revenues *should* be associated with WBB (a position that Sure fundamentally disagrees with), there is no credible reason that the inclusion of WLR revenues should have such a material impact on the costs, profitability and proposed pricing of WLL.

53 To gauge the extent of the inappropriateness of the GCRA's model, we created a version of its model that excluded WLR revenues. Using the GCRA's chosen WLL reference product of 'LanLink 10', we can see that, if WLR revenues are not erroneously applied to the LanLink 10 service, the annual rental charge would be £[redacted]. However, incorrectly applying WLR revenues to WLL services (as the GCRA is proposing) produces a charge of £1,823 – a [redacted]% lower figure. The reason for the significance of that impact is what could be described as 'widespread short-cutting' by the GCRA, through its acceptance of the material overuse of revenue as a cost driver.

54 The use of revenue as a driver, which then impacts the forecast revenue required, creates an inappropriate methodology in the model – one of near-circularity. This has led to a fundamentally unsound model, which is not fit for purpose. In addition, considering the very impactful outcome within the GCRA's model that the addition of WLR revenues produces, even if it were appropriate to include them for the WBB cost and price modelling (and again, Sure asserts that it is not), the GCRA must have noticed that its model produces counterintuitive outputs which cannot be rationally justified.

55 Given the model's deficiencies, and if the GCRA decides to proceed with the approach in the WBB PD and the WLL PD, Sure would expect the GCRA to work through a process with Sure which identifies additional cost-based (rather than revenue-based) drivers. The result should be that the GCRA could appropriately update its model to materially close the gap between the likes of the 57% of costs being driven on revenue and the 10% cap figure previously stipulated by the GCRA as the upper limited for Sure's cost modelling outputs.

56 Whilst, in the absence of Sure's separated accounts, it is unlikely that the gap will be closed entirely, within a reasonable timeframe, Sure would very much expect that more appropriate

modelling would bring the 57% down to no more than 20%. That would still be far from ideal but should bring significant quality increases to the model and provide an outcome that would be materially more reflective of a fit-for-purpose methodology.

Our analysis of the GCRA's combined cost model revealed errors in relation to the values relevant to DSL re-investments and wholesale charges for one-off fibre installation and reactivation activities. In addition, we have proposed a change in the recognised lifetime of Optical Network Terminals (ONTs). The details of the required changes are set out in Section 7 of our associated WBB PD response, but as the changes do not directly relate to Sure's WLL services, they have not been replicated here.

(O) GCRA Response

The GCRA considers that the use of revenue-based cost drivers is reasonable and proportionate given the size of the Guernsey jurisdiction, and consistent with the approach in Jersey which Sure did not raise concerns with. In addition, the GCRA does not agree that the inclusion of WLR revenues for Wholesale Broadband customers in the model would not be expected to impact the allocation of costs to Wholesale Leased Lines.

Prices and in-turn revenues for a given service provide a reasonable and proportionate proxy for the efficient allocation of costs between services, with higher prices/revenues for a given service suggesting that it is efficient for more costs to be recovered from that service. Having become aware that a customer required a WLR in order for an OLO to be able to provide broadband services using Sure's network to that customer, the GCRA has had to adjust the effective "total price" for Wholesale Broadband services accordingly. It follows that it is reasonable to recover a greater share of costs from Wholesale Broadband customers than previously envisaged to reflect the existence of WLR in the Wholesale Broadband "product set", as is reflected in the model underlying the Second PDs.

In addition, as noted above, a large share of relevant Sure costs are "shared" between Wholesale Broadband, wholesale leased lines, and other services. It therefore follows that if a larger share of costs have to be recovered from wholesale broadband customers, with a lower share should be recovered from other services, including Wholesale Leased Lines: if more costs were recovered from Wholesale Broadband customers, but the same from Wholesale Leased Lines and other services, then this would result in over-recovery of costs by Sure.

Therefore, the impact of the introduction of WLR revenues for Wholesale Broadband customers on the modelling outputs is an expected outcome, not an indication of "widespread short-cutting" as suggested by Sure.

The GCRA considers it has already undertaken a thorough process with Sure during the development of the cost model, to identify appropriate allocation keys and data that could be provided and produced to inform these keys. This gave Sure ample opportunity to raise

concerns regarding the use of revenue-based (and other) allocation keys and to suggest alternatives. There was also an opportunity for Sure to raise concerns with the use of revenue-based allocation keys in response to the First Proposed Pricing Decisions (given the use of revenue-based keys was clear within the models provided alongside these Proposed Pricing Decisions), but Sure did not. See Annex 3 of the Final Decision which outlines in detail the collaborative consultation process and engagement between the GCRA and Sure.

The GCRA accepts the need to update the DSL re-investments value for 2021 and 2022, and to adjust the one-off wholesale charges in 2023, and has therefore updated the cost model to reflect this.

Regarding the asset lifetime for Sure's Optical Network Terminals (ONTs), the GCRA acknowledges the additional information provided by Sure on the number of ONT failures during its initial roll-out period, and its resulting further views on the likely lifetime of these assets. In particular, the GCRA notes that the number of ONT failures that Sure has incurred over the initial 18 months of the fibre roll-out suggests an annual failure rate of around 13%, which if this was maintained throughout the rollout over several years would imply an average asset lifetime of around 8 years.

However, it can be expected that the level of failure in the very early phases of a new rollout might be higher than the long term average as the experience and training of installers and processes improve. Since Sure is in the initial phase of the roll-out, the failure rate over the full roll-out period might be considerably lower (and in turn the implied asset lifetime longer). The evidence the GCRA has is that Adtran will cover the replacement cost of the initial ONT failures in any event leads to the conclusion that a 12 year life time in the cost model remains appropriate since Sure will not bear the costs of the higher failure rate, so an adjustment would realise revenue to cover costs Sure had not incurred.

Impact analysis

57 The impact of the proposed WLL price control on Sure is significant, but the extent of that impact is materially worsened through the GCRA's late inclusion of WLR revenues within its cost model. We fundamentally disagree that those revenues should be included, but the fact that the GCRA intends them to have such a material impact on WLL services, when there is no relationship between WLR and WLL services, reveals the major flaws in the modelling methodology.

58 In Sure's response to the WBB PD, we have included an overview of what regulatory impact

analysis should involve. We do not repeat that here but note that the GCRA does not appear to have conducted any impact analysis that could be described as compliant with international best practice for either of the two Proposed Decisions.

(P) GCRA Response

There is no legislative requirement for the GCRA to conduct a detailed impact assessment while Ofcom is legally obliged to do so in the UK. Further, as set out in Section 3 in the Final Decision (and in the previous Pricing Decisions), the price reduction is designed to address Sure charging unjustifiably excessive prices in a market where it has a dominant position.

The GCRA has a duty to customers to address this failure, and it is not solely concerned with Sure's interests. The impact of excessive prices for stakeholders and the wider Guernsey business community is the relevant consideration for the GCRA. A decision to delay the reduction of costs in order to maintain Sure's higher return to its shareholders for longer is not a persuasive submission.

The GCRA's consultation process

59 Below is a summary-level table of the correspondence and interactions between Sure and the GCRA in relation to the WLL PD consultation.

Table 1: Overview of interactions between Sure and the GCRA during WLL PD consultation period

Date	Activity
03-10-23	GCRA emails Sure to confirm that it intends to publish "T1621 – Second Proposed Decision – Wholesale On-Island Leased Line Pricing" and "T1652 – Second Proposed Decision – Wholesale Broadband Pricing" at 12:00 on 5th October 2023 (the Second Proposed Decisions).
04-10-23	The GCRA and Sure had an online meeting to discuss the publication of the GCRA's Second Proposed Decisions. Sure sets out its initial concerns about the GCRA's proposed four week timeframe.

05-10-23	The GCRA publishes the Second Proposed Decisions. An embargoed copy of the Second Proposed Decisions is provided to Sure at 07:02.
09-10-23	Sure responds to the GCRA's 9th October email to accept the GCRA's offer and requests that the meeting be held during the week commencing 16th October. Sure also requests recording of 4th October meeting.
10-10-23	Sure requests an extension of the 3rd November deadline to 30th November.
11-10-23	GCRA emails Sure stating that it can only facilitate a meeting during the week beginning 23rd October.
12-10-23	Sure asks the GCRA for a response to its 10th October extension request. GCRA rejects Sure's extension request via an email.

13-10-23	Sure confirms receipt of GCRA's rejection and again requests that the GCRA provides the 4th October meeting call recording, which it subsequently provides
17-10-23	Carey Olsen, on behalf of Sure, submits a second extension request containing more details of reasons for request whilst offering a one week reduction to the duration of extension to 23rd November.
19-10-23	Sure informs GCRA it has engaged external consultants and that it would be able to have a meeting on either 26th October or 27th October. Sure also requests that Frontier Economics (the GCRA's economic advisors) be invited to the call.
20-10-23	GCRA confirms its availability for call on either date suggested by Sure, who responds to confirm meeting for 9am on 26th October. Sure provided a list of its attendees, including its external consultants. The GCRA issues meeting invite (not including Frontier Economics) and an agenda.
24-10-23	Sure again requests that Frontier Economics be invited to the 26th October call, so that its queries about the changes to the model and overall methodology can be dealt with quickly.
25-10-23	The GCRA rejects Sure's request to invite Frontier Economics. The GCRA also requests meeting delayed to 10 am on Friday 27th October due to travel disruption for a GCRA Case Officer. Sure requests a response to its 17th October 2023 extension request. Sure agrees to delay the meeting to 3 pm on Thursday 26th October to accommodate the travel disruption.
26-10-23	The GCRA and Sure have a call to discuss the Second Proposed Decisions. The GCRA agrees to take away questions as they are unable to answer Sure's questions on the call. Subsequent to the call, Sure provides GCRA with a list of questions about the Second Proposed Decisions The GCRA responds to Sure's 17th October extension request, again rejecting it.
27-10-23	A recording of the 26th October meeting is provided to Sure by the GCRA. The GCRA provides short responses to some of Sure's questions and confirms that further responses will follow.

	Sure responds to the GCRA's 26th October rejection of Sure's extension request via Carey Olsen.
30-10-23	The GCRA responds to Sure's 27th October letter to again reject the request for an extension.
31-10-23	GCRA provides the remaining, brief responses to Sure's questions on the cost model.
02-11-23	Sure emails the GCRA to inform them that Sure had conducted its own analysis of the pasted values in certain cells of the spreadsheet, so this information no longer needed from GCRA.

60 In Annex A we have included a more detailed summary of the communication between Sure and the GCRA in the given period, together with Sure's assessment of the GCRA's behaviour during that period, along with other key dates and processes relating to the overall market review process.

61 As clearly demonstrated above, even before it received the PDs, Sure alerted the GCRA to its concerns that a thorough and meaningful response to both the WLL PD and the WBB PD consultations could not be produced within the four-week consultation period proposed by the GCRA. In response to these concerns, the GCRA invited Sure to submit a request for an extension to the response deadline, explaining why this would be justified. Despite doing so, the GCRA initially took two weeks to reject the initial request (with the justification that -in the GCRA's view- Sure did not need more time) but inviting Sure to provide further justification for the extension sought. The GCRA then again rejected Sure's 2nd more detailed request for an extension, this time with the justification that an extension would jeopardise the GCRA's planned launch date of 1st January 2024 for the new pricing[15].

62 At the meeting for Sure to seek clarification on queries from the two PDs, held on October 26th (just over 1 week before the response deadline, as the GCRA had not been able or willing to arrange the meeting for the previous week), the GCRA declined to answer any of the questions posed, instead asking that they be submitted in writing after the meeting for the GCRA to reply

[15] Note, that at this time the GCRA, however, offered Sure the possibility of submitting evidence of any material errors within one week of the original 3rd November deadline, thus by the 10th November.

replies at a later time. The GCRA also did not invite its advisors (Frontier Economics) to that meeting so it was not possible to seek clarification on detailed modelling queries from them. By the following day, the GCRA provided part answers to some of the questions, but overall simply referred to the same documents which had given rise to the need for clarification in the first place. The responses to modelling queries were only received on the 31st of October and were very brief and lacking in the required detail.

63 In summary, the GCRA rejected Sure's reasonable requests for extensions, prevaricated over replies to those requests and wasted considerable resources for Sure by requesting more detailed justification for the extension request. It then hosted a very ineffective meeting, late in the review period, for clarifications and took additional time to provide only very limited answers.

64 Returning to the GCRA's refusal to grant an extension to the extremely short response time, Sure is particularly concerned that the GCRA appears to use different reasons for why an extension cannot be granted. Specifically, the refusal of the extension request due to this putting at risk the GCRA's planned January 1st 2024 launch date for the new regulated wholesale prices gives rise for concern.

65 The revised deadline for responding set by the GCRA (after allowing a short extension to another stakeholder) is 6th November 2023[16] and the GCRA would need to carefully review the contents of all responses received, including the review of issues raised relating to the modelling that underpins the proposed prices. The GCRA had allowed Sure a further week, to the 10th November, to identify any material errors in the modelling. To the extent that there are such errors, these would ordinarily need to be reflected in Sure's written representations. However, this will not be possible given that Sure's responses will have been submitted four days beforehand. In addition to analysing the qualitative comments received on matters like market analysis and due process, Sure reasonably expects that, if acting properly, the GCRA would need to get Frontier Economics to review all the modelling comments and where necessary perform impact analyses to assess those comments. The GCRA would then need to review Frontier Economics' analysis and recommendations and decide whether and (if so) how to modify the regulated prices. At the completion of those tasks the GCRA would then need to

[16] The original deadline was 3rd November 2023, but on 2nd November the GCRA notified stakeholders of an extension, at the request of Airtel-Vodafone.

produce its Final Decision document. Of course, if the GCRA were to produce its Final Decision prior to these steps, not only would this be very inefficient (due to the need for changes to address comments received) but it could also suggest that the GCRA had a closed mind, with no intention to change any of its proposals regardless of the comments received.

(Q) GCRA Response to paragraphs 58 - 64

It is not apparent whether Sure has an alternative timeline for engagement with the GCRA or is disputing the chronology of engagement set out in the Second Proposed Decision. The GCRA has provided its summary of the consultation process which is included in the Final Decision and has outlined in substantial detail through its responses, why it considers that Sure has been provided with sufficient opportunity to respond to the proposed decisions throughout the consultation process. There should be no expectation that GCRA Officers would have answers to questions raised by Sure at the moment they are asked and a portrayal that this constitutes refusal to answer questions is without foundation.

The GCRA with assistance from Frontier Economics has provided substantive replies to Sure representations and has adjusted the cost model accordingly, to take account of Sure's submissions.

66 It would be reasonable to expect the GCRA to need a minimum of 4-6 weeks to complete the post-consultation processes and produce the Final Decision document; certainly, Sure cannot see from the GCRA's records of published decisions on its website that it has ever reached a Final Decision within one week of the consultation closing.

67 However, if the GCRA wishes the amended wholesale prices to apply in the market from January 1st 2024, the GCRA *would* have to complete all the activities described above in seven working days or fewer. This is because Sure is required to provide a minimum of 30 clear working days' notice to its wholesale customer of any price changes and (due to the Christmas period) that means that Sure would have to notify the new prices on November 15th at the latest. Assuming the GCRA adopts its usual course and allows Sure a short period of notice so that it can, on a practical level, prepare and publish the relevant notices, that would further reduce the time available to the GCRA.

68 This is therefore an all-but impossible timeframe for the GCRA and calls into question the overall approach. It is further complicated by the GCRA's offer that Sure can submit evidence of material modelling errors by November 10th. It is Sure's view that a submission by Sure of

modelling errors by as late as November 10th would in practical terms render it impossible for the GCRA to have performed a reasonable review of such comments and incorporated them into a Final Decision issued in time for Sure to notify its wholesale customers of new prices by November 15th, just three working days after November 10th.

69 Sure queries whether the GCRA has miscalculated the date from which the new prices must be made available. It would certainly not seem credible that the GCRA would expect to be able to review, assess and process all comments and produce a Final Decision document in such a short period.

70 This being the case, it would seem that at least the rationale given for rejecting Sure's second request for extension was invalid. As for the reason for rejecting the first request for extension, it seems unusual that the GCRA considers itself in a position to determine how much time one of its stakeholders requires to review and respond to proposals that could materially affect the

viability of their business. It would seem reasonable that Sure itself has the best understanding of its resources and the time necessary to perform those tasks.

Conclusion

71 The GCRA's approach to designing price control remedies in the WLL market are ill-informed and out of step with international practice and the reasons provided by the GCRA for the over-prescriptive price regulation is based on lack of understanding of the different price regulation options available to regulators.

72 The attempt to set cost-based WLL pricing by using out-of-date costing data and a combined WBB and WLL costing model that allows the shifting of costs between unrelated products due to the use of revenues as the predominant cost allocation key used in the model is not defensible.

73 To that end, the GCRA needs to recognise that its combined WLL and WBB model is not fit for purpose, due to its significant overreliance on the use of revenues as a cost allocation key and the inappropriately material impact that the GCRA's inclusion of WLR has on WLL. In addition, the proportion of WLL costs driven by revenue is excessive. Based on these deficiencies, we believe that the following steps should be undertaken:

a. The GCRA should revert to the use of its separate WLL cost model (relating to its First PD) – where no WLR costs could inappropriately materially influence the proposed WLL charges.

b. On a temporary basis (if necessary), the GCRA could align the regulated WLL charges with those shown in the First PD.

c. A revised WLL specific model should be created, alongside a Third Proposed Decision and Sure would assist the GCRA (and its consultants) to design and create additional relevant cost drivers to limit the erroneous exposure to the use of revenue as a driver.

Annex

Annex 1: Overview of timeline of GCRA'S market reviews of wholesale broadband and wholesale leased lines (business connectivity)

Date	Activity
26 April 2018	CICRA (the then joint Channel Islands regulator for Guernsey and Jersey) hosts a stakeholder meeting to launch its broadband consultation covering both Bailiwicks.
4 May 2018	CICRA publishes Consultation Document 18/21: Future Economic Regulation of the Broadband Market CICRA appointed SPC Networks to undertake this part of the market review. In summary, CICRA described the purpose of the consultation as an initial step in progressing actions contained the 2018 CICRA work programme, to address any structural or behavioural constraints in wholesale service provision and to review wholesale charges for broadband services.
19 October 2018	CICRA publishes Draft Decision Document 18/41: Broadband Market – Market Review and SMP Finding. The draft conclusion was that the appropriate market definition for Guernsey was for wholesale access to the Internet at a fixed location using an access network based on local loops that are either exclusively or partially based on the copper or fibre access network or using the 4G and ultimately 5G wireless access network via a fixed device. The draft conclusion on SMP was that Sure had SMP in this market.
9 January 2019	CICRA publishes its Final Decision Document 19/01: Broadband Market, Market Review and SMP Finding. This largely confirmed the draft decisions. It was a non-statutory decision for Guernsey and did not become binding until the statutory Final decision was made.
20 March 2019	CICRA publishes its Statutory Notice of a Final Decision Broadband Market, Market Review and SMP Finding
28 October 2019	CICRA issues Call for Information (Business Connectivity Market Review)
1 July 2020	CICRA disbanded and GCRA re-established as the separate regulator for Guernsey

January to December 2020	<u>No activity by the GCRA with respect to the Market Review for wholesale broadband</u>.
4 March 2021	GCRA publishes T1480GJ Business Connectivity Market Review (BCMR) Draft Decision GCRA 21/4. Document identifies eight relevant markets, four at retail level and four at the wholesale level. Sure is deemed to be have sole SMP in 5 of the markets defined; JT is deemed to have sole SMP in 1 of the markets; Sure and JT deemed to have joint SMP in 1 of the markets.
January to December 2021	<u>No activity by the GCRA with respect to Market Review wholesale broadband</u>
14 January 2022	T1602G Consultation paper - Price control for wholesale on-island leased lines. This proposed an alternative approach to the existing price control, despite it having started a BCMR in March 2021, which was still ongoing. The GCRA appears here to have moved the remedies stage of the market review prior to having concluded the market definition and SMP stages.
22 March 2022	T1602G Price control for wholesale on-island leased lines: Information Paper & Conclusion (dated 17 March 2022). GCRA announces it will not proceed any further with the consultation on the alternative approach given the voluntary price reductions undertaken by Sure. In the Next Steps section of the paper the GCRA says it will proceed with its ongoing BCMR market definition and market power assessment. It notes that the final part of the BCMR process is the remedies review that will follow the market definition and competitive analysis and will include proposals for any regulatory action that may be necessary should competition be found to be deficient.
12 April 2022	T1480GJ Business Connectivity Market Review, Proposed Decision: Market definition and competitive assessment. This replaced the March 2021 market definitions and SMP findings, with the GCRA noting that – following concerns expressed by respondents to the March 2021 consultation - it was instead now adopting the EU approach to market analysis, <u>recognising both the importance of the three-criteria test and that the remedies stage is the final stage of the overall review, should a finding of SMP be made</u>. The GCRA defines a retail market for on-island leased lines but finds that the three criteria test is not passed and no operator has SMP.

	The GCRA defines a wholesale market for on-island leased lines and designates Sure as having SMP in that market.
29 July 2022	GCRA informs Sure in writing it that it has appointed Frontier Economics to support the GCRA in its review of wholesale broadband service pricing and the development of any appropriate remedies regarding wholesale leased lines. The letter states that the GCRA and Frontier would be collecting relevant information and date, that would be comprehensive enough to ensure the analysis is robust and in line with international best practice but proportionate to the size of the jurisdiction. Relevantly, given what the GCRA now proposes, it states that "It is also important that the analysis conducted to inform potential remedies is based on accurate information."
19 August 2022	T1480GJ Business Connectivity Market Review Final Decision: Market Definition and Competitive assessment. The GCRA largely confirms its Proposed Decision.
30 September 2022	GCRA writes to Sure regarding its compliance with Licence Condition 4 relating to the maintenance of costing information systems, claiming that Sure had taken unilateral decision to reduce the quality of its costing information systems and risked failing its licence obligation.
10 October 2022	Round Table meeting held with operators where Frontier Economics sets out its high level approach for considering wholesale prices for broadband and leased lines services.
28 October 2022	Sure writes to GCRA expressing concerns that the GCRA is progressing to review Sure's wholesale broadband pricing without revisiting the market definition and assessment of SMP within the relevant market.
21 October 2022	Sure responds to GCRA letter of 21 October 2022 stating that it is not in breach of Licence Condition 4, which does not require Sure to maintain a cost accounting system. Condition 4 requires Sure to provide on request from the GCRA "any documents, accounts, returns, estimates, reports or other information included but not limited to [those] specified in Sure's licence. However, having explicitly disapplied Condition 27 (the obligation for SMP provider to produce and maintain separate accounts), Condition 4 could not reasonably be interpreted as requiring Sure to provide such data.
22 December 2022	Sure writes to GCRA asking for a response to its letter of 28 October 2022. Sure repeats its concerns that the GCRA is continuing to proceed on basis of outdated

	market definition and SMP assessment, and to determine remedies based on 5 year old data.
October 2022 to January 2023	Various data requests from Frontier Economics relating to the remedies stages of both market reviews
11 January 2023	GCRA responds to Sure's letter of the 22nd December stating that it will not respond to bilateral correspondence with Sure. It goes on to say that instead, the Authority will engage with all parties once its process of evidence gathering is complete and Sure will have the opportunity then to make representations, including any objections to the approach the Authority is proposing.
31 March 2023	GCRA publishes T1621G Business Connectivity Market Review: Proposed Decision – wholesale on-island lease line pricing. Proposal is to reduce prices of wholesale on-islands leased line products by 18% on average over a 5 year period from 1 January 2024 to 31 December 2028.
23 May 2023	GCRA publishes Proposed Decision – Wholesale Broadband Access Pricing. Proposal is to reduce the prices of wholesale broadband services by 11% on average over a 5 year period from 1 January 2024 to 31 December 2028.
20 July 2023	Email from the GCRA to James Williams, Regulatory Manager at Sure, asking if a fixed line element - Wholesale Line Rental (WLR) is required to enable a broadband service to end customers
24 July 2023	Email sent to the GCRA by James Williams in response to its query of 20th July about WLR. Email confirms that a landline is required alongside the broadband service. Email concludes by stating "Should [this] confirmation have any material impact on the GCRA's proposals then we would expect you to engage with us and other stakeholders as a matter of priority." <u>No further communication from the GCRA on WLR is received.</u>
27 September 2023	GCRA emails Sure's regulatory team to inform them that the GCRA would be publishing updated proposed decision for WLL and WBB in the week commencing 2nd October. It offers a courtesy meeting with Sure prior to publication to provide a short debrief on the high-level changes to the original proposed decisions, which Sure confirms it would like to have.
3 October 2023	GCRA emails Sure to confirm that it intends to publish "T1621 – Second Proposed Decision – Wholesale On-Island Leased Line Pricing" and "T1652 – Second

	Proposed Decision – Wholesale Broadband Pricing" at 12:00 on 5th October 2023 (the Second Proposed Decisions).
4 October 2023	The GCRA and Sure have an online meeting where the GCRA outlines that Second Proposed Decisions are being issued as a result of various adjustments having been made to the cost models used for the original proposed decisions for Wholesale Leased Lines and Wholesale Broadband. The main adjustment being the inclusion of WLR revenues and the combination of the original two separate cost models into a new combined model. This is the first time since the July exchange of e-mails between the GCRA and Sure that the GCRA has mentioned the inclusion of WLR. The GCRA states that the second proposed decisions will be subject to parallel consultation processes, running for a four-week period. The Sure team express concerns that this time period seems too short given there are now three products involved (WLL, WBB and WLR), a new combined cost model, and the consultation period includes the half term week when key Sure personnel are on leave. The GCRA suggests that the Sure team review the documents when received and if it is felt there is insufficient time, Sure should submit an extension request.
5 October 2023	The GCRA publishes the Second Proposed Decisions.
9 October 2023	The GCRA emails Sure to offer a meeting in the week beginning 23rd October "to assist in formalising your written representations in advance of the 3rd November 2023 deadline." Sure responds requesting that the meeting is held the week of the 16th October given the short timeframe for response. Sure also requests copy of the recording of 4th October meeting
10 October 2023	Sure asks GCRA to grant an extension to the response deadline to 30th November, given the materiality of the changes included within the second proposed decisions and the need to consider then fully.
11 October 2023	The GCRA responds to Sure's request to bring forward the GCRA meeting to week of 16th October, stating no availability, meeting is optional and can only be facilitated the week of the 23rd October.
12 October 2023	Sure asks GCRA to respond to its extension request. GCRA responds by email, rejecting the request on the basis that Sure has already had considerable level of engagement throughout the price control process. It also states that the input

	data in the costing model has largely remained the same except for adjustments applied due to Sure's representations and the inclusion of WLR revenue. It also states that consultation and engagement with Sure on the cost model has continued since the publication of the First Proposed Decisions on WLL (in March 2023) and WBB (in May 2023) until late August. The GCRA concludes the date for written representations must remain as 3rd November unless Sure can give more details of the elements of the Second Proposed Decisions that require more than four weeks to respond to.
13 October 2023	Sure confirms receipt of GCRA's rejection to its extension request. Sure again asks GCRA to provide the recording of the 4th October call, which it subsequently provides.
17 October 2023	Sure submits, via its external legal advisers, Carey Olsen, a further request for an extension, which sets out the detailed reasons why it is required. In summary, it explain ed that the late inclusion of WLR revenues was not just a change to the cost model; it also suggested a change to the GCRA's approach to the market review that fell outside standard regulatory approach and which Sure require external consultancy support to advise on. The materiality of the financial impact of including WLR revenues also required Sure to engage separate external economic and costing advisers to investigate why this was the case. Sure noted that, despite the need to involve external advisers, it could reduce the extension request by one week to the 23rd November 2023.
19 October 2023	Sure informs GCRA it has engaged external consultants (GOS Consulting and Oxera) and that it would like to have the meeting offered by the GCRA on either 26th October or 27th October. Sure requests that the GCRA's economic advisers, Frontier Economics, also join the call so that questions of clarification can be asked about the changes to the cost model.
20 October 2023	GCRA confirms meeting for 26 October and includes agenda for meeting, phrased in terms of the meeting being for Sure's view/comments on the second Proposed Decisions. GCRA attendees for the meeting do not include its economic advisers, Frontier Economics.

24 October 2023	Sure requests that Fronter Economics attend the meeting to enable Sure to verify its understanding of the model and to better understand why WLR revenues were included in the model.
25 October 2023	GCRA rejects Sure's request for Frontier to attend the meeting, stating that the sole purpose of the meeting was for Sure to make comments on the Second Proposed Decisions. The GCRA would respond as best as possible to any queries raised by Sure during the meeting, or else take queries away for subsequent response. Sure requests a response to its 17th October extension request. The GCRA also requests delay to the meeting until 10am on the 27th October to accommodate travel disruption for a case officer.
26 October 2023	Sure emails GCRA asking it to reconsider its decision not to invite Frontier Economics to meeting given that Sure had queries about the cost model that would be more efficiently addressed by Frontier being on the call, especially given the time constraints of the response deadline. Sure emphasises it wishes to have as full an understanding of the GCRA's proposals as possible to enable it to provide substantive and informed comments in its written representations. GCRA responds that Frontier would not be on call and that any specific points on the model should be expressed in meeting or in writing and they would then be answered in writing. Meeting takes place at 15:00 that day with GCRA stating at outset it would not be expanding an any aspects of its decisions. Sure asks 8 questions on the call and GCRA requests that Sure puts them in writing for it to respond to subsequently. Sure provides a list of 19 written questions of clarification after the call and asks that the GCRA respond in a timely and informative fashion. At 17:15 that day the GCRA again rejects Sure's request for an extension to the deadline for written representations. It states that this is because: • the Second Proposed Decision had not been substantively modified from the First Proposed Decisions; • Sure had had 14 weeks of engagement with GCRA since the First Proposed Decisions; and

	any extension would delay the GCRA's proposed commencement date for Final Decision of 1st January 2024.
27 October 2023	GCRA provides responses to some but not all of Sure's questions, The responses were very brief and in most cases referred back to the Second Proposed Decisions without providing the clarification requested. Carey Olsen responds to GCRA's refusal of extension, asking it to reconsider.
30 October 2023	GCRA responds to Carey Olsen letter of 27 October, again rejecting request for extension.
31 October 2023	GCRA provides brief responses to the remaining questions raised by Sure on the cost model.
2 November 2023	Sure emails the GCRA to inform them that, given the brevity of GCRA's other responses to its clarification questions, Sure has conducted its own audit and analysis of the pasted values in certain cells of the spreadsheet, so this information is no longer needed from GCRA.

Annex 2 – GCRA reply to Sure & Oxera Consulting's written representations in response to the Second Proposed Decision

GCRA EMBEDDED RESPONSES TO SURE & OXERA SUBMISSION

Sure’s & Oxera’s material concerns with the combined WLL and WBB pricing model

10 November 2023

Table of Contents

Executive Summary

1 This document should be read in conjunction with Sure's responses to the GCRA's Second Proposed Pricing Decision for Wholesale On-Island Leased Lines and the GCRA's Second Proposed Pricing Decision for Wholesale Broadband[1].

2 In this document, Sure has focused on the material concerns that its advisors, Oxera Consulting LLP, have identified in relation to the model that the GCRA and its external consultants (Frontier Economics) built and used for calculation of Sure's unit costs in the WLL and WBB markets and based on which the GCRA has proposed what it considers to be cost-based charges for those services. This response is confidential and **must not be published or shared, nor have its content divulged, without the express permission of Sure**. Sure has highlighted in this document any information that it considers to be confidential and thus must not to be included in the published version of this response.

3 Sure would be pleased to provide the GCRA with a redacted version of this response for publication. In this instance, there may be a particular benefit, as the contents of Annex A (The Oxera Report) have been pasted into this document as a set of images.

4 Both Sure and Oxera set out evidence within this document of material failings in relation to the model. Collectively, we view the following as being those of greatest consequence:

a) The GCRA's model applies WLR revenues to the associated (but distinctly separate) WBB product. The resultant inflated revenue not only distorts the way in which an unsuitably large proportion of costs are driven, based on that revenue, but it materially (and unnecessarily) impacts the unrelated WLL product charges. Sure proposes an alternative mechanism, one that takes only minutes to apply, but which has an altogether fairer and more appropriate outcome. The GCRA simply needs to follow the logic used in the model that was designed for its counterpart, the JCRA, in Jersey. In that model, which was also created by Frontier Economics, the WBB cost is calculated first and then the WLR charge is deducted. That instantly removes the erroneous impact of WLR revenue on the unrelated WLL product.

[1] GCRA document references: T1621G and T1652G, respectively.

b) Were the GCRA not to acknowledge the benefit of the above simple change, another WLR related issue would prevail. Whilst the GCRA has included WLR revenues in the model, as a late addition, it has not revisited any of the cost drivers or the underlying cost based data to seek to establish what WLR-specific costs should also be recognised.

c) Regarding revenues, more generally, the GCRA's model has an over-reliance on its use for the allocation of costs to WLL and WBB. [redacted]% of WLL costs and [redacted]% of WBB costs are driven in such a way. These proportions are way in excess of the 10% cap that the GCRA applied to Sure's separated accounts, during the periods that it was required to submit them (2002-14). Unfortunately, it appears that the GCRA's excessive reliance on revenue as a cost driver has caused unintended detrimental consequences to the validity of the model's results.

d) The GCRA's model does not allow Sure to earn a return, or recover its investments in certain instances, prior to 2022. Oxera has identified £[redacted]m of FTTP roll-out related costs and £[redacted]m of WLL related assets that have not been allowed for within the period of the GCRA's review (2024 – 2028). In addition, there is a need to earn a return on shared assets – those which cannot readily be attributed to WLL or WBB, but are required to support their provision.

GCRA Reply: The GCRA provides it responses on these points where these are raised in the main body of the document.

5 Sure concludes that were the GCRA to apply Sure's proposed change (as summarised in 4a, above) regarding the recognition of WLR (albeit that we assert that no association with WBB is appropriate), the GCRA's proposed outcomes for WLL and WBB would be materially fairer. However, Sure considers that more fundamental changes are required to bring about the long-term improvements necessary to make the GCRA's proposals for WLL and WBB fit for purpose. Proposals to achieve that are provided in Section 9 of this document.

Introduction and background

6 On 6th November 2023, Sure submitted its separate responses to the GCRA's two Second Proposed Decisions ("PDs"): Wholesale Leased Lines ("WLL") pricing and Wholesale Broadband ("WBB")

pricing.

7 As set out extensively in those two documents, due to the very compressed response window allowed by the GCRA (just four weeks) Sure was unable to complete its analyses to submit comprehensive responses and, as a direct consequence, some of its responses are incomplete.

8 Sure repeatedly sought an extension to the GCRA's four-week deadline but, in relation to the responses referred to above, none was forthcoming[2]. However, the GCRA did allow Sure an additional week, from the original 3rd November date to the 10th November, for the further review of the cost model by Sure's advisors, Oxera Consulting LLP ("Oxera").

9 This document, and the enclosed report from Oxera ("the Oxera Report"), constitute that additional submission.

10 Sure re-emphasises that this additional response is not comprehensive and is the result of rushed and incomplete analysis. The additional four days allowed by the GCRA simply did not permit a comprehensive analysis and, in particular, for the full development of detailed proposals for how the GCRA could potentially overcome some of the material issues identified herein.

11 In Annex A to this document, we enclose the Oxera Report, which describes the analysis that it has undertaken and the conclusions that it has reached.

GCRA Reply: the GCRA has addressed Sure representations on process and timescales in its substantive representations to Appendix 1 and does not repeat those comments in this paper.

Sure's process to review the GCRA's model

12 As this document should be read alongside the two response documents submitted by Sure on 6th November, we do not repeat all model-related matters and concerns here, as that would be inefficient and there simply isn't time for us to do so and then comment on each, in the context of the subsequent Oxera Report.

13 As background to the provision of the Oxera Report, once Sure received the two PDs from the GCRA, on 5th October, it first set about reviewing the two 130-page documents explaining the GCRA's analyses and proposals. The radical changes to the proposed 'cost-based' charges, which it became apparent were primarily as a result of the GCRA's late inclusion of Wholesale Line Rental

[2] It is noted that the GCRA did provide one extra working day following a request from Guernsey Airtel Limited.

("WLR") revenues, were such that Sure initially thought that some kind of error must have occurred and perhaps the wrong output values had been inserted into the PDs. This was due to the significant disparity between the values shown in the GCRA's first and second proposed decisions for both WLL and WBB charges. Sure turned its attention to the accompanying model to seek clarification.

14 The GCRA had originally provided Sure with separate discounted cashflow (DCF) models for the setting of proposed 'cost-based' WLL and WBB charges (that is, the same DCF model, inappropriately split into two). Due to concerns that it was not possible to see how any appropriate changes in one model impacted the values in the other, Sure suggested to the GCRA that an updated version of the original combined DCF model be provided instead.

15 Despite having sought to work closely with the GCRA and its advisors (Frontier Economics) in the modelling process, and Sure on several occasions offering (and even specifically requesting) that Sure be given the opportunity to review the assumptions made in the new combined model[3], the GCRA did not allow this to happen, so Sure had no detailed understanding of the underlying methodologies employed in the combined model.

GCRA Reply: See Section 5, 'Overview and modelling', in the Final Decision, for the GCRA's comprehensive response on the extensive opportunities that Sure was given to comment on and provide its input on the allocation keys and assumptions made in the cost model. Sure's description of the process is not fair or accurate.

1.1 Sure's comments on the separate models

16 In response to the GCRA's First Proposed Decisions (both WLL and WBB), Sure submitted a set of detailed model related corrections and updates, most of which were subsequently accepted by the GCRA and implemented into the new combined model. This proved the value of Sure's sense-checking of the GCRA's models and heightened our frustration that the GCRA refused our repeated offers of further assistance and requests for sight of the model.

17 The changes that the GCRA accepted covered the following areas:

3 Most recently in an email on 6th July 2023, from Sure's Regulatory Manager to the GCRA, in which he stated 'Not to sound like a stuck record on the matter, but… hopefully the benefits of information checking with Sure are being recognised. So as to minimise the chances of any misunderstandings regarding the data we're providing in this phase of the review, I'd like to reiterate our offer – indeed, our request – for us to assist in the review of the proposed GCRA version of the model, when that stage is reached. As I've mentioned, there's no criticism of Frontier's work. Certain assumptions need to be made; it's just that we'd like to help sense-check them'.

1. The correction of the treatment of Sure's recurring fee discount which it provided to retailers in instances where their customers upgraded to a faster fibre speed at the time of their service migration from copper to fibre. The GCRA's WBB model had originally treated this as additional revenue to Sure, rather than a reduction of it.

2. The correction of the GCRA's significant overstatement of revenue relating to the charges applied by Sure when a fibre service is installed. In all cases where customers are migrating a service from copper to fibre, no charge is made (and hence no revenue is earned), however the model had erroneously calculated that Sure received wholesale revenue in all such instances.

3. The GCRA's recognition of the lifespan of each Optical Network Terminal (ONT) – the active equipment placed inside every premises served by fibre – which the GCRA had estimated had a lifespan of 20 year, when in fact a maximum of 12 years was appropriate. More recent and detailed analysis on Sure's part has led to a further reduction, to 8 years.

4. Updating of the model to recognise that the States of Guernsey inflation related data (actuals and forecasts) had become out of date, between the time of creation of the original models and that of the combined model.

5. The necessary value adjustments, due to the GCRA's incorrect recognition of Sure's WBB charges during the years 2016 to 2021.

1.2 The scope of the model

18 Until the 4th October 2023, Sure had expected to be issued with a combined model for the two focal products (WLL and WBB), however, during a call with the GCRA on that day, the GCRA briefly explained that its revised cost model (and the associated PDs) would reflect its addition of Wholesale Line Rental (WLR) revenues, which the GCRA asserted related to WBB[4].

19 As far back as 24th July 2023, Sure had explicitly stated that, should the GCRA decide to include WLR in its calculations, then the GCRA should engage with Sure as this would be a material impact on the GCRA's proposals[5]. The GCRA never responded to Sure's request.

20 Therefore, to find that the GCRA had included WLR revenues in the model was entirely unexpected.

4 Although the model also materially impacts WLL profitability, which we believe is a material modelling deficiency.
5 Email from Sure's Regulatory Manager to the GCRA: 'Should the above confirmation [re the concept of WLR] have any material impact on the GCRA's proposals then we would expect you to engage with us and other stakeholders as a matter of priority'.

Sure carefully reviewed the PDs for the GCRA's justification for this change and found none, other than a mention that WLR is a product that Sure's wholesale customers must purchase together with the WBB product. In its WBB PD response, Sure sets out in some detail why this is not the case. The GCRA has offered no objective justification for the sudden inclusion of WLR revenues, and neither Sure nor its advisors (Oxera and GOS Consulting) are aware of any precedent that would support this approach.[6]

GCRA Reply: Please section 3 of the Final Decision and section 4 of Second Proposed Decision.

21 However, of even greater surprise and alarm was the realisation that the GCRA's inclusion of the WLR revenues had an inappropriately material impact on the (supposedly) cost-based charges for the WLL product. The inclusion of the WLR revenues into the combined WLL and WBB model resulted in a 14% reduction in the WLL unit costs produced by the model. The WLL product and the WLR product are in no way related. Customers do not need to purchase one to use the other, nor are customers even able to use the two products together in any meaningful way.

22 This entirely counterintuitive and unexplained outcome alerted Sure to the possibility to there being major structural and design flaws in the model and this caused Sure to engage Oxera to review the GCRA's model.

GCRA Reply: Regarding paragraphs 21 and 22, the GCRA refers Sure to its response under paragraph 113 of "Appendix 1", where the GCRA explains why the impact of the introduction of WLR revenues for wholesale broadband customers on the costs allocated to wholesale leased lines services is a reasonable and expected outcome. It also explains, the consideration of WLR for wholesale broadband customers means that more costs should be recovered from wholesale broadband customers, and given a large share of relevant Sure costs are "shared" between wholesale broadband customers, wholesale leased lines, and other services, this necessarily requires a lower share of those costs to be recovered from other services including wholesale leased lines in order to avoid over-recovery of costs by Sure.

23 As part of the engagement and on-boarding process, Sure asked how much time Oxera would need for its review, and it became clear that it would not be possible to complete a meaningful review in the fewer than three weeks remaining of the four-week response period allowed by the GCRA. With Sure having already voiced concerns to the GCRA about the compressed response window,

6 In this document, we do not address issues relating to the relevant market definition. That analysis is, however, critical to the full picture and Sure refers the GCRA to its WBB PD response for that analysis.

the GCRA responded to its (the GCRA's) suggestion that Sure provide a reasoned request for an extended response period. The ensuing correspondence between Sure and the GCRA is fully documented in both the WBB PD response and the WLL PD response. Regrettably, the GCRA did not grant an overall extension, instead providing Sure a mere five additional working days [7]with which to document any material modelling concerns that were found by Oxera.

Oxera's review of the GCRA's model

24 Despite the very short time allowed for the review of the model, Oxera has identified a number of **material errors** in both the GCRA's approach and detailed implementation. Those errors can be summarised as follows:

- Of greatest consequence, from Sure's perspective, is that the Frontier Economics (the same consultants as that used by the JCRA) have applied a different treatment of WLR within the model it created for the GCRA, compared to that which it had created previously for the JCRA's equivalent review of wholesale broadband services. In Guernsey, the model adds WLR revenues to those of Sure's WBB products, whereas in Jersey, the model calculated WBB costs and then deducted the WLR charge – a fundamental and unexplained difference in approach. Worse still, the methodology used in Guernsey amplifies uncertainty over WLR costs and creates unnecessary problems with cost allocations, an unusually significant proportion of which are based on revenue. Using this flawed methodology has created a deficiency in the GCRA's proposed WLL charges, which are 14% lower than they should be. This has occurred despite there being no causal link between the WLR and WLL products. Sure cannot accept that such an impactful shortcoming is appropriate and now that it has identified this error, it considers that **the GCRA must take corrective action to ensure that its Final Decision is not deficient** in this regard.

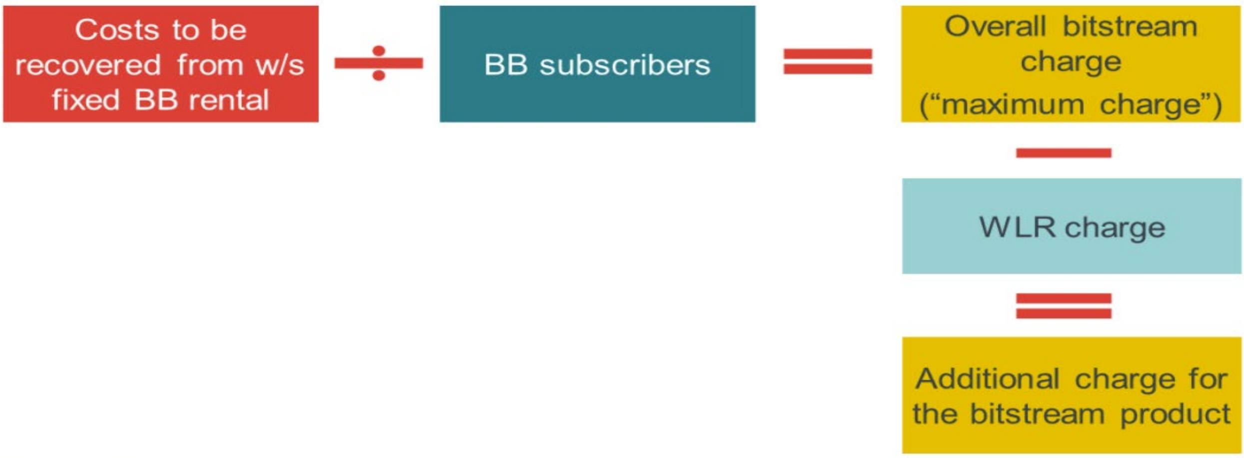
  GCRA Reply: Sure and Oxera incorrectly concluded that the GCRA has taken a different approach to the JCRA. As the GCRA has explained in its response to paragraph 64 in "Appendix 1", the GCRA's approach is in fact equivalent to the approach taken by the JCRA. The JCRA applied a price control that included the two key elements required to deliver broadband, a wholesale bitstream charge and a WLR charge, which it described as a

[7] Which more recently became four days, as a result of the one day extension granted at Airtel's request.

"maximum price"[8].

The GCRA is working closely with the Frontier Economics team that developed the models used in Guernsey and Jersey, and the "maximum price" [9] in Jersey, is the same pricing structure used in the Final Decision (and the previous proposed decision). Essentially, JCRA's <u>bitstream charge</u> is equivalent to the wholesale broadband access charge in Guernsey. Figure 13, of the Frontier Economics report accompanying the JCRA's Final Decision[10], demonstrates the approach taken in Jersey.

Figure 13 Overview of the overall bitstream charge and additional charge for the bitstream product



Source: Frontier

The GCRA modelling approach in accounting for WLR in its combined model is equivalent:

- **The GCRA has estimated the <u>total costs to be recovered from wholesale broadband rental services</u>, including the costs to be recovered from wholesale broadband product charges and the WLR charges for wholesale broadband customers.**
- **This has then been used to determine the cost-based price level for the average combined charge for wholesale broadband product rental and WLR: this is the level of the combined charge which would mean Sure's wholesale broadband revenues (i.e. combined revenues for its wholesale broadband product rental and WLR from**

[8] https://www.jcra.je/media/598347/t-011-wholesale-broadband-access-services-price-review-final-decision.pdf . See paragraph 7.6-77 and Figure 9.

[9] https://www.jcra.je/media/598347/t-011-wholesale-broadband-access-services-price-review-final-decision.pdf . See paragraph 5.87

[10] https://www.jcra.je/media/598354/final-decision-frontier-economics-report.pdf

wholesale broadband customers) cover these costs plus a reasonable rate of return.**

Regarding the impact of considering WLR for wholesale broadband customers on wholesale leased lines charges, see the response to paragraph 22 above and the GCRA response to paragraph 113 in "Appendix 1".

- Were the GCRA not to take the above corrective action, a further WLR related issue would continue to exist – that being the GCRA's late addition of WLR revenues in its model, but with no recognition of the costs associated with providing that service. This matter will be of no consequence, should the GCRA carry out Sure's proposed change from the recognition of WLR revenue as additional revenue associated with WBB and instead apply the WLR charge as a reduction to the calculated WBB charge.

GCRA Reply: The GCRA has included all material relevant costs that are appropriate to be recovered from wholesale broadband customers via its charges for wholesale broadband product rental and WLR charges.

The cost model considers all relevant costs for which at least a share should be recovered from Sure's provision of wholesale products, including WLR. This is because the objective of the data gathering process conducted by the GCRA at the outset of the model development process (and therefore the data requested) aimed to gather costs relevant to the provision of ALL access and core-related Sure wholesale services, to ensure the GCRA had a full picture of Sure's costs. In particular, the cost model includes:

- **All of Sure's core and access network capital costs;**
- **All of Sure's network and non-network operating costs. The raw operating cost data in the model is the direct "Report output" from Sure's financial accounts, and the GCRA understood from engagement with Sure during the model development process that this reflects all of Sure's operating costs.**

In addition, the GCRA considered whether adjustments to its allocation keys were needed in order to ensure any additional costs that should be recovered from wholesale broadband customers when taking account of WLR charges for these customers. As a result of that consideration, the GCRA made adjustments to the revenue-based allocation keys in the model such that the relevant wholesale broadband customer revenues included both wholesale broadband product rental revenues and the WLR charges to these customers. This resulted in a greater share of Sure's costs being allocated to wholesale broadband customers. As outlined in the GCRA's response to paragraph 113 "Appendix 1", allocating more costs to take account of

WLR for wholesale broadband customers is a reasonable approach.

Prices, and in-turn, revenues for a given service provide a reasonable and proportionate proxy for the efficient allocation of costs between services, with higher prices or revenues for a given service suggesting that it is efficient for more costs to be recovered from that service. Having become aware that a customer required a WLR in order for an OLO to be able to provide broadband services using Sure's network to that customer, the GCRA has had to adjust the effective "total price" for wholesale broadband accordingly. It follows that it is reasonable to recover a greater share of costs from wholesale broadband customers than previously envisaged to reflect the existence of WLR within the defined wholesale broadband market. The GCRA concluded that the other allocation keys used in the model did not need to be adjusted.

Taken together, the GCRA considers that it has included all material relevant costs that are appropriate to be recovered from wholesale broadband customers via wholesale broadband product rental and WLR charges.

- <u>The GCRA's model does not allow Sure to earn a suitable return—or recover its investments.</u> This is a material flaw, as the GCRA's model identifies £[redacted]m of CAPEX incurred by Sure, relating to its FTTP roll-out, prior to 2022, but it is excluded from the model's NPV calculation. Similarly, pre-existing capital investments relating to WLL, where £[redacted]m of assets related to the period 2016-2021, have not been allowed for. Clearly, these omissions relate to sizeable values, which the GCRA needs to recognise, before it finalises its proposed WLL and WBB charges. Furthermore, as Oxera has identified, there is a need to earn a return on shared assets – those that cannot readily be attributed to WLL or WBB, but are required to support their provision.

GCRA Reply: The GCRA chose 2022 as the starting year on the basis that the vast majority (97%) of Sure's forecasted £38.7M build CAPEX for its FTTP network occurred from 2022 onwards and all the model calculations were based on that timeline. This was a reasonable approach for the GCRA to take. Sure has now sought to include certain elements of cost it incurred prior to the period the GCRA considered reasonable for this price control. It is disappointing that Sure did not raise this matter far earlier in the process as it knew as early as May 2023 that the period for which income and costs would be assessed was from 2022. In setting this control, the GCRA considers that a start point needs to be decided upon and there will always be prior year costs incurred by a party subject to a such a control. There will however also be revenues in prior years, so costs, such as the ones identified by Sure, cannot be considered alone. The GCRA does not believe that using an earlier starting date is likely to lead to any material changes to this decision, since the evidence we have suggests it is highly likely Sure earned income well above

its costs for an extended period and any historic costs it now wants to include would have been paid for already from the income received. Accounting for them in the period we have assessed is very likely to lead to double recovery.

- <u>The inappropriate use of revenue as a cost allocation key.</u> Sure has identified that the inclusion of the WLR revenues in the model was having material counterintuitive effects of the model outputs. Oxera has investigated this specific issue and identified that, of the costs for WLL and WBB that were identified as common and shared costs (which represented unacceptably high portions of the total costs for each product), [redacted]% for WBB and [redacted]% for WLL were allocated using revenues as a cost allocation key. As Oxera explains, this creates a circularity issue. Modelling professionals are well aware that the use of revenues for cost allocation should be an option of last resort. Oxera notes that, in its requirements for Sure's separated accounting models, the GCRA had set an upper limit of 10% for the portion of common and shared costs that could be allocated using revenues as the allocation key. Despite this background of internationally recognised problems with the over-use of revenues for cost allocation and the GCRA's own restriction on that approach when applied to Sure, the GCRA's model allocated [redacted]% and [redacted]% using revenues for the WBB and WLL products respectively. Oxera also expresses relevant concerns about how, when used in a forward-looking regulatory context (as is the case here), the use of revenue has the potential to cause circularity. In Sure's view, such circulatory is evident within the GCRA's model.

GCRA Reply: The GCRA refers to its responses under paragraphs 99 and 110 in "Appendix 1". The GCRA restates its position that:

- **The GCRA considers that the use of revenue-based cost drivers is reasonable and proportionate given the size of the Guernsey jurisdiction and is consistent with the approach in Jersey which Sure did not raise concerns with.**
- **The 10% limit did not specifically relate to the proportion of costs that could be allocated using revenues, but instead relates to the share of costs for which there is no easily established means of appropriate allocation across the relevant markets (i.e. "non-attributable").**
- **In any case, the GCRA does not consider that this 10% limit is reasonable to apply going forward, and therefore considers that making a comparison of the share of costs that are considered non-attributable to a 10% threshold does not represent a reasonable test of whether a cost model is fit-for-purpose. This is because (i) the nature of telecoms networks and businesses means a large proportion of network costs support**

multiple services, and (ii) Sure will incur "common costs" (such as corporate overheads) which are by definition not related directly to the provision of particular services, but for which it is reasonable to include an allocation of these to individual services to ensure Sure is able to recover these costs. It is therefore reasonable to expect that the share of Sure's costs to be recovered from a given service that are "non-attributable" is greater than 10%.

Conclusion

25 Despite the very limited time afforded to review the GCRA's new combined model, there can be no doubt that the flaws identified are of a magnitude, in terms of the integrity of the model, and of a materiality, in terms of the outputs of the model, that renders it not fit for purpose.

26 Whilst the GCRA is likely to remain eager to press on with its next and final stage of its market reviews – leading to the publication of Final Decisions for the setting of charges for WLL and WBB products – Sure cannot see any feasible way forward for the GCRA, other than to amend the methodology within its model. As a minimum, and regardless of the GCRA's stance regarding the general views expressed by Sure and Oxera, it must recognise that it is being gifted information that would materially and beneficially influence the WLL and WBB markets[11], based on a simple change in recognition of WLR charges (from being treated as a revenue, to being treated as a reduction of cost). Sure undertook this change within a copy of the GCRA's model within a matter of minutes. On the basis that the GCRA has 'nothing to lose' from considering Sure's recommendation, it would surely make sense for the GCRA to set aside time for a call or meeting with Sure so that our findings can be shared.

27 Whilst the above action, in itself, will provide a material correction, it will not directly resolve the other issues that Sure concluded are necessary to be actioned to enable a long-term suitable and fair outcome. Therefore, in addition to Sure's proposal in Section 26, it is also necessary to take account of the conclusions drawn within its WLL and WBB related responses, which it submitted to the GCRA on 6th November 2023. For ease of reference, those conclusions are restated here:

1. **WLL:**

   "… the GCRA needs to recognise that its combined WLL and WBB model is not fit for purpose, due to its significant overreliance on the use of revenues as a cost allocation key

[11] Through a material improvement in the cost causality principle, with minimum additional effort to achieve that.

and the inappropriately material impact that the GCRA's inclusion of WLR has on WLL. In addition, the proportion of WLL costs driven by revenue is excessive. Based on these deficiencies, we believe that the following steps should be undertaken:

a. The GCRA should revert to the use of its separate WLL cost model (relating to its First PD) – where no WLR costs could inappropriately materially influence the proposed WLL charges.

b. On a temporary basis (if necessary), the GCRA could align the regulated WLL charges with those shown in the First PD.

c. A revised WLL specific model should be created, alongside a Third Proposed Decision and Sure would assist the GCRA (and its consultants) to design and create additional relevant cost drivers to limit the erroneous exposure to the use of revenue as a driver."

2. WBB:

"… Sure would be amenable to the GCRA retracing its steps to the approach in the First Proposed Decision, including the use of a separate cost model. Whilst this also suffered from some fundamental weaknesses, as previously identified, the more limited scope of the approach at least had the effect of limiting the harm resulting from those weaknesses. This temporary solution would be used only until such time as the GCRA's revised review of WBB has been completed. This approach would avoid the potential harm from the lack of reliable data and undue reliance on inappropriate assumptions and proxies and enable the GCRA to move forward quickly, both on an interim basis and during its revised market review."

Given the GCRA's responses within the document and in "Appendix 1", the GCRA does not consider the suggestions made under points 1a, 1b, and 2 are appropriate. Instead, GCRA considers that the Final Decision, reflects the model updates that the GCRA has outlined within this document and "Appendix 1", and results in an appropriate estimate of cost-based prices for wholesale broadband and wholesale leased lines. For the avoidance of doubt, the GCRA has not provided specific responses to the content of the Oxera report, as the key points in that report are summarised by Sure in the section "Oxera's review of the GCRA's model" above, and the GCRA has provided responses to those within that section.

Annex A – The Oxera Report

The Oxera Report – Slide 1

Contents

Introduction

The Guernsey Competition and Regulation Authority (GCRA) engaged consultants to build a cost model to aid the setting of prices for two regulated services: Wholesale Broadband (WBB) and Wholesale Leased Lines (WLL).

The tariffs resulting from the model were initially broadly acceptable to Sure (Guernsey) Ltd (Sure). GCRA then invited Sure to comment on parameters within the model, to further refine it.

However, a further, radical change was made, namely to bundle the revenue of Wholesale Line Rental (WLR)—a product outside of the market defined for this review—into the WBB category. This led to material counterintuitive effects. Oxera was commissioned by Sure to examine the model and its underlying assumptions.

Evolution of the model

Oxera understands that the current GCRA model has evolved in the following steps.

- The first was the creation of separate models for WBB and WLL. Sure then suggested some specific parameter changes, the majority of which were accepted by the GCRA.
- It is understood that the GCRA then decided that it preferred to use one consolidated model (a structural change).
- For transparency purposes, best practice would be to (i) apply the suggested parameter changes in the separate model and provide this for review at an interim stage; and then (ii) create a combined model for both WBB and WLL.
- The final stage was the publication of a combined model, using revised parameters, but with WLR bundled into the WBB category.

In the absence of sight of the model at an interim stage, Sure built an estimate of this, in order that it could be compared with the third to isolate the effects of the bundling of WLR into WBB.

Sure estimated that the effect of this bundling was to reduce the WLL allowed revenues by 14%, even though there was no causal link between WLL costs and WLR. This reduction could only be due to cost allocation principles, and led to Oxera examining these further (see slide 12).

Material issues

The GCRA has attempted to implement a cost-based approach to price regulation.[1] However, our review has indicated a number of material errors and issues with the modelling undertaken.

- There is a fundamental flaw in that the GCRA's model does not allow Sure to earn a return—or recover its investments, in particular assets constructed prior to the control period (slides 6 to 9).
- Notwithstanding the issue of whether it is appropriate to include (and regulate) WLR revenues in this process, if these are to be included, so should corresponding WLR costs. The GCRA has not undertaken a process to capture these, and this has led to the omission of at least some costs associated with the provision of WLR (slide 10).
- Frontier Economics, the consultant to the GCRA, has applied a different treatment of WLR to that in a similar model recently constructed by it for the Jersey Competition Regulatory Authority.[2] The updated method used in Guernsey amplifies uncertainty over WLR costs and problems with cost allocation (see below), and is a backwards step (slide 11).
- The GCRA allocates a high proportion of joint and common costs ([redacted]%) based on revenue in cases where there is no causal link with revenue. Oxera understands that, in previous regulatory accounting cycles, this proportion has been much lower (<10%). This leads to an unnecessarily high degree of imprecision in the modelled cost estimate (slide 12).

Notes

1 GCRA (2023), 'Second Proposed Pricing Decision – Wholesale Broadband Pricing', 5 October, para. 4.8.

2 Frontier Economics (2021), 'Wholesale Broadband Access Services in Jersey: Price Review', A.3.

No return allowed on invested capital (I)

The GCRA's model makes no allowance for Sure to earn a return on fibre or WLL assets constructed prior to 2022; nor on common assets that Sure currently holds.

The absence of such a recovery mechanism appears to be confirmed in the GCRA's response to two questions raised by Oxera, where it stated, in response to a question on why the value of operating assets is not included in the model:[1]

> This question would only be relevant if the model was a Regulatory Asset Base model, which is not the case here.

Further, in response to a question on why depreciation was not included as part of the NPV (Net Present Value) calculation:

> Non-cash assets do not form part of the model as it is a cashflow model, and it models the actual capital costs expected to be incurred in each year. Depreciation is an annualised cost, so therefore isn't included in the model.

Notes

1 GCRA's response to Sure's questions, 27 October 2023.

No return allowed on invested capital (II)

However, the GCRA's reasoning appears to be flawed, and this results in a fundamental error in modelling an appropriate regulatory tariff.

It is not correct to state that the use of a Discounted Cash Flow (DCF) modelling approach removes the need to consider the recovery of—and the return upon—capital already invested.

The need to allow companies to earn a return on capital invested is a longstanding regulatory principle. For instance, the Europe Electronic Communications Code states that:[1]

> When a national regulatory authority calculates costs incurred in establishing a service [...], it is appropriate to allow a reasonable return on the capital employed including appropriate labour and building costs, with the value of capital adjusted where necessary to reflect the current valuation of assets [...]

Furthermore, the need to earn a return on assets is not confined to those assets specific to the services. It should also logically include a proportion of shared assets (there is a direct parallel with shared operational costs being apportioned across service lines). The model also does not allow for this.

Notes

1 European Commission, Directive 2018/1972 establishing the European Electronic Communications Code, para. 192.

No return allowed on invested capital (III)

To illustrate this, we note that, for example, the GCRA's model itself identifies £[redacted]m of CAPEX incurred by Sure relating to FTTP (Fibre to the Premises) roll-out, incurred in 2021.[1] However, the GCRA's model gives no further consideration of this expenditure—it is not included in the model's NPV calculation.

There is therefore an implicit assumption that this expenditure has already been recovered by Sure.

However, the associated assets will be (at most) three years old at the start of the Control Period. As the GCRA itself notes, these infrastructure assets are likely to have a significant economic life—of 20–25 years for the majority of these costs.[2]

It would therefore appear to be impossible that Sure has yet recovered and earned a return on these investments, which are directly related to—and necessary to the provision of—the WBB/WLR product.[3] **The GCRA's approach effectively assumes that these assets have come into existence with no cost being incurred in creating them.** This will result in an underestimate of the wholesale revenues that should be allowable to Sure.

A similar issue afflicts pre-existing capital investments relating to WLL, where £[redacted]m of assets constructed between 2016 and 2021 are not allowed for.[4]

Finally, Sure currently employs some degree of common assets, used across its business lines. **There appears to be no allowance for the return on these common asset investments, a proportion of which should be allocated to the regulated products under consideration.**

Notes

1. GCRA Cost Model, 'Capex forecasts' tab, cell K18.
2. The same tab shows a range of lifetimes from 12 to 25 years for various FTTH-related assets. Further, the GCRA itself notes that some assets under consideration have a lifespan of up to 40 years—see GCRA (2023), 'Second Proposed Pricing Decision', 5 October, para. 5.4.
3. Notwithstanding the issue of whether it is appropriate for WLR to be included within this model. See slide 13.
4. GCRA Cost Model, 'Capex forecasts' tab, cells F40:K40.

No return allowed on invested capital (IV)

As a further example, consider the ***next*** control period. The GCRA's model currently suggests a negative NPV of £[redacted]m for the period 2024–28, which is offset by a positive £[redacted]m over the period 2029–61.

However, when setting prices for the 2029–33 control period, following the same approach would disregard the £[redacted]m of FTTP CAPEX incurred between 2021 and 2026. The approach would result in only £[redacted] of fibre-related CAPEX being recognised by the GCRA.[1] This would be expected to result in a dramatic reduction in tariffs suggested from 2029. This raises concerns over the viability of this regulatory approach going forward.

Notes

1 GCRA Cost Model, 'Capex forecasts' tab, cells S18 to W18.

Failure to capture WLR-related costs

Notwithstanding the issue of whether it is appropriate to include WLR revenues within the model (see observations in slide 13), if WLR is to be included as a revenue option, then WLR-related costs should also be included.

Oxera understands that the original model used by the GCRA was based on a request made to Sure, at a stage in the process when WBB and WLL were the only products under consideration. Given this, it is natural that the original cost-gathering exercise would not have been conducted with a view to gathering a comprehensive view of all costs relating to the provision of WLR. We understand that no further cost-gathering information requests were made of Sure prior to the Second Proposed Decision.

This leads to the material risk that not all costs associated with WLR have been captured by the GCRA's model. We observe that there is at least one example of this: the electrical consumption of concentrators.

If the GCRA proposes to continue to include WLR revenues, we consider that a separate cost-gathering exercise—with appropriate timescales to ensure that a reasonable estimate can be made—would be required, in order to ensure an accurate outcome.

Proceeding without this exercise runs the risk of further material errors. However, the next slide indicates that there is a way to partially mitigate uncertainty over WLR-related costs.

Inconsistent and problematic treatment of WLR revenue

In the GCRA model, WLR is treated as revenue to be added to WBB revenue, requiring the subtraction of WLR-related costs. Apart form the uncertainty over WLR costs referred to on the previous slide, this has the effect of inflating revenues and affecting allocations of joint and common costs, where revenue is used as a driver.

These difficulties are avoided in the approach adopted in Jersey, where WLR revenue is treated as a cost to be deducted from WBA revenue.[1] This approach:

- avoids the increase of revenue by the inclusion of WLR in the revenues of WBB, leading to distortions on other services, such as WLL; and
- avoids the informational deficit on WLR costs that has led to cost omissions.

There is no explanation for the deviation from recent Channel Islands precedent by the GCRA and its consultants.

If the GCRA had undertaken a robust analysis of WLR costs, there might be no clear economic rationale for preferring one approach over the other. However, as the GCRA has not undertaken such an exercise, the 'cost deduction' approach proposed would be preferable, as a way of avoiding this issue.

Notes

1 Frontier Economics (2021), 'Wholesale Broadband Access Services in Jersey: Price Review', July 2021, A.3.

Cost-allocation principles

Given the updated model's unexpected effect of generating a 14% reduction in allowable WLL prices based on the inclusion of WLR—despite there being no causal link between the two products—Oxera has investigated the cost-allocation principles applied by the GCRA.

The GCRA's model allocates a high proportion of costs based on revenue. Specifically, [redacted]% of WBB and [redacted]% of WLL shared costs were allocated on this basis in 2022 (see right). In two small cases, involving regulatory fees, there is a causal link between cost and revenue, and the use of the driver is appropriate. Once these items are removed, we observe that [redacted]% and [redacted]% of shared costs are allocated on revenue, where there is no causal basis.

When used in a forward-looking regulatory context, the use of revenue has the potential to cause circularity, as revenues are used to determine the cost, which then determines allowable revenues for a given product.

Oxera understands that, when producing regulatory accounts (as previously), Sure was required by the GCRA (then as part of CICRA) to perform activity-based costing (ABC), and ensure that no more than 10% of costs were allocated on the basis of revenue; and that accounts would be considered non-compliant with regulation if this threshold were exceeded.

This suggests that there may be significant further scope to better understand (or estimate) the causality of these costs. Best practice would be to investigate this further. **It is uncertain whether this would yield similar results to the GCRA's current analysis—indeed there is scope for the outcome to be materially different.**

	WBB	WLL
Shared costs allocated to product, 2022	[redacted]	[redacted]
IT OPEX	[redacted]	[redacted]
General OPEX	[redacted]	[redacted]
Local regulatory licence fee	[redacted]	[redacted]
Passive infrastructure, shared buildings	[redacted]	[redacted]
Professional consultancy	[redacted]	[redacted]
Corporate overheads	[redacted]	[redacted]
Fixed network licence fees	[redacted]	[redacted]
Allocated on revenue	[redacted]	[redacted]

Source: Oxera analysis based on the GCRA's Cost Model.

Other observations

The GCRA has proposed an approach of regulating the total combined price of WBB and WLR, while allowing Sure freedom to vary the exact structure of prices between the two products providing that the total cost is the same.[1]

The nature of the tariff control proposed effectively results in the WLR product being indirectly regulated, as, if Sure were to increase the price of this product, it would be required to implement a corresponding reduction in the price of another product (WBB).

Oxera understands that the GCRA's market definition and finding of SMP (Significant Market Power) was, however, related specifically to the WBB product. While Oxera does not comment on procedural and legal aspects of the GCRA's decision, it is noted that standard practice would be to define a relevant market and assess SMP before implementing price controls in relation to that product.

It is also noted that this is a significant change in approach that has been made in an accelerated manner, first arising in the GCRA's Second Proposed Decision, which was published on 5 October and provided only a four-week consultation period.[2]

Notes

1 GCRA (2023), 'Second Proposed Pricing Decision – Wholesale Broadband Pricing', 5 October, section 7.

2 For instance, we note that the JCRA recently undertook a similar exercise in Jersey. The JCRA's first draft decision was published on 27 January 2021, appeared to include its proposals in relation to WLR from this point, and included an eight-week consultation to 24 March.

Conclusions

The current model put forward by the GCRA for the purpose of tariff-setting contains a number of serious flaws. In particular, we have noted the following.

1. The model fails to allow Sure to recover its investment on fibre-specific CAPEX made in 2021.
2. The inclusion of WLR revenues necessitates that WLR costs should also be included, although a thorough process has not been undertaken in relation to these.
3. There is a high degree of imprecision in relation to cost allocation, as a result of the extensive use of revenue (as compared with historic precedent in Guernsey).
4. There has been a deviation from recent regulatory precedent in Jersey that has compounded the flaws listed in points (2) and (3).

We have also observed that there are other potential issues that fall short of best practice, including the substantial change in scope of the products and services that the model seeks to regulate relative to the market definition and SMP exercise.

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Annex 3 – GCRA reply to Airtel written representations in response to the Second Proposed Decision

GCRA EMBEDDED RESPONSES TO SURE & OXERA SUBMISSION

Guernsey Airtel Limited's (GAL) response to Guernsey Competition & Regulatory Authority (GCRA) regarding '*Case T1621G – Business Connectivity Market Review (BCMR) – Second Proposed Pricing Decision – Wholesale On-Island Leased Line Pricing*', published 5 October 2023.

1.0 At the outset, GAL would like to thank GCRA for extending the response submission deadline until 1700 6 November 2023 on GAL's request.

2.0 Despite GAL responding to GCRA's 'BCMR - T1621G' on 12 May 2023 followed by meeting on 21 June 2023 and GAL's letter of 23 June 2023 addressed to GCRA with GAL's concerns, GAL is disappointed to note that GCRA's proposed second decision for 'Wholesale On-Island Leased Line Pricing' published 05/10/2023 will result in 'negligible benefit' for GAL, as none of the GAL's concerns have been addressed.

3.0 GAL requests GCRA to judiciously reconsider and respond to each of the concerns set out below in this response document before the final decision on 'Wholesale On-Island Leased Line Pricing' is made. These points re-emphasise the extreme challenges posing a barrier to GAL competing 'effectively and efficiently'.

4.0 This response is structured in three sections:

4.1 <u>Section A</u>: sets out GAL's concerns regarding lack of objective engagement on the part of the GCRA to consider the concerns and evidence provided by GAL throughout the current BCMR exercise since 2019 to address the lack of level playing field in Guernsey.

4.2 <u>Section B</u>: sets out GAL's response to GCRA's response to *GAL's 'BCMR - T1621G' response letter of 12 May 2023 in Appendix 3* which confirms that none of GAL's concerns shared via previous BCMR responses have been addressed.

4.3 <u>Section C</u>: sets out GAL's concerns regarding GCRA's cost modelling approach in '*BCMR - T1621G' - Second Proposed Decision - Wholesale On-Island Leased Line Pricing*'.

Section A GAL's concerns regarding lack of objective engagement on the part of the GCRA.

5.0 GAL buys various types of wholesale access such as 'fibre, on-island & inter-island leased line connectivity, SP interconnect, internet feed i.e., ISP' etc., in Guernsey to compete in mobile and fixed market against its two competitors i.e., JT and Sure who unlike GAL, own 'fibre, on-island & inter-island leased line connectivity, SP interconnect, internet feed i.e., ISP' etc.

6.0 GAL expects GCRA, like any OLO (Other Licensed Operator) would expect any telecom regulatory body in any jurisdiction, to address any kind of barrier to 'effective and efficient competition' by 'regulation and intervention' upon being made aware about any 'lack of level playing field' concerns. Thus, GAL has been sharing its commercial and competition challenges regarding the 'cost of doing business' with GCRA regularly since 2017-2018 so that GCRA can prioritise formulation of their action plan to address barriers to the 'effective and efficient competition'.

7.0 GAL is writing with reference to the above and to express its growing frustration with GCRA's lack of objectivity and sincerity in handling of all the concerns with evidence explained by GAL over the last 5 years during '*BCMR - Market Definition & SMP Assessment*' in 2019-2022 followed by '*BCMR - Wholesale On-Island Leased Line Pricing*' in 2022 - 2023.

8.0 After analysing GCRA's latest '*BCMR - T1621G' - Second Proposed Decision - Wholesale On-Island Leased Line Pricing*', it's becoming increasingly clear to GAL that GCRA has no intention to acknowledge and resolve the underlying issues posing barrier to GAL to compete effectively and efficiently.

9.0 GAL would like to remind GCRA that the current '*BCMR - T1480GJ & T1621G'* was initiated at behest of GAL in 2018 due to 4G data experience issues faced by GAL, and the irony of the matter is that '*BCMR - T1480GJ and T1621G'* will result in 'zero' benefit for its intended challenger beneficiaries like GAL.

10.0 Further to the issue highlighted in above bullet point 9.0, the 'zero benefit' referred to by GAL is in fact '<u>negative benefit</u>' for GAL considering GAL's analysis of its mobile customer market share and its mobile revenue share in Guernsey. As per the GCRA's '*Telecommunications Statistics and Market report 2022*'[1], the table below shows that GAL's both 'customer market share' and 'mobile revenue share' have materially declined between 2018 and 2023. The table also confirms that GAL is not able to 'compete effectively and efficiently' due to prohibitive pricing of all types of wholesale access in Guernsey despite the various GCRA's interventions, as GAL is struggling to achieve revenue equal to its market share.

Mobile Base in '000					
Guernsey	2018	2019	2020	2021	2022
Industry (JT, Sure, GAL)	71,278	72,006	71,622	71,485	75,129
GAL	17,107	16,909	17,195	15,580	16,513
GAL CMS%	**24.0%**	**23.5%**	**24.0%**	**21.8%**	**22.0%**
CMS - Customer Market Share					
Mobile Revenue in GBP					
Guernsey	2018	2019	2020	2021	2022
Industry (JT, Sure, GAL)	22,446,490	22,793,027	21,290,818	21,509,509	23,362,981
GAL	4,003,699	4,104,082	3,879,367	4,048,019	3,924,569
GAL RMS%	**17.8%**	**18.0%**	**18.2%**	**18.8%**	**16.8%**
RMS - Revenue Market Share					

11.0 The proposed second BCMR-T1621G decision by GCRA is not aligned with the ever-evolving data consumption patterns of mobile subscribers in Guernsey. Over the years, GAL has witnessed a consistent upward trend in data usage among consumers which has been consistently shared by GAL with GCRA, however, the GCRA's proposed BCMR pricing framework fails to address this crucial aspect of the telecommunications landscape in Guernsey.

12.0 GAL is disappointed to note that not only GCRA ignored, GCRA did not respond to the following key issues which were consistently highlighted to GCRA by GAL via all the BCMR meetings and responses:

12.1 GAL is surprised to note that consideration of 'dark fibre access' as a substitute for an on-island leased line is not mentioned in the current BCMR-T1621G despite being mentioned by GCRA in their proposed decision '*BCMR - T1480GJ*' of 12 April 2022 and 19 August 2022.

[1] *https://www.gcra.gg/media/598566/telecoms-stats-report-to-be-published.pdf*

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12.2 Despite GAL requesting as early as in 2019 through a response to 'call for information' followed by GAL's repeat requests made via its various BCMR responses to create a 'telecom specific backhaul product', and despite in parallel GCRA listing the objective 3.14 in the GCRA's document '5G Spectrum– Statement of Intent' released in November 2019, GAL is disappointed to note that no progress has been made by GCRA to pursue a 'telecom specific backhaul product'.

12.3 Despite GAL's recommendation in its response to '*GCRA Case T1480GJ in May 2022*' that using bitstream fibre broadband product as an alternative to low speed leased lines will provide end to end connectivity without throttling and any contention ratio, yet GCRA did not explore cost effective and innovative solution such as to broaden the market to include business connectivity services provided via business or residential 'bitstream broadband' during the current BCMR exercise.

12.4 The mobile data experience problems being faced GAL highlighted as per the table below shows that GAL's network, despite being the challenger in Guernsey, has the mobile data volume at 62% of incumbent Sure's mobile network and at 211% of another challenger network i.e., JT's mobile network. The table below shows year on year decline in GAL's data volume as compared to its competitors which confirms that GAL is struggling to compete 'effectively and efficiently', and GAL's both 4G mobile and home broadband customer base is declining.

Telecom Statistics for Guernsey Mobile Data Volume (Million Gbytes)						
Operator / Year	2020	GAL's Data Volume ratio	2021	GAL's Data Vol. ratio	2022	GAL's Data Vol. ratio
JT	1.01	**238%**	1.11	**248%**	1.24	**211%**
Sure	2.5	**96%**	3.53	**78%**	4.24	**62%**
Airtel (GAL)	2.4	-	2.75	-	2.62	-

(Source is GCRA's 'Telecommunications Statistics and Market report 2022' in footnote 1)

12.5 GAL is incurring 83% loss for providing mobile services in Sark and Alderney respectively, and 51% contribution to this loss is made by prohibitive price of 20 Mbps leased line at £20,534 for each each island respectively despite GCRA's second proposed BCMR intervention. See the table below for the calculation in which the costs associated with sales, distribution, marketing, people, etc., are not even considered.

Annual Cost vs Revenue Operations in Sark & Alderney		
Item	**Sark**	**Alderney**
20 Mbps Leased Lines Cost	£20,534	£20,534
Mast Rent Cost	£10,800	£25,793
Electricity Cost	£5,760	£11,580
Maintenance Costs	£1,800	£3,600
Total Cost	£38,894	£61,507
Total Cost Sark & Alderney	£100,401	
Revenue (PAYG + PAYM) Sark & Alderney	£16,800	
Loss £	-£83,601	
Loss %	-83%	

13.0 On 18.02.2022 GAL reminded GCRA via its BCMR response that *GCRA's intended proposal as per T1602G for 'price control for wholesale on island leased lines' will just be a 'symbolic exercise' if GCRA fails to take on board GAL's issues to find proper and effective remedial measures aimed at enabling more competition and choice for consumers*, and 20 months later GAL's fears are proving true as GCRA's current BCMR exercise is going to be 'tokenistic' only without achieving any remedy to enable 'efficient and effective competition'.

14.0 Particularly concerning to GAL is that, GAL met with GCRA on 21 June 2023 to explain each of their concern, followed by GAL's letter of 22 June 2023 summarising all of GAL's concerns from the meeting, and then GAL followed up again via email on 18 September 2023 with GCRA to respond to the issues raised by GAL, however, neither GCRA ever acknowledged, nor GCRA responded to any of GAL's concerns despite GCRA promising in meeting of 21 June 2023 to get back to GAL before the next stage decision is made. Therefore, GAL is very disappointed and frustrated that over 20 months have passed without response from GCRA to any of GAL's concerns.

15.0 The current BCMR review took 5 years to conclude and proposing price for another 5 years until 2028 which is going to result in 'zero/negative benefit' for a challenger OLO like GAL. Therefore, between 2018-2028 GAL will continue to suffer losses due to inconsequential interventions made by GCRA as during the next 5 years, GAL will struggle to 'compete efficiently' and might be forced to stop selling certain 4G mobile products as data traffic is ever increasing as evident from GCRA's annual telecom statistics shared above.

16.0 Further to bullet point 15.0, the 'Second Proposed Decision as per BCMR T1621G' by GCRA will assist incumbent like Sure to continue to exploit advantages like 'prohibitive pricing of all kinds of various wholesale on-island leased line services' to their benefit, ultimately harming the consumers in Guernsey, Sark and Alderney respectively.

17.0 And therefore to avoid another 'tokenistic' intervention, GAL requests GCRA to take cognisance of all the issues explained by GAL via the Section A, B, and C respectively in this response, and GAL urges GCRA to take substantive and relevant actions to help with laying firm foundation for 'fair, efficient, and effective competition' in Guernsey.

Section B Response to GCRA's reply to GAL's 'BCMR - T1621G' letter of 12.05.2023 in Appendix 3.

GCRA's response to MW backhaul on page 4: *The GCRA notes that this price control relates to Sure's pricing of its wholesale on-island leased lines, so it does not cover MW backhaul. See the preceding 'Business Connectivity Market Review - Market definition & SMP Assessment.*

18.0 It is an unnecessary comment by GCRA as GAL never ever asked to include Microwave (MW) backhaul in BCMR. The objective behind GAL's sharing of MW backhaul related concerns with the GCRA was for GCRA to create a 'level playing field' for all the possible backhaul options in Guernsey as it exists in other jurisdictions, e.g., UK. Therefore, GCRA was required to reduce pricing of on-island leased lines closer to the level of MW backhaul costs which GCRA did not do so.

19.0 Despite GCRA's mischaracterisation of GAL's MW backhaul related concerns and context, GAL will clarify again, the MW backhaul point being ignored by GCRA that *GAL has shared consistently with GCRA regarding the non-resilient MW backhaul limitations faced by GAL, including GAL's reliance on MW* *backhaul for 76% of its masts as compared to its competitor incumbent using MW backhaul on 10-15% masts only, which leads to 'customer experience' disparity in the market*. This has been shared and explained regularly via all the responses to previous BCMR consultations since 2019, and presented in two GCRA led 5G summits too.

GCRA's response to MW backhaul on page 4: *The GCRA understands that a reason why Airtel takes MW backhaul rather than fibre optic lines is because of the level of prices for wholesale on-island leased lines.*

20.0 Despite GCRA's understanding of the economic compulsion for GAL to use MW backhaul given the prohibitive pricing of wholesale on-island leased lines, yet GCRA's 'Second Proposed Decision - Wholesale On-Island Leased Line Pricing' will result in zero/negative benefit for GAL.

GCRA's response to MW backhaul on page 4: *The GCRA notes that as a result of this proposed price control, GAL will have access to wholesale on-island leased lines at a significantly lower price, which may facilitate GAL making greater use of fixed-line leased line solutions and reduce its reliance on MW backhaul.*

21.0 Request GCRA to share the basis for their comment that GCRA's proposed second wholesale on-island price control will facilitate GAL to opt for use of fixed leased lines instead of its reliance on MW backhaul.

22.0 As shared above, GCRA's proposed wholesale on-island price control will result in zero/negative benefit for GAL as the proposed second decision by GCRA for 'Wholesale On-Island Leased Line Pricing' published on 5 October 2023 reflects a reduction of just 9% in most leased line products when compared to the 31 March 2023 BCMR decision.

23.0 It is crucial for GCRA to assess the overall impact and implications of this decision on a challenger OLO like GAL. Therefore, the proposed small token reduction of 9% is not going to help GAL both from technical and financial perspective.

24.0 In case if GCRA has not carried out any analysis to compare MW backhaul costs with their own proposed second wholesale on-island price control, then for the benefit of GCRA, GAL has worked out that the cost of 'leased line backhaul' is 4.3 times the cost of 'microwave backhaul' for the same bandwidth as explained:

24.1 One-time cost of a MW link is £3,000 for a 500Mbps product, and around £1500 per year is operational expenditure, whereas the proposed annual price of fibre backhaul is £9,113 for the same capacity i.e., 500Mbps.

24.2 Considering 5 years life span of a MW link, GAL will spend £10,500 (*£3000 + £1500 x 5*) on 500 Mbps MW backhaul, whereas cost will be **4.3x** i.e., £45,565 (*£9,113 x 5*) of 500 Mbps leased line.

24.3 Therefore as explained above, it is not financially viable for GAL to buy fixed leased line because the cost of fixed leased line is almost 4.3 times the cost of microwave backhaul for same bandwidth despite the GCRA's proposed second wholesale on-island pricing review.

GCRA's response to disproportionate pricing of different bandwidths on page 4: *The prices of wholesale on- island leased line prices reflect a significant portion of fixed costs, hence, prices will not be directly proportional to bandwidth. This is especially noticeable in the prices of lower bandwidth products where the proportion of fixed costs will be higher than the proportion of fixed costs for higher priced - larger bandwidth products. However, the GCRA underlines that the "price curve" used to inform the product-byproduct price control reflects adjustments to the relative prices between some products, where anomalies* *were identified (these are described in Section 4 of the Second Proposed Price Control Decision). The price control will result in significant reductions in the prices of the products mentioned by GAL, versus if Sure's current prices were to increase with inflation.*

25.0 Despite GAL pointing out to GCRA consistently regarding the disproportionate charging across all the various bandwidths in leased lines, the similar disproportionate charging is observed again in this GCRA's second pricing decision (*refer to the comparison shown in the table below*). For example: the proposed cost of 100Mbps (*1/10th speed of 1Gbps*) leased line at £6,805 is 62% of 1Gbps leased line at £11,031. Similarly, the proposed cost of 500Mbps (*half the speed of 1Gbps*) leased line at £9,113 is 83% of 1Gbps leased line at £11,031.

Bandwidth	Bandwidth Ratio to 1Gbps	2nd Proposed BCMR Sure's Annual Price	Price Ratio to 1Gbps
100Mbps	10%	£6,805	62%
250Mbps	25%	£7,670	70%
500Mbps	50%	£9,113	83%
750Mbps	75%	£10,072	91%
1Gbps		£11,031	

26.0 GAL understands that there are fixed costs associated with each bandwidth leased service, however absent GCRA's validation of the incumbent wholesale service provider i.e., Sure's actual costs, GAL fails to understand the logic for such a high fixed cost factored in pricing of 100 Mbps i.e., one tenth capacity of 1Gbps is priced at 62% of the price of 1Gbps. Therefore, request GCRA to clarify what thorough analysis was done by GCRA to establish high fixed costs for the low-speed bandwidth leased lines as GCRA's assessment appears to be flawed for the following reasons:

26.1 GAL's understanding is that the primary cost driver for fixed leased line solutions is the infrastructure required to provide the service, which includes laying fiber optic cables, setting up network equipment, and ensuring the reliability of the connection. Plus, the diameter of fibre optic cable and fibre duct is same regardless of the speed bandwidth or capacity of the fibre optic cable.

26.2 Further, a higher speed bandwidth leased line will require more extensive and robust infrastructure to support higher speeds and greater data volumes, along with more monitoring and maintenance for consistency of performances, which will result in higher fixed costs, whereas for same reasons, a low speed leased line with lower bandwidth will incur low fixed costs.

27.0 Request GCRA to clarify what due consideration was given to the actual product demand for each bandwidth category of the fixed leased lines, as GAL firmly believes that the incumbent wholesale service provider i.e., Sure has large pool of customers in low-speed bandwidth leased line category which includes GAL too. Therefore, absent the visibility of any underlying analysis done by GCRA, it appears to GAL that the approach taken by GCRA may assist the incumbent wholesale service provider i.e., Sure in protecting their higher profitable income in low-speed bandwidth category i.e., less than 500 Mbps.

28.0 As the current 'BCMR - T1621G' exercise was initiated at behest of GAL due to 4G data experience issues faced by GAL in 2018, therefore, for the benefit of GCRA to assess how their decision impacts a challenger OLO like GAL is explained below:

28.1 GAL generates revenue based on the resource consumption at each base station, e.g., each MB (Megabyte) consumed by customers at one base station provisioned with 100 Mbps leased line will generate the same revenue at the other base station provisioned with 1Gbps leased line, and since GAL has majority of <1Gbps leased lines basis the network traffic.

28.2 Therefore, the cost to be paid (*as per second proposed BCMR disproportionate pricing*) by GAL for every single MB consumed by the customers will be very high overall which will not allow GAL to compete effectively and efficiently. This proves that the cost of doing business in Guernsey is prohibitively high, which is not getting addressed via this BCMR. GAL would also like to remind GCRA that GAL will not be able to compete if GAL will have to increase its prices to recover prohibitive disproportionate prices of low-speed bandwidth leased lines from its customers.

29.0 The disproportionate charging across all the products less than 1 Gbps is harmful for the 'effective and efficient' competition given the data usage pattern of majority of GAL's customers which can be serviced by leased lines less than 500 Mbps as shared with GCRA via the previous BCMR responses, however, as explained via the bullet point 24.0 that GCRA's latest proposed second BCMR pricing decision does not incentivise GAL to opt for any additional leased line or upgrade any of the existing leased lines, as it will increase GAL's costs more than 4 times.

30.0 As explained above via the bullet points 25.0 to 29.0 that fixed cost will be similar across all the bandwidths of leased lines, and disproportionate charging across all the products less than 1 Gbps is harmful for the 'effective and efficient' competition, therefore, GAL would urge GCRA not to ignore GAL's request that a significant reduction should be made in low-speed bandwidth category so that GAL can compete effectively and efficiently, ultimately benefitting the consumers in Guernsey.

31.0 GAL notes that GCRA's 2nd proposed BCMR decision is misaligned with States of Guernsey's directive in '*The Regulation of Utilities*'[2] which states that "*Policy interventions must be proportionate and cost-effective while decision making should be timely, and robust*" as GCRA's proposed 'disproportionate' pricing of 'bandwidths less than 1 Gbps is neither proportionate, nor cost-effective for a challenger OLO like GAL.

GCRA's response to price comparison with Jersey on page 5: *In Tabel A, in the Second Proposed Price Control Decision GCRA has set the proposed prices at the efficient level of Sure's costs. As a result, reducing prices below this proposed level would lead to under-recovery of costs by Sure. This could lead to worse market outcomes, as Sure would not be able to invest in network build or spend which are required costs incurred to maintain its provided services. As set out in the Second Proposed Price Control Decision, the proposed prices represent significant reductions, versus if Sure's current prices were to increase with inflation. In addition, GAL's price comparison to Jersey is incorrect as it compares only rental prices (i.e. ignores connection charges). When connection charges are taken into account, the proposed prices for the 500Mbps product in Jersey and Guernsey are comparable and in general, the proposed prices in Guernsey are lower than for comparable products in Jersey.*

32.0 GCRA's analysis and comment is incorrect as considering 5 years 'Total Cost of Ownership' (TCO) including one time JT's connection charge, cost for 500Mbps product is still 17% higher for Sure when compared to JT as shown in the table below for all the bandwidths.

[2] https://www.guernseylegalresources.gg/CHttpHandler.ashx?id=75588&p=0

Product	Sure Proposed Pricing (£)						JT Pricing (£)	Difference (Sure Vs JT)
	2024	2025	2026	2027	2028	Sure - 5 Yrs	JT - 5 Yrs (with one time charge)	
1Gbps	11,031	11,274	11,522	11,775	12,034	57,636	48,834	15%
100Mbps	6,805	6,955	7,108	7,264	7,424	35,556	34,085	4%
500Mbps	9,113	9,313	9,518	9,728	9,942	47,614	39,691	17%
250Mbps	7,670	7,839	8,012	8,188	8,368	40,077	36,882	8%
750Mbps	10,072	10,294	10,520	10,751	10,988	52,625	44,262	16%

33.0 As explained via the bullet points 25.0 to 31.0, the potential harm to both challenger operators like GAL and consumers must be weighed by GCRA against the proposed pricing model which will not promote fair competition, market growth, and innovation, which will ultimately harm the consumers.

34.0 During the 'BCMR - T1621G' exercise, neither GCRA has provided any information to GAL about any past returns the incumbent wholesale service provider i.e., Sure has made so far on the historical costs including any resulting adjustment to be made in the future costing, nor GCRA has shared any thorough validation analysis of the incumbent wholesale service provider i.e., Sure's costs with 100% transparency to avoid any potential misallocation of costs or cross-subsidisation. Therefore, request GCRA to explain how and why reducing prices below the proposed level would lead to under-recovery of costs by Sure.

35.0 The cost recovery by the incumbent wholesale service provider i.e., Sure is understandable, however, request GCRA to confirm if Sure's pricing for all types of wholesale access is based on actual costs and does not create unfair advantages for Sure Wholesale and Sure Retail respectively.

GCRA's response to price increase built in proposed price model on page 6: *A key objective of the GCRA's price review is to ensure that all licensed operators have non-discriminatory access to the wholesale network at reasonable prices, which supports effective competition at the retail level. The GCRA is of the view that a price path inflator over time is justified since a significant portion of Sure's costs are affected by inflation and wage growth.*

36.0 As the key objective of the GCRA's price review is that all licensed operators have non-discriminatory access to the wholesale network at reasonable prices which supports effective competition at the retail level, thus, request GCRA to clarify if validation such as that any kind of 'SMP' or 'wholesale on-island leased line price' is free of any unfair advantages due to ownership of wholesale on-island leased lines as GAL couldn't find any such analysis by GCRA during the 'BCMR - T1621G' exercise.

37.0 Since GAL firmly believes that a price path inflator over time is not justified given the significant portion of Sure's costs would be 'one off cost' as major cost is contributed by cost of deploying the fibre, therefore, request GCRA to clarify the actual break up of Sure's one time and recurring costs.

38.0 Further, did GCRA verify past instances of where inflation and wage growth has been lower than anticipated, leading to overcharging by the incumbent wholesale service provider i.e., Sure, as GAL could not find any such validation by GCRA during the 'BCMR - T1621G' exercise.

GCRA's response to price increase built in proposed price model on page 6: *Cost recovery could technically be implemented with a downward price trend, but this would: (i) Require prices to be higher in initial years to compensate for lower prices in later years, to allow Sure to recover its costs over the lifetime of its investments; and (ii) Decorrelate prices from actual costs.*

39.0 The approach taken by GCRA will be counterproductive to the importance of balancing cost recovery with affordability, fairness, and the long-term interests of both consumers and challenger OLO like GAL, as during the current 'BCMR - T1621G' exercise GAL has not been provided with any information about the incumbent wholesale service provider's cost efficiencies and innovations to recover their costs basis past trends, and efficiency gains can help maintain affordability while ensuring profitability over the long term.

GCRA's response to price increase built in proposed price model on page 6: *Regarding GAL's reference to the UK, the GCRA notes that Ofcom's current price controls on the wholesale leased line market are indexed to CPI, so implies price increases over time.*

40.0 The point ignored by GCRA is that regular Ofcom reviews in UK reduced leased line prices by 200% since 2013 i.e., 5 reviews in 9 years, and request GCRA to confirm if their validation of Sure's costs is as thorough as Ofcom's process, therefore warranting price increases over time.

GCRA's response to prohibitive price of inter-island links, e.g., between Guernsey and Sark / Alderney on page 8: *The higher price for wholesale leased line products with an end in Alderney or Sark can be justified by the additional costs required to cover submarine cables linking these islands. The GCRA again notes that GAL's comparison to Jersey is incorrect, as it compares only rental prices (i.e. ignores connection charges).*

41.0 Suggest GCRA to refer to bullet point 32.0 to understand why GCRA's comment regarding connection charge is incorrect, and request GCRA to share their analysis regarding the 'one time connection charge' constitutes what portion of the price difference percentage.

42.0 GAL also notes that the response by GCRA to GAL's concern regarding '*inter-island links i.e., Guernsey-Alderney and Guernsey-Sark*' GCRA is a selective response as GCRA has not acknowledged and responded to GAL's actual concern explained with evidence that GAL is incurring loss in providing services in Sark and Alderney respectively. Request GCRA's to respond to GAL's concern regarding 83% loss being incurred by GAL in providing mobile services in Sark and Alderney as explained by GAL via its previous two responses and Section A in this document.

43.0 GAL's understanding is that data connectivity from Guernsey to Sark and Alderney respectively is delivered via microwave backhaul and not through submarine cable, therefore, GAL requests GCRA to share their cost due diligence carried out to respond to GAL's concern as GCRA justifies prohibitive price for wholesale leased line products with an end in Alderney or Sark. Assuming GAL's understanding that data connectivity from Guernsey to Sark and Alderney respectively is delivered using a microwave setup, therefore, request GCRA to clarify why the price of data links for Guernsey-Sark and Guernsey-Alderney is so prohibitively high i.e., £20,534 for a 20 Mbps link.

44.0 GCRA also needs to understand GAL's point here that it would be detrimental for any business to operate network at a constant loss, which is currently the case for GAL's 'mobile services in Sark and Alderney respectively' since GAL's rollout there, therefore, GCRA's intervention is required to reduce the price of all types of wholesale leased line access much further so that GAL can compete effectively and efficiently, ultimately benefitting the public in Sark and Alderney.

GCRA's response to ISP Connectivity on page 8: *The GCRA did not include ISP connectivity products within the scope of the wholesale on-island leased line market product definition. As this price review is focusing on wholesale on-island leased line market products, the revision to ISP connectivity product prices is not in the scope of this price review.*

45.0 Request GCRA to clarify the timescale for 'ISP connectivity' product price review, as GAL has been requesting GCRA for the last 5 years to address the current prohibitive pricing of 'ISP connectivity', thus GAL is waiting to hear from GCRA for last 5 years.

GCRA's response to prohibitive price of inter-island link between Guernsey and Jersey on page 8: *Leased line connectivity products between Guernsey and other jurisdictions are not within the scope of the wholesale on- island leased line market product definition, therefore, reviewing the price of these products was not within the scope of this price review.*

46.0 Request GCRA to clarify the timescale for 'inter-island link between Guernsey and Jersey' product price review, as GAL has been requesting GCRA for the last 5 years to address the current prohibitive pricing of 'inter-island link between Guernsey and Jersey', thus GAL is waiting to hear from GCRA for last 5 years.

GCRA's response to the frequency of BCMR timescales on page 9: *The GCRA acknowledges the value of contemporary market definitions and market power assessments. However, the GCRA has been directed by the States to be proportionate and cost effective in its approach to economic regulation, and therefore, the GCRA will undertake market reviews when market conditions deem them to be necessary.*

47.0 GCRA contradicts itself by not following the States of Guernsey's directive in '*The Regulation of Utilities*' (*in footnote 1*) asserting that "*Policy Interventions must be Proportionate and Cost-effective while decision making should be timely, and robust*" which calls for the following:

47.1 "*Policy Interventions must be Proportionate*": This directive means that any actions or policies implemented in the regulation of utilities should be proportionate to the specific issues or challenges being addressed and appropriate in relation to the circumstances.

47.2 "*Policy Interventions must be Cost-effective*": This directive emphasises the importance of ensuring that the regulatory policies and actions are efficient and cost-effective for the competition.

47.3 "*Decision making should be timely*": This directive underscores the importance of making regulatory decisions in a prompt and efficient manner. Delays in decision-making can hinder the effectiveness and efficiency of competition. GCRA should not take 5 years to conclude a BCMR.

47.4 "*Decision making should be robust*": This directive suggests that regulatory decisions should be well-founded and based on thorough analysis and assessment.

48.0 None of the objectives as explained via bullet point 47.0 (including 47.1 to 47.4) have been achieved despite GCRA spending the last 5 years on the current BCMR exercise as GCRA will achieve zero/negative benefit for the competition as set out in this document. Therefore, GAL would like to remind GCRA that the government mandate to be proportionate and cost effective does not imply that regulatory obligation and intervention cannot be exercised to ensure the efficiency of 'effective market dynamics' led by a challenger telco like GAL.

49.0 GAL notes again that GCRA did not follow States of Guernsey's directive as per '*The Regulation of Utilities*' (*in footnote 1*) which states that "*the framework of economic regulation needs capacity to evolve to respond to changing circumstances and continue to be relevant and effective over time*" which has been completely overlooked by GCRA during the current BCMR exercise by ignoring concerns and evidence shared by GAL regarding ever evolving data usage pattern in Guernsey over last 5 years.

Section C Concerns ref. GCRA's cost modelling in 'BCMR - T1621G' - Second Proposed Decision.

50.0 As Guernsey is amongst few rare, regulated jurisdictions where incumbent service provider is not required to publish their complete financials with full transparency, and GCRA being a member of Small Nations Regulators Forum[3] (SNRF) where many fellow SNRF member countries follow practice of publishing separated accounts of 'respective incumbents providing wholesale and retail services in those small nations' to increase the transparency of their financial reporting including any cost efficiencies achieved to avoid any cost misallocation or cross subsidisation.

51.0 GCRA has proposed 'Discounted Cash Flow' (DCF) cost modelling approach to set the price control for on-island leased lines as Sure's FTTP (fibre to the premises) network is currently in the process of being built, however, Sure has been providing on-island leased line services since many years.

52.0 Therefore, given the lack of transparency of Sure's financials as explained in bullet point 50.0, and given GCRA's basis for DCF cost modelling approach as explained via bullet point 51.0, GAL requests GCRA to clarify the following:

52.1 GAL's understanding is that FTTC (fibre to the cabinet) and 'business FTTP' was already available before the commencement of current FTTP project, therefore, what due diligence has been done by GCRA to account costs and return made for existing FTTC and business FTTP in certain pockets of Guernsey. Plus, if the GCRA has considered the returns Sure has made so far on the respective historical costs, and accordingly if the future costing is adjusted for same.

52.2 If FTTP for 'on-island leased lines' is currently being built, then how come Sure was already selling high bandwidth fibre on-leased lines for many years. GAL is particularly interested in understanding how GCRA determines the capital expenditure and profit margins for Sure's provision of on-island leased lines in Guernsey including how one-time costs are optimised by £12.5 million funding[4] provided by the States of Guernsey.

52.3 GAL's understanding is that FTTP project is aimed to make 'fibre-based broadband' available but GCRA's stance implies that fibre infrastructure is shared between 'Sure retail' and 'Sure broadband wholesale' and 'Sure on-island leased line wholesale', therefore, request GCRA to clarify what due diligence has been done by GCRA to avoid any cross subsidisation or cost misallocation including steps taken to ensure shared costs are accounted as per actuals including any cost efficiencies achieved.

53.0 When using DCF modeling to set regulatory prices for wholesale on-leased line access provided by Sure whose infrastructure is shared between wholesale and retail services, and between products too i.e., on-island leased lines and fibre broadband, therefore, request GCRA to clarify what due diligence was done to address the following drawbacks and challenges:

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3 https://www.iicom.org/become-a-member/small-nations-regulators-forum/

4 https://www.gov.gg/CHttpHandler.ashx?id=144068&p=0

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53.1 If incumbent service provider shares complex infrastructure between wholesale and retail services, and between products too i.e., on-island leased lines and fibre broadband, thus, it can be difficult to accurately allocate costs between these categories. The shared infrastructure can create opportunities for cross-subsidisation, where costs incurred for wholesale services may be inappropriately allocated to retail services, or from on-island leased line product to broadband product to justify higher wholesale prices which may not always be detected or prevented.

53.3 If any financial and operational data for the shared infrastructure may be considered proprietary or confidential, this could lead to challenges in accessing and using this data for DCF modeling, potentially hindering transparency and accuracy.

53.4 Determining the appropriate discount rate (the cost of capital) is critical in DCF modeling including any assumptions used in the DCF model. Incumbent provider may argue for higher discount rates to justify higher wholesale prices. There is a possibility of risk of GCRA's decision aligning more with the interests of the incumbent rather than fostering effective and efficient competition given the subjectivity involved in Discount Rates. Ultimately selecting an appropriate discount rate for DCF analysis is a subjective decision which can be influenced by various factors as different discount rates can yield significantly different price outcomes.

54.4 Given GAL's concern that GCRA's proposed second BCMR decision completely overlooks the evolution of data consumption over the last 5 years in Guernsey, GAL is further concerned that DCF modeling may not fully account for the dynamic nature of the telecommunications market, where technology and demand change rapidly. Predicting future cash flows and demand for leased line access services may not be accurate, especially in an evolving landscape.

54.5 In a shared infrastructure scenario, there is a risk that DCF modeling may result in regulatory prices that are higher than competitive market prices. This could harm competition and limit consumer choices. GAL has already shared enough analysis /examples with GCRA in this regard as GCRA's proposed second BCMR pricing is disproportionate and higher than other jurisdictions.

54.6 DCF models rely on a wide range of input data, such as revenue projections, discount rates, and cost estimates. Small changes in these inputs can lead to significant variations in the calculated price, making the model sensitive to the accuracy of the data. DCF models often require long-term forecasts, and predicting variables like future demand and technology advancements is challenging. Errors in these estimates can result in inaccurate pricing, leading to ineffective and inefficient competition.

54.7 The complex nature of shared infrastructure and DCF modeling can lead to a lack of transparency in the pricing process. Stakeholders, including competing providers and consumers, may find it challenging to understand and trust the calculations. Therefore, GAL being a challenger OLO has been demanding GCRA to clarify their cost modelling and explain the rationale behind various assumptions factored in their cost modelling to GAL which GCRA has not obliged despite promising in meeting of 21 June 2023.

Guernsey Airtel Limited
06 November 2023.

GCRA Response

The GCRA acknowledges GAL's comprehensive response and the concerns expressed in relation to the Second Proposed Decision.

The GCRA notes that GAL is of the view that its concerns have not been fully addressed in the Second Proposed Decision. Please be assured that the GCRA is committed to ensuring a fair and competitive market for all stakeholders. The GCRA is reviewing GAL's concerns, including those regarding the lack of a level playing field, cost modelling, and pricing disparities.

The GCRA acknowledges GAL's comments at the omission of dark fibre access in the remedies process and the GCRA may investigate the feasibility of introducing a telecom-specific backhaul product over the course of the review period.

As is evidenced in the proposed decisions and the Final Decision, the GCRA has conducted thorough analysis to ensure final wholesale leased line prices are based on efficient costs to reflect a balanced and competitive market environment. GAL's concerns about the GCRA's cost modelling approach, including the handling of bandwidth pricing and the economic viability of different leased line products, have been noted.

The GCRA recognizes the challenges that GAL has highlighted regarding its market share and competitiveness. The GCRA remains committed to promoting effective and efficient competition in the telecom sector. The Authority's decisions aim to balance the interests of all market participants, including challenger operators such as GAL.