Response by Sure (Jersey) Limited to the JCRA's second Initial Notice on JT's Retail Price Control (CICRA 16/20)

Sure (Jersey) Limited ('Sure') is submitting this response in relation to the second Initial Notice ('the IN')[1] issued by the Jersey Competition Regulatory Authority ('JCRA') regarding its proposed Retail Price Control for JT (Jersey) Limited ('JT').

The JCRA is welcome to share this document with other interested parties and publish it on its website. A confidential annex has been provided to the JCRA in relation to Sure's consideration of JT's PrimeTalk tariff.

Whilst we welcome the further scrutiny of JT's price control framework, we would question the validity of the lengthy process that has been undertaken, particularly as almost all of the detailed analysis has since been discarded by the JCRA in favour of a simple – and we would contend, flawed - comparison of JT's fixed line prices in Jersey against those of Sure's equivalent prices in Guernsey.

Please note that within this document we have related our comments to the sections and page numbers used by the JCRA within its IN.

Scope of price control going forward

Page 13: Sure is pleased to note that the JCRA states that 'it is not apparent why fixed line service customers should cross-subsidise the cost of fibre rollout in Jersey' as this echoes our own long-held view. The benefit to consumers is clearly only evident through the availability of higher speed data (broadband) services. Whilst JT may suggest that voice services will also benefit, the availability of such services on its existing copper network was already likely to have been at least 99.9%, so JT's previous claims about improved network reliability (through the use of fibre) appear to be unfounded. We believe that it is also worth reiterating the total loss of service on fibre-provisioned fixed lines during a power cut[2], a situation that is not replicated for services provided over a copper network.

Level of price control going forward

Page 16: Frontier Economics considered whether the prevailing differences in retail prices across the two jurisdictions (JT's charges being higher in Jersey than Sure's charges in Guernsey) was justified going forward. It believed that it was reasonable to assume that the overall level of retail prices across Jersey and Guernsey could be similar. Sure considers that JT prices in Jersey should, in fact, be lower than Sure's prices in Guernsey, as Jersey has a significantly greater number of exchange line customers, all of whom are served on one island. By comparison, the Bailiwick of Guernsey consists of 7 islands (Guernsey, Alderney, Sark, Herm, Jethou, Brecqhou and Lihou), linked via a variety of wireless networks. Separate on-island fixed networks also have to be maintained on Guernsey, Alderney, Sark and Herm. Unsurprisingly, the high cost to serve the

---

[1] www.cicra.gg/_files/Second%20RPC%20Initial%20Notice%20JT%20April%202016[111238].pdf

[2] For all but the most vulnerable of users and those who choose to purchase a battery back-up unit.

‘outer islands’ (beyond Guernsey) results in a disproportionate cost per subscriber, for which there is no equivalent detriment in Jersey. We therefore believe that both the JCRA and Frontier Economics should recognise that it is inappropriate to consider JT’s fixed line prices as being fair once they have been more closely aligned with those of Sure in Guernsey, as the cost to serve customers in Jersey should, by comparison, be lower.

Page 20: Whilst not directly relevant to the consideration of JT’s retail prices, we believe that it is unfair for the JCRA to claim that JT and Sure negotiated the wholesale price for line rental. This is certainly not Sure’s view of the process that was undertaken in arriving at the WLR charges for Jersey and Guernsey. We would draw your attention to the contents of CICRA’s letter of 29 December 2014, as it clearly shows the rates that CICRA had established for itself and urged the operators to accept (under the explicit threat of a formal price control setting process if we and JT did not agree to its proposals) . As a result, it is incorrect to state on page 20 of the IN that ‘the JCRA did not set the pricing for WLR’. In Sure’s view CICRA – which of course encompasses the GCRA and JCRA - was entirely responsible for setting the WLR rates in operation across the Channel Islands.

Pages 20 – 22: The JCRA highlights that both Sure and JT have amended retail fixed line charges over the past year and in doing so, have reduced JT’s price premium (compared to Sure’s prices) from 33% to around 13%. The JCRA has however failed to acknowledge the key reason for Sure’s change in its retail exchange line price.

As the key stakeholders to this review process are fully aware, Sure, with the full support of CICRA, undertook a tariff rebalancing exercise in May 2015 in preparation for the opening up of the fixed line market to competition in Guernsey in June 2015. This one-off ‘Day Zero’ rebalancing process resulted in a £2.00 reduction in the monthly price of Sure’s retail broadband services, but a corresponding £2.00 increase in Sure’s monthly fixed line rental charge. This process was undertaken for the specific purpose of eradicating the otherwise certain margin squeeze that would have occurred with regard to Sure’s fixed line rental charge. The JCRA has failed to recognise in its latest IN that Sure’s broadband services sit outside of its retail price control, whereas its line rental services very much form part of it. As a result, the reduction in the headline price difference between JT’s fixed line services in Jersey and Sure’s in Guernsey is entirely misrepresentative, as it takes no account of the offset loss of our broadband revenue. This is a serious omission on the part of the JCRA.

Considering that the JCRA’s latest calculated price difference between the two operators (13%) is the sole measure that the JCRA now intends to apply to JT for price control purposes we consider this to be a flawed approach. Not only does the JCRA not explain how it has arrived at a 13% price difference (it not having provided any updated comparison table to the one it had included in its first IN, for which Sure highlighted a material error, resulting in a correction from 13.9% to 18.4%), but it has focused on a limited time window that completely ignores JT’s significant long-term overcharging of Jersey consumers (compared to their Guernsey counterparts). The JCRA could hardly claim to have reached its conclusion based on any robust methodology, when so much of the underlying analysis over recent months has now been swept aside. The reality is that the JCRA’s current proposal for JT’s price control could have been created using nothing more than the standard annual market data already available to it, along with headline pricing information from Sure’s and JT’s websites. We therefore must question the costs that have been incurred by the JCRA in relation to the external consultancy used during this price control review, especially as they will be passed on through Jersey operators’ future licence fees.

We are also concerned at the apparent naivety shown by the JCRA in its proposed application of the 13% price reduction for JT's fixed line services over the next two years. Simply dividing 13% by two (as the JCRA seems to have done) is a flawed methodology, as it will not result in a 13% reduction, but rather 12.58%. The table below shows the incorrect calculation, along with the corrected view, which provides the closest reasonable value to 13%. We have expressed the opening position (i.e. the current value) as 100.00.

JT's price control	**Incorrect calculation**		**Corrected calculation**	
Opening position		100.00		100.00
End of Year 1	-6.5%	93.50	-6.72%	93.28
End of Year 2	-6.5%	87.42	-6.72%	87.01
Outcome (total reduction)		12.58		12.99

The JCRA must therefore impose a price control of RPI – 6.72% on JT in Years 1 & 2 to achieve its proposed 13% outcome. Notwithstanding our criticism of the process, we believe that JT should be more than satisfied with an RPI – 6.72% price cap, particularly given its significantly less onerous price controls (compared to Sure in Guernsey) during previous periods.

Annex 2: Monitoring & Enforcement

Page 28: We believe that the JCRA has made an error in relation to its proposals in the event of negative inflation. The JCRA has proposed the same methodology as adopted by the GCRA for use by Sure in Guernsey, which is that if the relevant RPI in a year is negative then Sure is not required to reduce its prices, but must take account of that the following year by offsetting against an increase in any positive RPI figure. In Guernsey the price control has been set on an RPI – 0% basis for each of the three years of the price control period, so only the RPI itself will affect Sure's prices. In Jersey, however, for the first two years, JT's prices will be impacted by changes in both the RPI value and by the 6.72% (corrected) 'X' value of the RPI–X% mechanism. As such, the negative inflation mechanism should only apply to the RPI element of JT's price control. Using the JCRA's example (page 29 of the IN) we believe that the corrected text should read:

'If the relevant RPI in a year were to be -2% followed by 4% the following year, with the X value set at -6.72%, the PCI would reduce to 91.28 (being 100 -2 -6.72) in the first year. JT would be required to reduce its API by 6.72% in that first year (being solely the X value), but it could also not raise its average prices by 4% the following year. The ceiling for any rise would be capped by the 88.56[3] index for any average price the following year, essentially requiring a reduction of 2.98%[4] for that subsequent year.'

Submitted on behalf of Sure (Jersey) Limited
26th May 2016

[3] 91.28 - (+4 - 6.72) = 88.56
[4] (91.28-88.56)/91.28 = 2.98%