



## **Response by Sure (Jersey) Limited and Sure (Guernsey) Limited to CICRA consultation documents 15/22: Pan-Channel Island Consultation on Mobile Termination Rates**

Sure (Jersey) Limited and Sure (Guernsey) Limited, collectively referred to as 'Sure' is submitting this response in relation to CICRA's consultation on mobile termination rates ('MTRs') for Jersey and Guernsey. This is a non-confidential response, which we are happy for CICRA to publish on its website.

### **Question 1**

***Do respondents agree that the MTRs proposed should be introduced in the Channel Islands over the period defined by CICRA? Respondents who do not agree with either or both of CICRA's proposal for MTRs or the period over which they are to be introduced are asked to provide reasons and evidence to support their position.***

Sure does not agree with the MTRs being proposed by CICRA, but does agree that should material reductions in the MTR rate be forced into the market these reductions should occur on a glide path basis, so as to minimise the commercial risk and financial exposure that may otherwise be created for Channel Islands'(CI) mobile operators as a result.

CICRA places emphasis on the MTRs defined by Ofcom for application in the UK wholesale Mobile Call Termination ('MCT') markets and considers that alignment of the CI rate with that of the UK, by September 2017, is appropriate. However, as we have highlighted to CICRA on numerous occasions, we simply cannot agree that the costs borne by CI operators can ever compare to those of UK providers. In the case of UK mobile networks, these cannot be proportionately scaled down to the miniature equivalent networks that exist in Jersey and Guernsey. Even between these islands the actual cost bases are likely to be materially different, as they key elements of each core mobile infrastructure (the majority of the cost of a mobile network) will be very similar in both islands, but the number of subscribers over which to recover these costs, as per CICRA's most recently published market data<sup>1</sup>, is almost exactly double that in Jersey than in Guernsey. That suggests that the mobile core network unit cost in Guernsey is around twice that of Jersey's. Whilst we are not currently proposing a different MTR in each island, it highlights the enormity of the difference between two small islands and we would hope that CICRA might better understand our concerns about how the unit cost of MTRs in the UK (with 80 million subscribers), which would need to be scaled down by a factor of 400,

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<sup>1</sup> [www.cicra.gg/files/Market%20Statistics%202011%20-%20FINAL5625656323.pdf](http://www.cicra.gg/files/Market%20Statistics%202011%20-%20FINAL5625656323.pdf)

could ever be considered appropriate. This makes no sense, when the same key elements within a small operator's core mobile network need to exist whether it has 1,000, 10,000 or 100,000 subscribers using it. Our key concern is that CICRA considers that the economies of scale that exist in the UK could exist in the 'microclimate' of the Channel Islands. We do not believe that this could ever be the case.

Putting the above concerns to one side for a moment, we would draw CICRA's attention to Section 10 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, in particular, where various references are made to the costing/charging principles that must be adhered to in relation to the Reference Offer charges (which include MTRs) as part of Interconnection and Access requirements. We believe that the relevant clauses within Section 10 of the Law are:

- 10 (2)(c): The licensee shall provide interconnection or access on terms, conditions and **charges that are transparent and cost-oriented** [emphasis added] having regard to the need to promote efficiency and sustainable competition and maximise consumer benefit;
- 10 (3): The Director General may direct that adjustments be made to the terms, conditions and charges set out in a licensee's reference offer and in so doing so may take into account information provided by the licensee together with such other information as the Director General considers relevant including (without limitation) information as to international best practice in other markets;
- 10 (4): The Director General may require a licensee –
  - (a) to justify its costs of or charges for providing interconnection or access; and
  - (b) to show that its charges for providing interconnection or access are derived from actual costs (which may include a reasonable rate of return)

Based on these legal requirements we would question whether CICRA (and specifically the GCRA) has the remit to enforce the significantly reduced MTRs (even taking into account the rates applied elsewhere) that it is currently proposing in Guernsey without following the due process as set out in the Law. We would therefore expect a process to be established whereby Sure (as the incumbent operator and the only mobile operator to produce separated accounts in Guernsey) be required to submit its justified costs (including the Weighted Average Cost of Capital, 'WACC', as a reasonable return) in relation to mobile termination. This should then be analysed by the GCRA and whilst account may be taken of charges elsewhere, Sure's MTR should be set based on its own efficiently incurred costs.

It is interesting to note that BEREC's review of EU MTRs, as shown on page 14 of CICRA's consultation<sup>2</sup> document, compares the average MTR per country and yet the only country with a population anywhere close to that of Guernsey or Jersey is Liechtenstein, where the MTR was 5.08ppm<sup>3</sup> (6.2760 €cent). This adds further weight to our argument that smaller jurisdictions are

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<sup>2</sup> [www.cicra.gg/files/CiCRA%20Consultation%20on%20mobile%20termination%20rates.pdf](http://www.cicra.gg/files/CiCRA%20Consultation%20on%20mobile%20termination%20rates.pdf)

<sup>3</sup> Using Euro exchange rate of 1.2532 on 1<sup>st</sup> July 2014 ([www.xe.com/currencytables/?from=EUR&date=2014-07-01](http://www.xe.com/currencytables/?from=EUR&date=2014-07-01))

likely to have a higher per unit cost, as they do not have a large enough subscriber base over which to recover their core mobile infrastructure costs.

With regard to the need to promote efficiency and sustainable competition and maximise consumer benefit, as set out in Clause 10 (2)(c), Sure would question, on a pan-CI basis, whether CICRA has given appropriate consideration to the significant 4G investments that have been made by local mobile operators. By the time Airtel finishes its 4G rollout its costs, then along with Sure's and JT's own 4G costs, the three mobile operator in the CI will have invested a total of around £39 million. That is potentially the largest investment in the CI mobile market to date and clearly, much of that cost will need to be recovered through charges to consumers and other operators (primarily via MTRs in the case of the latter). Without the ability to do so there will be little incentive for future investment (e.g. 5G services from around 2020), nor the environment created for sustainable competition. We have suspected for some time that Airtel has yet to make a suitable return on its CI mobile network investments and the recent news that it is seeking to merge with JT has come as no surprise as a result. As seen in Sure's 2013 separated accounts, Sure's own Mobile Business return on investment was only 8% (that is, lower than our business' 11.6% WACC).

In summary, whilst CICRA may believe that CI MTRs should be set at rates lower than those applied in countries with millions of subscribers, Sure is concerned that its cost-based charges in relation to just tens of thousands of customers may actually need to increase from the current 4.11ppm, if it is to recover 4G investment costs and make a suitable (if small) return on those investments.

## **Question 2**

***Do respondents agree that it is appropriate for CICRA to change the description of the market in which the operator has been found to have SMP? Respondents who do not agree are asked to provide reasons to support their position.***

Sure fundamentally disagrees with CICRA's proposal.

Whilst CICRA omits to ask a specific question about which traffic the MTRs should be applied to, we believe that it is important to set out our understanding, as part of the wider considerations of this consultation.

Since its inception, as the GCRA in Guernsey (2001) and the JCRA in Jersey (2002), CICRA has only regulated each operator's activities to the extent that they are relevant to the local telecommunications markets. To our knowledge, it has never tried to regulate the commercial charges applied by local operators to terminate traffic that originates on networks outside the island, nor has it tried to regulate the charges that these other networks apply to local operators to terminate calls to destinations outside of the islands. We are concerned that CICRA infers that it believes that it has the right to do so – seemingly counter to its long-held position to date – by setting an MTR that it believes should be applied to all other operators, regardless of whether or not the call originated within the respective Bailiwicks.

Sure's costs in relation to calls that originate outside of the Bailiwicks are materially higher than those that originate on a local operator's network. Without giving away any commercially sensitive information within this public response, Sure interconnects in Guernsey with JT and Airtel via dedicated STM1 (155Mbit) circuits, with a number of 2Mbit ports 'lit' dependant on the actual capacity required. These costs form part of both the fixed interconnection rates and the MTR. However, for traffic passed between Sure in Guernsey and UK operators the use of network infrastructure – and therefore costs - is significantly greater, being three submarine cables and associated off-island transmission costs, in addition to local switching and transmission costs. It is not possible for these significantly increased costs to be swallowed up within CICRA's proposed MTRs, which we continue to believe are only relevant to traffic that has originated locally.

We would be grateful if CICRA could confirm its position with regard to the commercially negotiated charging principles that have existed for decades between local operators and their off-island connectivity partners, as we do not consider that CICRA has the remit to intervene in such negotiations. Section 10 of The Telecommunications (Bailiwick of Guernsey) Law, 2001, refers to the framework for interconnection and access, which is applied in the form of a 'reference offer', but this has only ever existed for use by Other Licensed Operators, as licensed by the GCRA under Part I the Telecommunications (Bailiwick of Guernsey Law, 2001 and regulated under the umbrella of the Regulation of Utilities (Bailiwick of Guernsey) Law 2001. Off-island operators are not regulated by the GCRA and are unlikely to be willing to sign-up to such an agreement.

Sure is concerned that if CICRA tries to change the definition in relation to the termination of calls on a mobile network to be 'Calls to the UK mobile numbers allocated by Ofcom to that mobile operator', it will then seek to additionally control the charges for calls originated outside of the Bailiwick. As highlighted above, Sure fundamentally disagrees with this position.

### **Question 3**

***Do respondents agree that it is appropriate for CICRA to include Marathon in the scope of the regulation of MTRs? Respondent who do not agree are asked to provide reasons to support their position?***

Yes. The regulation of MTRs should apply to all local licensees (for traffic originated in the Bailiwick).

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