



## **Response by Sure (Guernsey) Limited and Sure (Jersey) Limited to CICRA consultation documents 15/07 (Guernsey) & 15/08 (Jersey): Review of the price control for wholesale on-island leased lines**

### **Overview**

Sure (Guernsey) Limited and Sure (Jersey) Limited, collectively referred to as “Sure” is pleased to submit this single response to the two CICRA consultation documents on the review of the price control for wholesale on-island leased lines in Guernsey and Jersey respectively. These consultations were issued by CICRA on the 19<sup>th</sup> March 2015. This is a non-confidential response, which we are happy for CICRA to publish on its website.

### **Response to questions:**

*Q1: do you agree with the GCRA’s/JCRA’s proposal to implement a retail-minus price control, strengthened by supporting remedies? If not, what alternatives do you suggest?*

Yes.

However, Sure believes that there is a fundamental difference in the supporting remedies that will be appropriate in Guernsey compared to Jersey. This is because in Guernsey, the GCRA removed Sure’s existing Significant Market Power (‘SMP’) in the Guernsey retail on-island leased lines market, whilst in Jersey the JCRA has now designated JT as having SMP in the Jersey retail on-island leased lines market. In particular, there is no regulatory basis by which Sure will be obliged to report on the retail on-island leased lines market in Guernsey through its separated accounts. This is in contrast to JT’s position, where it must now have a regulatory obligation to report on the retail on-island leased lines market in Jersey through its separated accounts.

Whilst recognising that these current consultations relate to the wholesale on-island leased line markets, we believe that this essential difference with respect to the respective retail on-island leased markets must be expressly acknowledged by CICRA. However we note that page 10 of the Jersey consultation states “In the BCMR, the JCRA concluded that, the finding of retail SMP notwithstanding, it was not necessary at this time to consider the imposition of direct retail remedies on JT.” How does this square with an obligation that JT must now have to report in its separated accounts on the retail on-island leased lines market?

The JCRA will also recall that at the time of the BCMR, we raised concerns with them that the Final Notice issued in Jersey<sup>1</sup> was not sufficiently clear that JT’s new SMP status in the retail on-island leased lines market in Jersey meant that certain obligations would now be “triggered” in JT’s licence. This included Licence Condition 28, which amongst other things, imposes transparency

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<sup>1</sup> Document CICRA 14/50, Final Notice on Business Connectivity Market Review, 1<sup>st</sup> October 2014.

and non-discrimination requirements on JT whereby it has to publish its retail prices and not discriminate by offering less favourable terms to Other Licensed Operators compared to its own businesses. We were assured by the JCRA that this would be the case. Subsequently we were informed by e-mail<sup>2</sup> that "CICRA is confident that JT understands of [sic] the obligations imposed on it in the on-island retail leased lines market under the existing conditions as a result of the finding it has SMP in this market.....there will be an opportunity when we next publish a WLL price control for JT in Jersey to reiterate the accompanying obligations in the retail leased lines market."

We note that page 22 of the Jersey consultation states that JT is obliged to publish details of its retail leased lines offerings but this should also make it clear that there are other obligations too, and especially with respect to non-discrimination.

*Q2: do you agree that the control should be set ex ante? If not, why not?*

Yes, but in Jersey, where JT has been designated as holding SMP in relation to both wholesale and retail On-Island Leased Lines, CICRA needs to be very clear about the regulatory framework by which JT is required to ensure compliance with its obligations. The key control against the potential for the abuse of market dominance is the publication of and adherence to standard leased line pricing.

*Q3: do you agree that the control should apply to all wholesale on-island leased lines? If not what alternatives do you suggest?*

The Channel Islands markets for leased lines continue to show a trend of consolidation of lower capacity services and increasing usage of larger capacity circuits. This move up the capacities available in the product portfolio means that larger capacity options are having to be added on an almost annual basis. This suggests that it would be unwise to exclude any capacities from control at the wholesale level, as to do so could lead to the deliberate distortion of leased line pricing if an option for a less regulated subset of services existed. On a pan-CI basis, Sure supports the inclusion of all wholesale on-island services within the charge control.

*Q4: do you agree that the control should apply to each wholesale on-island leased line? If not, what alternatives do you suggest?*

Sure agrees with CICRA that a product-by-product approach would offer the highest degree of certainty. In fact, Sure would be concerned by any other approach, as this could obscure the expected margins available and encourage deliberately distorted pricing to suit a particular contract or customer relationship.

*Q5: do you agree that every retail on-island leased line product offered by Sure (in Guernsey)/JT (in Jersey) must have a wholesale equivalent? If not, what alternatives do you suggest?*

Sure understands what CICRA is trying to achieve with this proposal, but believes that it could unnecessarily stifle innovation if every type of retail leased line had to be made available at the wholesale level. We believe that CICRA should instead focus on the ability of OLOs to fairly replicate any retail services provided by an incumbent operator, so that where an incumbent operator provides a managed connectivity solution it must be based on standard underlying

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<sup>2</sup> E-mail from CICRA to Sure dated 23<sup>rd</sup> December 2014

wholesale services. That would mean that value/innovation at the retail level would not be penalised. Within Guernsey, this may become more obvious over the coming months as Sure's wholesale leased lines portfolio is developed. We would be happy to discuss this further with CICRA as part of this price control review process.

*Q6: should all retail price discounts and temporary promotions be mirrored in wholesale level pricing? If not, what alternatives do you suggest?*

Sure believes that wholesale prices should be set at rates based on the equivalent standard retail leased line prices, which should not include term discounts (e.g. two or three year terms), as such savings are only evident at the retail level. For example, where a retail customer signs up for a three year deal the retailer has saved itself the cost of marketing/client relationship as the end of the year approaches, as the customer is already committed to a second/third 12 month term. However, at the wholesale level, the incumbent operator doesn't incur any similar marketing/client relationship costs, as none of its services are marketed – they're simply made available to retailers – so there are no equivalent costs to be saved at the wholesale level.

For clarity, in response to the consideration requested by CICRA in Section 4.2, Sure would like to confirm that it does not believe that discounts and other temporary promotions offered at the retail level should be mirrored in the prices offered for corresponding wholesale leased lines.

*Q7: do you agree that the control should be set as a fixed percentage? If not, why not?*

Yes.

*Q8: do you agree that retail minus 20% is an appropriate margin? If not, what alternatives do you suggest?*

Yes.

*Q9: do you agree that it is not appropriate to use the price control mechanism to address differential pricing? If not, why not?*

Sure maintains that in any price control mechanism the complete pricing framework should be reviewed, including the structure of any differential pricing. In Guernsey, Sure's wholesale charges have historically been differentiated based on whether both ends of a circuit were within the same or different exchange areas. This recognised the additional equipment and longer physical line lengths of circuits in those different exchange areas. In Jersey, JT differentiates its pricing based on whether a circuit is less than or greater than 300m in total length, but this 'magic' length has no relevance to either physical or cost constraints. As such, this has always been an artificial measure, which seeks only to favour JT's own retail arm over those of its competitors.

Without regulatory support Sure is unlikely to voluntarily remove its same/different exchange pricing differential, as doing so would result in increased costs for certain customers (at both the wholesale and retail level) and would create enforced margin squeeze – a position unlikely to be favoured by Sure's competitors. Sure will instead look to other options to bring about changes to its wholesale product portfolio to lessen the reliance on its existing same/different exchange prices, but remains disappointed that CICRA is seemingly willing to dismiss the opportunity to

remove differential pricing across the Channel Islands as part of this wholesale leased lines price control review.

*Q10: do you agree that the term of the price control should be aligned with the market review cycle? If not, what alternatives do you suggest?*

Sure notes CICRA's proposed control/review alignment, but there is no indication of the likely frequency of any market review cycle. As CICRA is aware, Sure believes that in the Guernsey market in particular the pace of change would warrant a review within the next 24-36 months. JT continues to build out its own fibre network, whilst Sure will be introducing significant changes to both its retail and wholesale portfolios, which will bring a stepped change to the way in which its leased lines are both physically and commercially provided. Conversely, we believe that the market in Jersey will be prone to much slower development and so may not warrant another market review within the same time period. We would also like to understand the process by which a market review could be requested outside of whatever frequency CICRA deems to be appropriate for its standard market review cycle.

*Q11: do you agree with the GCRA's/JCRA's proposed use of supporting remedies? If not, why not?*

**Cost accounting/accounting separation:**

Sure notes the proposals for it to produce separated accounting information for wholesale on-island leased lines. If required, Sure will separate the revenues and costs associated with such services from those relevant to the remainder of its Core Network Business in Guernsey and hence the reporting would be undertaken on the basis of:

- Core Network Business (excluding wholesale on-island leased lines)
- Wholesale on-island leased lines

As highlighted by CICRA, Sure no longer holds SMP in the provision of any retail leased line services and hence Sure has ceased to report such revenues and costs separately within its separated accounts. These services are now included within Sure's 'Retail – Remaining Activities Business'. Sure will however be able to provide the visibility to CICRA that it is seeking through its quarterly compliance statements.

To reiterate the requirements in Jersey – JT is now required to provide separated accounts at both the wholesale and retail levels for on-island leased lines (as it holds SMP in both of these markets). Sure will therefore look to ascertain whether JT is compliant with Condition 28 of its licence, requiring JT to provide such leased lines on publicly advertised conditions and on non-discriminatory terms. For the avoidance of doubt, Sure would like CICRA to confirm that JT is therefore required to publish its standard retail and wholesale (the latter within any portal) connection and rental charges for on-island leased lines and not to deviate from such prices.

**Transparency:**

The GCRA proposes that Sure reports on all retail and wholesale leased line services, even though it is only on-island services that are relevant for the purposes of CICRA's proposed quarterly review. Sure

would intend only to provide the details of its on-island services. The GCRA acknowledges that Sure is not required to publish details about its retail pricing, as it no longer has SMP in the retail leased line market. Sure would assert that this also gives it pricing flexibility at the retail level. This means that whilst Sure will continue to maintain a standard retail leased lines price list for internal purposes (and for the setting of underlying wholesale on-island leased line charges), it reserves the right to deviate from this list if it believes that it can still fulfil its regulatory obligations in relation to fair competition and the avoidance of margin-squeeze. As already noted above the situation is different as far as JT in Jersey is concerned whereby it will not be able to deviate from its published retail price list where this would be contrary to Condition 28 of JT's Licence.

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

16<sup>th</sup> April 2015