Response by Sure (Guernsey) Limited and Sure (Jersey) Limited to CICRA Consultation Documents 14/16 (Guernsey) & 14/17 (Jersey): Business Connectivity Market Review

NON-CONFIDENTIAL VERSION

Overview

Sure (Guernsey) Limited and Sure (Jersey) Limited, collectively referred to as “Sure” is pleased to submit this single response to the two CICRA documents on business connectivity in Guernsey and Jersey respectively. Both these consultations were issued by CICRA on the 8th April 2014. This is the non-confidential version of Sure’s response, which we are happy for CICRA to publish on its website. Any confidential or commercially sensitive details included in our original confidential response are represented here by the symbol [✂]. Such details are not to be revealed by CICRA to any third party without Sure’s prior and express permission.

Sure notes that the methodology adopted by CICRA for this review is based on the accepted methodology applied in the European Union (EU). This methodology confirms that the imposition of *ex ante* regulation is only appropriate where a finding of Significant Market Power (SMP) has been made in a relevant market, such that the market is not effectively competitive. The EU makes it clear that where there is no SMP in a relevant market, the market is effectively competitive and does not require *ex ante* regulation. We have kept this important principle in mind as we have been considering the CICRA documents and have highlighted in our responses some concerns that CICRA may not be adhering to these principles. In particular, by suggesting that *ex ante* regulation is needed in the market for off-island connectivity despite its preliminary findings that no operator holds a position of SMP in this market, either in the case of Guernsey or Jersey.

Sure notes that if CICRA’s preliminary findings regarding SMP are confirmed in relation to the wholesale on-island leased lines market in Guernsey, the wholesale on-island leased lines market in Jersey and the retail leased lines market in Jersey, CICRA will then need to specify in more detail the remedies that it would like to propose to address that SMP. We expect that a further and full consultation will take place at that point and before any remedies are imposed.

Response to questions:

We have attempted to answer the two separate consultations as a single response given that we believe this is the best way to highlight any disparities that still remain between Guernsey and Jersey, despite CICRA’s aim of trying to apply a consistent approach to regulation in both islands. We would observe that the numbering of CICRA’s questions within its consultation documents (14/16 & 14/17) is not consistent. In providing this response Sure’s answers relates to both islands unless specified below. Questions and answers relating specifically to Guernsey are prefixed with ‘(G)’, with questions and answers for Jersey being prefixed with ‘(J)’.

Q1 (G): *Do you agree with the GCRA's proposed approach to market definition? If not, what alternative do you suggest?*

Q1 (J): *Do you agree with the JCRA's proposed approach to market definition? If not, what alternative do you suggest?*

Yes, Sure agrees with the proposed approach to market definition, given that it is consistent with accepted international best practice and particularly the methodology used by the EU.

Q2 (G): *Do you agree with the GCRA's proposed approach to competition and SMP assessment? If not, what alternative do you suggest?*

Q2 (J): *Do you agree with the JCRA's proposed approach to competition and SMP assessment? If not, what alternative do you suggest?*

Sure agrees with the proposed approach to competition and SMP assessment, noting that any assessment should take account of the particular circumstances of Guernsey and Jersey in terms of their relatively small size. This could mean, for example, that the traditional market share thresholds for assessing whether there is a presumption of dominance may be need to be revised upwards to take account of the fact that it is very difficult to achieve economies of scale in small markets. As such, large market shares could merely be a reflection of the minimum efficient scale in that market being very close to the overall size of that market.[1]

Q3 (G): *Do you agree with the GCRA's proposed approach to remedies, should there be a finding of SMP? If not, what alternative do you suggest?*

Q3 (J): *Do you agree with the JCRA's proposed approach to remedies, should there be a finding of SMP? If not, what alternative do you suggest?*

Yes, Sure agrees with proposed approach to remedies should a finding of SMP be made, and in particular the need to consult further regarding the details of any proposed remedies.

We would also note at this point that CICRA has acknowledged[2] that where there is no SMP, the market is effectively competitive and does not require ex ante regulation. We are therefore unclear as to why the GCRA is proposing certain measures in relation to off-island connectivity in Guernsey when it has come to the preliminary conclusion that no operator has SMP in this market, either at the wholesale level (where the GCRA has defined a separate off-island wholesale market and found no operator with SMP) or at the retail level (where the market has been defined as a combined market consisting of off-island and on-island connectivity, with no operator being identified as having SMP). Similarly, the JCRA is proposing certain measures in relation to off-island connectivity in Jersey, despite no operator having SMP in this market (although here, it has found that JT has SMP in the retail market, which is a combined market for on- and off- island connectivity). We discuss this further below in response to questions 24 (G) and 25 (G) and questions 25(J) and 26(J).

As a more general point, we would make the observation that historically the approach adopted by CICRA to remedying any issues of SMP or dominance has not been consistent between Guernsey and

[1] See, for example, discussion in Competition Policy for Small Market Economies, Michal S. Gal, 2003
[2] Page 4 of current consultation documents.

Jersey. The GCRA, and its predecessor the OUR, has been fairly rigorous in its approach in Guernsey but unfortunately the same cannot be said of the JCRA in Jersey. [✂] Whilst we recognise the different legal frameworks on each island we believe that this disparity and lack of appropriate regulation of JT helps to explain why the JCRA is finding that JT still has a position of SMP in the retail leased market in Jersey.

Q4 (G): *Do you agree with the GCRA's preliminary view that the retail market should not be narrowed to reflect the delivery technology used? If not, why not?*

Q4 (J): *Do you agree with the JCRA's preliminary view that the retail market should not be narrowed to reflect the delivery technology used? If not, why not?*

Yes, Sure agrees that the retail market covers both TI and AI technologies and therefore should not be narrowed. Sure also agrees with the sentiment that overall the customer wants reliability, service quality and resilience, although we note that how these are measured may not be so straight forward. We do not agree, however, with the statement that Ethernet is "new and more cost effective". Ethernet is not new and certainly the higher bandwidth carrier grade equipment still commands a premium price.

Q5: *Do you agree that the retail market should not be broadened to include downstream services bought in conjunction with leased lines? If not, why not?*

Yes, Sure agrees that the retail market should not be broadened to include downstream services bought in conjunction with leased lines. Downstream services such as VPN or IP Feed are delivered on top of basic building blocks such as private circuits and the review should only cover those basic building blocks.

Q6: *Do you agree that the retail market should not be broadened to include business connectivity services provided over broadband? If not, why not?*

Yes, Sure agrees that the retail market should not be broadened to include business connectivity service provided over broadband. As stated in the consultation the broadband service provides primarily for the consumer rather than business market. Small businesses might be happy to use broadband but the SLAs will be substantially different to a private circuit, reflecting the differences in contention, security, resilience and latency.

Q7: *Do you agree that all retail leased line bandwidths fall within the same market? If not, why not?*

Yes all retail leased line bandwidths are in the same market. Sure notes the consultation discusses WDM technology. As stated this is very much a carrier technology to provide multiple bandwidths where only a small number of fibres exist, it is not by definition "very high capacity connectivity". Sure notes also it is not yet in mainstream use in retail markets, but is very much in use in longer distance carrier backhaul circuits. For example it might be that an operator would use such technology to carry multiple circuits over a submarine cable where laying new cable is not cost effective. However, there would be no commercial benefit to customers in Guernsey to the deployment of this expensive technology for single on-island retail private circuits.

Q8: *Do you agree that separate geographic markets exist for Guernsey and Jersey? If not, why not?*

Yes, Sure agrees that currently separate markets exist for Guernsey and Jersey but agree that this needs to be reviewed by CICRA within the next 2-3 years. We would make the observation at this point that given the similarities between the two islands, it would be reasonable to expect to see similar pricing structures. In fact, it could be argued that the slightly larger scale of Jersey would result in slightly lower prices than in Guernsey. This is not the case and we contend that one reason for this is the current pricing practices of JT in terms of differential pricing based on the arbitrary measure of distance from the exchange. We discuss this issue further in response to question 10 below.

Q9: *Do you agree that the retail market encompasses both on-island and off-island leased lines? If not, why not?*

Yes.

Q10 (G): *Do you agree that there are no particular areas within Guernsey where the conditions of retail competition are such that they may constitute separate geographic markets? If not, why not?*

No, Sure does not agree with this statement for two reasons: first, it is based on the incorrect statement that operators offer uniform pricing across the island, and secondly, it ignores the significant build out of network by JT in specific business areas of Guernsey. We discuss each of these points in more detail below.

In terms of the first point, CICRA has been briefed on several occasions regarding Sure's same exchange/different exchange pricing in Guernsey and our desire to flatten this pricing to achieve uniform pricing across the island. We have explained how the achievement of such uniform pricing would be to the detriment of some customers, whilst others would benefit from lower prices. For Sure, the position would be revenue neutral. We have asked CICRA to help us to resolve this issue and to explicitly consider it as part of this consultation, so it is disappointing that the issue has not even been mentioned.

A similar issue exists in Jersey, where JT charges different prices depending on whether the customer is located less than or greater than 300 metres from the exchange. However, this is a more fundamental issue of discrimination as JT's > 300m prices fall disproportionately on OLOs and JT has never been able to provide a technical justification for this price differential. It is therefore even more critical that CICRA takes the opportunity presented by this current consultation to address this issue. We believe that this should also include discussion of the appropriate charges for installations, shifts and other ancillary charges, where we note that JT's charges in Jersey are significantly higher than the equivalent charges made by Sure in Guernsey.

In terms of the second point, the GCRA is aware that JT has been undertaking a significant build-out of network in specific areas of Guernsey, concentrated within the central business areas of St Peter Port and St Sampson, but also now extending to other parts of the island. JT is therefore not as reliant on Sure, as the incumbent, for wholesale services to support its retail business as it can increasingly self-supply. Note that the position is slightly different in Jersey, where Sure's own network build – which was necessary due to the poor wholesale rates offered by JT for many years due to the lack of suitable regulatory oversight by the JCRA – is focused only on the St Helier business area.

We would therefore question the conclusion that the conditions of competition in the retail market are the same throughout Guernsey, and also the same throughout Jersey. Whilst we do not believe that this should alter the conclusions of SMP for the retail leased lines market in Guernsey, or indeed in Jersey, [✂]. We discuss this in more detail in response to questions 16 (G) and 17 (J) below.

Q10 (J): *Do you agree that there are no particular areas within Jersey where the conditions of retail competition are such that they may constitute separate geographic markets? If not, why not?*

As noted above, the statement that operators in Jersey offer uniform pricing across the island is factually incorrect. JT charges different – higher – prices if the customer is located more than 300 metres from the exchange. There is no justification for this difference and it raises serious discrimination issues given that such charges fall disproportionately on OLOS. Sure has asked CICRA to consider this issue on several occasions and it should not be ignored any longer.

Q11 (G): *Do you agree with the GCRA's proposal not to designate any operator with SMP in the retail market for leased lines in Guernsey? If not, why not?*

Yes. In fact, we believe that Sure's SMP status should have been removed a long time ago and are disappointed that CICRA's lack of up to date market statistics has allowed this inappropriate designation to stay in place for longer than necessary, which has been harmful to the competitive process.

Q11 (J): *Do you agree with the JCRA's preliminary conclusion that JT is dominant in the provision of retail leased lines in Jersey? If not, why not?*

Yes, we agree with the JCRA's preliminary conclusion that JT is dominant in the provision of retail leased lines in Jersey. Sure believes that JT's position of dominance in the retail market for leased lines can be attributed to the lack of appropriate wholesale prices being available from JT for a very long period. The current wholesale rates of retail minus 20% have only been in place since 2012. For many years, competitors to JT have only been offered wholesale rates of retail minus 9% (this despite a ruling being made by JCRA in July 2004[3] directing JT to offer retail minus 20%, which for some reason was never implemented by the JCRA), which has effectively stifled retail competition. This explains why JT's dominant position in retail leased lines has continued to persist.

Q12 (J): *Do you agree with the JCRA's proposal to designate JT with SMP in the retail market for leased lines in Jersey? If not, why not?*

Yes. For the reasons stated above in response to question 11 it is entirely appropriate that JT should be designated with SMP in the retail market for leased lines in Jersey.***Q12 (G):*** *Do you agree that the GCRA's preliminary conclusions outlined above in relation to the retail leased lines market are mirrored in the wholesale market? If not, why not?*

Sure agrees with the broad framework (as set out on page 38 of the consultation) with the exception of the conclusion that there are no particular areas within Guernsey where conditions of competition are appreciably different to the extent that they constitute separate markets.

[3] Decision and Direction 2004-5 on Jersey Telecom Ltd Leased Lines, 28 July 2004.

JT's network build-out in Guernsey is already extensive - and will become more so over the next 2 to 3 years - yet it is not obliged to offer wholesale leased lines whereas Sure is. The effect of this seems to be that Sure will always have SMP in wholesale leased lines as it is the only operator obliged to provide these services. By contrast, it seems that JT (and any other operator) capable of providing wholesale leased lines can choose whether or not to provide these services to third parties. [✂]We discuss this further below in response to questions 16 (G) and 17 (J).

Q13 (J): *Do you agree that the JCRA's preliminary conclusions outlined above in relation to the retail leased lines market are mirrored in the wholesale market? If not, why not?*

As with our response to Q12(G), we agree with the broad framework (as set out on page 27 of the Jersey consultation) except for the conclusion that there are no particular areas within Jersey where the conditions of competition are appreciably different. The differential pricing by JT for >300m circuits also exists at the wholesale level.

Q13 (G) & Q14 (J):*Do you agree that the wholesale market should not be broadened to include dark fibre and/or duct access? If not, why not?*

Yes, we agree that the wholesale market should not be broadened to include dark fibre and/or duct access.

Q14 (G) & Q15 (J): *Do you agree that resellers should not be included within the market? If you do not agree, why not?*

Yes, we agree that resellers should not be included in the wholesale market.

Q15 (G) & Q16 (J): *Do you agree that the wholesale market should not be defined on a narrower basis to reflect customer use of leased lines? If not, why not?*

Yes, we agree.

Q16 (G) & Q17 (J): *Do you agree that self-supply should not be included in the wholesale market? If not, why not?*

Whilst we would agree that self-supply should not be included in the wholesale market [✂]

[✂]JT must realise that the lack of a commercial wholesale offering from JT helps to ensure that Sure's market share in wholesale on-island leased lines will always be maintained at a level whereby it will always be presumed to have SMP and therefore will always be obliged to offer wholesale services at a regulated rate. Indeed, we note that the GCRA makes the observation in section 9.3 of its consultation that "...JT does not have the incentive (absent regulation) or motivation to offer a wholesale product on its own infrastructure."

[✂]

Q17 (G) & Q18 (J): *Do you agree with the preliminary conclusion that separate geographic markets exist for Jersey and Guernsey? If not, why not?*

Yes.

Q18 (G) & Q19 (J): *Do you agree that there are separate geographic markets for on-island and off-island wholesale leased lines? If not, why not?*

Yes – there are separate geographic markets for on-island and off-island wholesale leased lines at the wholesale level.

Q19 (G) & Q20 (J): *Do you agree that separate markets do not exist for wholesale off-island leased lines between Jersey and Guernsey, and off-island leased lines elsewhere? If not, why not?*

Yes.

Q20 (G): *Do you agree that there are no particular areas within Guernsey where the conditions of wholesale competition are such that they may constitute separate geographic markets? If not, why not?*

Q21 (J): *Do you agree that there are no particular areas within Jersey where the conditions of wholesale competition are such that they may constitute separate geographic markets? If not, why not?*

No - Sure contends that certain geographic areas need to be considered separately (to Guernsey as a whole) due to JT network build being significantly developed in particular geographic areas (e.g. St Peter Port) where a high density of Business Connectivity requirements are prevalent. Whilst JT is not obliged to provide wholesale services it does supply Business Connectivity (e.g. Leased Lines and similar) services to OLOs. Further, whilst Sure notes that BEREC has stated that analysis required to determine whether such sub-geographic markets exist as a 'burdensome process', this should not be used as a reason not to investigate as to whether such a market exists or not.

Q21 (G): *Do you agree with the GCRA's preliminary conclusion that Sure is dominant in the provision of wholesale on-island leased lines within Guernsey? If not, why not?*

Q22 (J): *Do you agree with the JCRA's preliminary conclusion that JT is dominant in the provision of wholesale on-island leased lines within Jersey? If not, why not?*

As far as Guernsey is concerned, Sure is the only operator obliged to provide wholesale services and, noting that other operators do provide similar services (e.g. Leased Lines) to OLOs but are not obliged to identify them as 'wholesale', it is not surprising therefore that Sure has such a large share of the market as this is effectively by definition. Perhaps a more appropriate way to determine market share and hence dominance in wholesale is to be more specific about what is meant by the term 'wholesale'. Namely, that it should be defined as being the sale/supply of service from one Licensed Operator to another (within the product set being considered, in this case for basic connectivity type services, this would effectively mean one operator being an infrastructure operator (i.e. capable of self supply) and the other not so, at least in the particular geographic area relevant to the OLO purchasing the required service). If this were done, it is likely that the total count of deployed 'wholesale' products within the overall geographic market (Guernsey) will increase and that therefore the 'wholesale' market share of Sure will decrease. It is Sure's contention that this decrease will be particularly significant in certain sub-geographical areas where other operators have considerable own network reach (Central business areas/St Peter Port etc) and where the highest density of on-island leased lines are likely to be found. As such, under this definition of wholesale, it is highly likely that Sure is not dominant in key geographic areas but may be so outside of them.

In summary, Sure would question the preliminary conclusion that it is dominant everywhere in the wholesale on-island market. CIRCA appears to have not fully evaluated the impact of whether JT own network rollout.

Q22 (G): *Do you agree with the GCRA's proposal that Sure should be designated with SMP in the market for wholesale on-island leased lines in Guernsey? If not, why not?*

We have noted our reservations to this designation above. Should CICRA go ahead with this designation then at the very least it must commit to revisiting it within a 12-18 months' maximum timeframe given the speed of JT's rollout.

Q23 (J): *Do you agree with the JCRA's proposal that JT should be designated with SMP in the market for wholesale on-island leased lines? If not, why not?*

Yes.

Q23 (G): *Do you agree with the GCRA's preliminary conclusions on dominance in the provision of wholesale off-island leased lines within Guernsey? If not, why not?*

Yes, we agree with the GCRA's preliminary conclusion that no operator holds a position of dominance within the relevant market of wholesale off-island leased lines in Guernsey, nor is any operator likely to do so within the timeframe of this review.

Q24 (J): *Do you agree with the JCRA's preliminary conclusions on dominance in the provision of wholesale off-island leased lines within Jersey? If not, why not?*

Yes.

Q24 (G) & Q25 (J): *Do you agree that a specific off-island licence would assist in ensuring that there is no impediment to accessing off-island capacity? If not, what alternatives do you suggest?*

We note that Section 5.3 of both consultation documents clearly states "If there is no SMP the market is effectively competitive and does not require *ex ante* regulation. If there is no SMP existing *ex ante* regulation should be removed, and no further *ex ante* regulation should be imposed."

The GCRA has reached the preliminary conclusion that there is no SMP in the market for wholesale off-island leased lines within Guernsey, and the JCRA has reached the same conclusion with respect to the market for wholesale off-island leased lines in Jersey. As such, there is no reason or justification for imposing any remedy, including a specific off-island licence, when there is no SMP.

In the case of Guernsey, Sure does not believe that there is any evidence to support the idea that there is a bottleneck that is preventing customers in Guernsey from accessing off-island capacity. In fact we are unclear as to what GCRA is referring to when it uses the term "bottleneck" and would welcome clarification. Sure does not discriminate on A and B ends in relation to the connectivity of on-island circuits to off island circuits. Similarly in Jersey, Sure has never encountered any problems in accessing off-island connectivity.

Therefore, should the GCRA (and JCRA) proceed with issuing specific off-island licences this would be an inappropriate and unjustified regulatory measure. This could also result in existing licensed providers being left with stranded assets and investments, which could also act as a constraint on future investment intentions. This is because it would become more difficult for existing operators to produce feasible business cases to justify those investments. In this context we refer to our response under Q27 (G).

Q25 (G): *Do you agree with the GCRA's proposal that no operator is or is likely to be dominant in the market for wholesale off-island leased lines in Guernsey? If not, why not?*

Yes we agree but we do not then understand why the GCRA feels it necessary or justified to impose a remedy of issuing a specific off-island licence.

Q26 (J): *Do you agree with the JCRA's proposal that no operator is or is likely to be dominant in the market for wholesale off-island leased lines in Jersey? If not, why not?*

Yes, we agree but as is the case with Guernsey, we do not understand why the JCRA is proposing a remedy.

Q27 (J): *The JCRA has identified has identified 3 options as to how it could address JT's proposed SMP in the retail leased line market. Which of these options would you favour? Why?*

Sure believes that it will not be sufficient for the JCRA to rely on remedies in the wholesale market to address the competition problems in the Jersey retail market for leased lines.

Other Licensed Operators must be able to replicate JT's retail offers but it is currently the case that JT is being allowed to bundle in a way that an equally efficient operator, relying on wholesale inputs from JT, cannot replicate. We have anecdotal evidence of JT offering data centre and IP bandwidth services for nominal sums if purchased with retail leased lines, which makes it impossible for OLOs to compete.

Option 2 would seem to offer the most appropriate and proportionate remedy to address JT's SMP in the retail leased lines market. If JT complies with the obligation not to unreasonably bundle retail leased line services with other products and services then option 3 would not be necessary. However, we would request that should Option 2 fail, then CICRA would consider the implementation of Option 3 within a very short space of time.

Q26 (G): *Do you agree with the GCRA's proposals on imposing access obligations? If not, why not?*

The GCRA's proposals for imposing access obligations should only apply in markets where the GCRA has made a finding of SMP. The GCRA's preliminary conclusions show that it is only in the market for wholesale on-island leased lines that Sure has SMP. We have questioned above whether it is appropriate to consider that Sure has SMP in the entire market for wholesale on-island leased lines, given JT's network build out in certain parts of Guernsey.

We are concerned that the GCRA has discussed access obligations in the context of an equal access obligation as set out in Condition 24.1 of Sure's Licence. The GCRA quotes part of this Licence Condition but excludes the part of the Condition that makes it clear that the obligation to provide equal access applies only in the context of the provision of call origination. The Condition has nothing to do with the provision of leased lines. For clarity, the whole of Condition 24.1 of Sure's Licence states:

> *24.1 The Licensee shall at the request of an Other Licensed Operator or if directed by the Director General, make Equal Access available to that Other Licensed operator. The Director General may direct the terms upon which such Equal Access shall be provided and the Director General may make subsequent directions modifying or supplementing the regulation of Equal Access. In this Condition,* ***"Equal Access"*** *means a facility whereby a User can access the Telecommunications network or Telecommunications service offered by another Licensed Operator. The User's choice may be made in either of the following ways, subject to the requirements of the direction:*
>
> *(a) By pre-selection, that is to say the User registers with the Licensee the name of the Other Licensed Operator which will convey all his calls (but the Licensee may offer a facility to overwrite the preference in the case of any particular call), or*
> *(b) On a call-by-call basis using any numbers or codes allocated for this purpose by the appropriate licensing authority.*

It is quite clear from the above that Condition 24.1 is totally irrelevant to the consideration of access to wholesale on-island leased lines and it is therefore inappropriate for CICRA to refer to it in this consultation.

Sure is aware, however, that in the event of an SMP designation, it is obliged to meet reasonable requests for leased lines under Condition 26 of its Licence. In fact, prior to and since the Regulaid review in 2009, Sure has met all access requirements under these obligations and intends to continue to do so. This includes offering OLOS access to off-island capacity on either a full circuit basis, or a half-circuit basis, with the OLO able to take service from the corresponding far end operator. Sure therefore does not agree that there is a need for any additional obligations to be imposed.

Q28 (J): *Do you agree with the JCRA's proposals on imposing access obligations? If not, why not?*

Sure notes that the JCRA has also quoted the reference to equal access in JT's licence out of context; Condition 25.1 is also relevant only to call origination and not to leased lines. It is Condition 28 of JT's licence that is relevant for JT's obligations to meet reasonable requests for leased lines.

Q27 (G) & 29 (J): *The GCRA has identified 3 options as to how it could address the requirement to ensure access to off-island capacity. Which of these options would you favour? Why?*

As far as Guernsey is concerned, Sure has no difficulty with either Option 1 and 2, as we already comply with these requirements on a non-discriminatory basis.

In terms of Option 3, we do not believe there is any evidence in Guernsey of a market failure with respect to the ability of OLOS to access off-island connectivity and therefore there is no need – or justification - for this option.

We would also note that currently Sure is facing upgrade costs in 2015 to extend the life of the HUGO cable system that is otherwise approaching end of life. That investment is likely to be up to [✂]. In the event that the GCRA proceeds with proposals to introduce a special off-island licence this would change the business case for this investment significantly [✂]. However, should CICRA recognise the benefit of Sure's originally proposed investment, such that it is economically viable for Sure to proceed, this will lead to significantly more bandwidth being made available at the wholesale level. Should this be the case we would like to discuss with CICRA the options for reducing the pricing of the current portfolio, which have already been planned.

As far as Jersey is concerned, we have a preference for either option 1 or option 2 and we have no evidence that JT is not already complying with these options. However with the benefit of our own off-island cable system from Jersey should other operators have encountered any issue with JT it may be prudent to introduce option 3 in Jersey, or to refer those operators to us, so we can then provide them with service as per options 1 and or 2.

Q28 (G): *Do you agree with the GCRA's proposals on imposing non-discrimination obligations? If not, why not?*

Q30 (J): *Do you agree with the JCRA's proposals on imposing non-discrimination obligations? If not, why not?*

Sure believes that, in Guernsey, to the best of its knowledge, it is compliant with the existing non-discrimination obligations and therefore considers that the GCRA's proposal to clarify that such requirements should relate to on-island wholesale leased lines should have no impact on our business.

In Jersey, we consider that it is important for the JCRA not only to re-confirm the need for JT to comply with Condition 28.2 and Condition 31.1 of its licence, but also to scrutinise more closely its internal practices to ensure that JT does not favour its own retail arm with regards to the pricing and availability of leased lines. Sure continues to have concerns over the alleged provision of non-standard leased lines by JT's wholesale arm for exclusive use of its retail arm for connectivity of States of Jersey services. This includes the siting of Core Network equipment within a States building (Cyril Le Marquand House) to facilitate this practice.

Q29 (G): *Do you agree with the GCRA's proposals on imposing transparency obligations? If not, why not?*

Sure already complies with transparency obligations in Guernsey. We would also note that our licence was modified in January 2012[4] to make the notification requirement for changes to wholesale prices 30 days in advance, and not 21 days as noted in the consultation document. No such change was made to JT's licence in Jersey so this needs to be addressed for consistency.

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[4] CICRA 12/03, Amendment to Cable & Wireless Guernsey's Fixed Telecommunications Licence, Statutory Modification.

Sure has no difficulty with the proposal that a longer notification period should be provided for a new wholesale product, to enable all OLOs to have the same and sufficient opportunity as the SMP operator's downstream arm to produce its own retail offering. There are some circumstances where a shorter notification period will be appropriate – for example, where all affected or potentially impacted operators are agreed on the need to introduce a new wholesale product within a shorter timescale. In such circumstances we would suggest that CICRA adopts a pragmatic approach that allows a shorter notification period.

Sure believes that CICRA also needs to consider the appropriate notification period for the withdrawal of existing services, as many withdrawals can have major planning considerations for OLOs, which take time to resolve. A recent example – admittedly not from the leased lines market but useful to illustrate the point – is the withdrawal by JT of its sub-20Mb copper broadband portfolio.

Sure has already highlighted in response to question 26(G) that CICRA's references to Licence Condition 24.1 is inappropriate. A reading of the full text of Licence Condition 24.1 shows that the term Equal Access relates solely to the ability of a customer of an operator that has been deemed to be dominant in the provision of call origination to access the telecommunication services or network of an Other Licensed Operator. Licence Condition 24.1 has absolutely no relevance to leased lines and should therefore be ignored for the purposes of this review.

We note the proposal that Sure should be obliged to publish and maintain a Reference Offer for wholesale on-island leased lines, but would point out that there is no requirement in our licence to provide such a document. Sure does, however, support the provision of technical specifications and a framework for the notification of price and other changes in relation to wholesale on-island leased lines. Sure also intends to continue to comply with Condition 26.1 of its licence, which sets out the parameters on which such leased lines should be made available.

Q31 (J): *Do you agree with the JCRA's proposals on imposing transparency obligations? If not, why not?*

JCRA is aware of the scant regard that JT pays to transparency. This of course affects the ability of operators and CICRA to assess whether it is discriminating against OLOs and so needs to be addressed. The JCRA should also standardise the notification periods with those of Guernsey, namely 21 days for retail and 30 days for wholesale notifications. The comments made in response to question 29 (G) in relation to notification of new wholesale products and the withdrawal of existing products also should apply in Jersey.

We note that JT's licence contains a requirement for a Reference Interconnect Offer (RIO) and Sure believes that it is important that JT be obliged to include wholesale on-island leased lines within it. As the JCRA has proposed that JT be deemed to hold significant market power (SMP) at the retail level (for both on and off-island leased lines) it is vitally important that JT is not allowed to positively discriminate in the provision of wholesale leased lines for use by its own retail arm. The market would certainly have greater assurance of the likelihood of non-discrimination through the publication and maintenance of a properly defined RIO structure. Sure also believes that the existing failings in relation to documentation and process would be also addressed as part of those RIO requirements.

Q30 (G): *Do you agree with the GCRA's proposals on imposing accounting separation obligations? If not, why not?*

Q32 (J): *Do you agree with the JCRA's proposals on imposing accounting separation obligations? If not, why not?*

Sure understands the benefits of accounting separation, not just to CICRA, but to the Channel Islands' telecommunications market. Such separated accounts are also useful for Sure's own commercial costing purposes. However, CICRA has not defined within its current consultation process what required changes (if any) it proposes to impose on Sure and JT as a result of any finding of dominance in a particular market. Sure is therefore unable to comment further at this stage.

Q31 (G): *Do you agree with the GCRA's proposals for imposing cost accounting and price control remedies?*

Q33 (J): *Do you agree with the JCRA's proposals for imposing cost accounting and price control remedies?*

Sure currently provides its separated accounts on a current cost basis and whilst we believe that this has the potential to lead to misleading assumptions being made about the profitability of Sure's various products and services (as a result of the uninitiated reader not fully understanding the interdependencies of the underlying cost data) we have no objection to continuing to use this methodology (for as long as this requirement exists).

In document CICRA 14/17 we note that the JCRA proposes that JT should also be obliged to maintain its current cost accounting (CCA) obligations. We would question though whether JT does, in fact, currently provide its separated accounts on a current cost basis. Certainly, no CCA adjustments have been applied within any of the annual results published to date by JT, but it would be hoped that JT's 2013 separated accounts (and beyond) would recognise this requirement.

We also note in document 14/17 that CICRA acknowledges that price controls are usually put in place to address the potential for the SMP operator to impose margin squeeze or to cross-subsidise and in the case of JT, where the JCRA intends to designate JT as holding SMP at both the retail and wholesale level in relation to leased lines (wholesale on-island only), it would seem entirely appropriate for a price control to be put in place, so as to minimise the risks highlighted by the JCRA.

In Guernsey, where Sure is likely to be deemed as holding SMP only in relation to wholesale on-island leased lines, we would question the validity and the cost benefit outcome of a specific price control. The addition of a separately reported business within Sure's separated accounts would be all that is required to provide the visibility that CICRA is seeking in relation to the avoidance of margin squeeze and cross-subsidisation. As such, we do not agree with the proposal that Sure should be price-controlled in the wholesale on-island leased lines market.

Q32 (G) & Q34 (J): *Are there topics or priorities not covered in this consultation which you would like to raise?*

Sure has highlighted a particular concern in relation to the lack of any discussion of the same and different exchange pricing that Sure currently offers in Guernsey. More fundamentally there is no discussion of the premium that JT charges for >300m leased lines in Jersey, which clearly where it discriminates against OLOs. This is a major omission in these consultations and must be addressed.

We would also highlight that CICRA needs to ensure that it collates and analyses market information on a timely basis as otherwise this will limit its ability to conduct regular and timely reviews that will be necessary given the speed at which the business connectivity markets are changing.

Finally, we believe that CICRA needs to standardise the classification of leased lines into wholesale and retail by clearly defining the criteria for each and making sure all operators report on same consistent basis.

Submitted on behalf of Sure (Guernsey) Limited and Sure (Jersey) Limited