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Non-confidential response by Sure (Jersey) Limited to CICRA consultation document 16/48: 2016 Consultation on the Review of Mobile Termination Rates in Jersey

Sure (Jersey) Limited ('Sure') is submitting this response in relation to CICRA's consultation document CICRA 16/48[1], issued by CICRA in November 2016 on mobile termination rates ('MTRs') for Jersey. We have provided a separate response to CICRA's consultation document 16/49, which refers to MTRs in Guernsey.

We are submitting this document as a non-confidential response, which we are happy for CICRA to publish on its website. We are also providing a separate confidential version for CICRA's consideration only. Certain items, marked with [✂] within this document, formed part of our confidential response provided to CICRA and have been removed from this publication version.

Please note that when referring to Jersey specific matters we have referred to the relevant regulatory body as the 'JCRA', but for issues affecting both Jersey and Guernsey we have referred to 'CICRA' (being the joint regulatory body covering telecommunications regulation across the Channel Islands).

<u>Introduction and General Comments:</u>

We provide answers to CICRA's specific questions below but before doing so we feel we must make some general comments regarding the background and history to this current consultation.

In particular, the JCRA's introduction to this consultation makes no reference to the pan-island consultation on MTRs issued by CICRA in May 2015[2], which reached an Initial Notice stage in Jersey (and a draft decision stage in Guernsey) but was then withdrawn in September 2015 due to procedural errors. We presume that the current two separate consultations for Jersey and Guernsey are meant to replace this 2015 pan-island consultation. We note, however, that CICRA's general position and proposals remain unchanged from those presented in the 2015 consultation, but that many of the issues that we raised in response to that 2015 consultation have still not been adequately addressed by CICRA in the current consultations. We therefore feel we have to raise some of these same issues again as they remain valid and cannot simply be ignored by CICRA.

In particular, within our response to the 2015 consultation, we questioned the basis on which CICRA felt it could apply ex ante regulation to the MTRs charged by Channel Islands operators where the call has originated outside the Channel Islands. We noted that the wholesale charges that we apply to UK (and other overseas-based) operators for calls terminating on our networks within the Channel Islands are set according to commercial negotiations. Furthermore, that we did not believe that CICRA has the legal remit to intervene in these commercially negotiated rates. We set out the reasons for this in our written response and also discussed it with CICRA at some length subsequently. These latter discussions were based primarily on the contents of a Microsoft Visio diagram, which Sure provided to CICRA on 3rd February 2016. We have re-provided the

[1] www.cicra.gg/_files/MTR%20Consultation%20Jersey.pdf

[2] CICRA consultation 15/22 Pan-Channel Island Consultation on Mobile Termination Rates, 8th May 2015.

diagram as Annex 1 within this document. For the avoidance of doubt Sure's view of CICRA's legal remit has not changed and as such we believe that CICRA is only authorised to regulate MTRs in relation to calls across on-island interconnection interfaces, as provided for within a licensed operator's Reference Interconnect Offer framework.

It is unsatisfactory that the JCRA has neither responded to these original arguments nor addressed them in this current consultation. All it says – at paragraph 4.23 – is that any call originated internationally (i.e., where the subscriber is not roaming in Jersey) and terminated on a Jersey mobile number is considered to be part of the relevant mobile call termination market. However, there is no justification for this and we have to ask the JCRA to clearly explain what legal authority it has to try to extend its remit in this way. Interconnection and access rights and obligations are only applicable to operators licensed in Jersey.

We are also unsure what CICRA believes it will achieve by trying to extend its remit to include the regulation of calls originated off-island. It seems that in the 2015 consultation, CICRA's attempt to include off-island calls in the market definition was driven by the mistaken belief that the MTRs charged in the Channel Islands were directly influencing the retail prices that UK mobile operators were charging UK retail customers for calling the Channel Islands. We provided information to CICRA to show that there was little, if any, evidence to support this view, and that, even if we did reduce our MTRs to UK mobile providers, CICRA has no legal authority over UK operators to force them to pass any reductions on to their customers. Neither could Ofcom force the UK operators to do so, given that it has not made any determinations of SMP with respect the retail mobile calls market. The likely outcome of CICRA's actions would therefore be that UK mobile operators would simply retain a higher margin.

As an associated consideration, we also invited CICRA to review the prices charged (and high margins earned) by UK operators for calls to fixed lines in the Channel Islands. Our evidence suggests that even though our fixed termination rates are generally comparable to those of UK operators, they have chosen not to charge their retail customers at standard UK rates, nor include such calls within their call bundles. We believe that this evidence reinforces our view as to the unrealistic expectation held by CICRA that, were our MTRs to be reduced to match those of UK mobile operators, then UK based operators (both mobile and fixed) would seek to standardise the pricing (and bundle inclusion) of calls to Channel Islands' mobiles.

If, as we believe, UK operators continue to choose to retain their high level of margin for calls to the Channel Islands then neither UK nor Channel Islands consumers would benefit from a reduction in the Channel Islands' MTRs, and in the case of Channel Island consumers, they would actually be harmed by CICRA's actions.

This harm arises from CICRA reducing the MTR revenues for Channel Island operators, which they will have to recover elsewhere. This is often referred to as the "waterbed" effect. Mobile retail markets in the Channel Islands are very competitive and there are no super-normal profits earned by any operator. As such, if operators face a reduction in revenue from UK-based operators due to CICRA regulatory intervention, then they will need to recover that revenue from other sources. The only other revenue source available to the mobile operators would be consumers in Jersey, who would find that the prices they faced for other mobile services – such as outgoing call rates – would have to rise to compensate for lost revenue from UK operators.

Such an outcome would seem to be completely counter to the duties of the JCRA (and the GCRA) with respect to protecting the interests of local consumers. We note that, under the Telecommunications (Jersey) Law 2002, the JCRA has a general duty to protect the interests of users within Jersey[3]. There is no reference to the JCRA having a duty to protect the interests of consumers outside Jersey. So the outcome of the JCRA's actions would not just be inconsistent with the duties it has under the relevant legal framework; it would be counter to those duties.

Sure does find it interesting that this current consultation no longer mentions the supposed impact on UK consumers, when this seemed to be a major driver behind the original attempts to align the Channel Islands' MTRs with those of the UK in the 2015 consultation. Whether it is explicitly mentioned or not, however, the detrimental impact of CICRA trying to force Channel Islands mobile operators to apply the same MTRs to on and off-island originated calls will be the same.

The JCRA has not stated what period of review it is considering for the application of any revised MTR(s) in Jersey. It has clearly drawn significantly from Ofcom's 'MTR Mobile call termination market review 2015-18 - Draft decision'[4], in which we note that a forward-looking period of three years was proposed. It is further worth noting that the EC Framework Directive requires regulatory authorities to conduct market reviews within three years from the adoption of the previous measure relating to that market, save for exceptional circumstances[5]. Sure notes that the market for mobile termination in Jersey (and indeed the retail mobile market) has not been reviewed since 2010. Considering the pace of change in the relevant markets as described in this document Sure believes that three years is the longest a decision from this market review should be valid. We request that the JCRA provides regulatory certainty by setting out the defined period covered by this market review and any resulting remedies. It is imperative that, in a market changing as rapidly as this one, a regular review is undertaken, otherwise the remedies could become counter-productive.

Below we respond to the 11 questions posed by CICRA within the current consultation document (16/48):

<u>Question 1</u> - Does the respondent agree with the JCRA's provisional views relating to the retail product market? If the respondent does not agree with the JCRA's provisional views the respondent should provide all of its analysis and assessment of this market.

Sure does not agree with the JCRA's provisional views that the relevant retail market is 'a voice call initiated by the calling party to the called party's mobile number for which a termination fee is applicable'. Firstly, the market definition should make it clear that the market covers only calls to number allocated to mobile operators in Jersey. Additionally, in the retail market termination fees do not play an active role and a retail customer would not know whether its mobile operator pays a termination fee to another mobile operator or not.

[3] As per section 7 (2) (a)

[4] www.ofcom.org.uk/__data/assets/pdf_file/0030/76944/mct_draft_statement.pdf

[5] Article 16.6 of Directive 2002/21/EC, as amended by Directive 2009/140/EC and Regulation 544/2009 (Common regulatory framework for electronic communications networks and services)

Assuming that the JCRA corrects its description of the market definition to overcome the points raised above, the JCRA has then defined a market for calls made by any caller across the world who makes a call to a Jersey mobile number, for which there is a retail charge.

This would represent an extraordinarily vague and broad market definition. As set out above, Sure questions the JCRA's (and CICRA's) jurisdiction to even attempt to regulate a market thus defined. Having searched the JCRA and CICRA duties and powers in relevant legislation, Sure has not been able to identify any section that requires or even allows an action at this scale and scope. Sure would welcome the JCRA's clarification of the underlying rationale for adopting this retail market definition, including the legal powers and duties that enable to JCRA to do so.

A significant methodological challenge with the definition of very large and broad markets is the need to demonstrate that the market is sufficiently homogenous to constitute a single market (e.g. that conditions of supply, demand and competition are sufficiently similar for it to qualify to as a single market). Sure notes that the JCRA has not included any such analysis in its justification for this market definition and would welcome the JCRA's views on this. Defining a market as broad as this would require that such analysis is undertaken and provided for comment.

With respect to demand-side substitution, Sure contends that the market is not sufficiently homogenous to qualify as a single market. That arises from the simple fact that for one group of consumers, calls to Jersey mobiles are 'domestic calls', typically included in calls bundles; whereas for the remainder of the consumers of this product, calls to a Jersey mobile is not a domestic call, but an international call. International calls are typically substantially more expensive than domestic calls. As a result of this, the use of alternative calling methods, such as Over The Top ("OTT") platforms, are used substantially more for international calls than for domestic calls. Sure therefore contends that the demand side characteristics of the very large and broad market defined by the JCRA is not sufficiently homogenous to justify including these in the same market. Whilst on the supply-side, the OTT platforms are also available for domestic calls to Jersey mobile numbers, the incentives to use OTT is much smaller due to the typically lower rates and that such calls typically are included in bundles offered by mobile operators.

Furthermore the fact that a termination fee may or may not be applicable is something at the retail level that customers are increasingly unaffected by. There is clear evidence that customers (both in Jersey and the UK) are choosing to adopt different calling methodologies (particularly using OTT alternatives) due to ease of use, additional functionality (including group and video calling) and cross-platform capabilities. The key, from a user's perspective, is that the functionality is available on a mobile device, although it should be noted that with these cross-platform capabilities it is now possible to make and receive calls via desktop computers and tablets and that whilst these can occur over a mobile network, greater functionality is provided when purely OTT technology is used.

CICRA seems keen to exclude any consideration that OTT services can provide an equivalent to standard voice call termination, but in doing so we believe that its view could now be considered blinkered, based on recent UK market evidence. CICRA referenced Ofcom's 2015 Mobile Call Termination Market Review[6] within its most recent MTR consultation and suggested that 'the use of OTT applications does not currently seem to be a close substitute for calls to mobile numbers'.

[6] www.ofcom.org.uk/__data/assets/pdf_file/0029/76385/mct_final_statement.pdf

However, more recently, in Ofcom's 2016 Communications Market Report[7], it recognised that one of the key market developments from 2015 was the substantial growth of OTT services such as Facebook Messenger and WhatsApp, both of which have embedded audio calling functionality. They have a reach of 64% and 47% respectively across the UK mobile population. Considering the speed of growth of the OTT market in the UK we believe that it would be a material omission, were CICRA minded to continue to ignore the impact (and benefits for consumers) that OTT services are increasingly having on the corresponding market of mobile call termination. Users clearly recognise that there are now multiple options when it comes to calling a mobile device, irrespective of whether or not they are influenced by a mobile termination rate – which may be directly (by not having to pay to originate an individual call to a mobile device) or indirectly (for example, by not using up bundled minutes when calling another mobile from a postpay mobile device).

Based on the analysis set out above, Sure objects to the definition of a single retail market for calls originated anywhere in the world and terminated on Jersey mobile numbers. Although the current consultation does not refer to call rates for UK customers to call Jersey mobile numbers, this has previously been highlighted as the main motivator behind the JCRA's proposal to include calls originated outside the Channel Islands in its regulation of MTRs. The UK can be considered as a 'special case' in respect of calls to the Channel Islands as the Jersey numbers are part of the overall UK numbering plans and some customers may not know that a call to the Channel Islands is different to any other call to a mobile number within the UK numbering scheme. In the 2015 consultation CICRA described the high retail prices charged by UK mobile operator for calls to the Channel Islands as the main motivator for regulatory intervention to reduce the termination charges applicable to such calls. Sure has already provided detailed arguments and factual evidence supporting the case that the retail pricing of UK MNOs is not directly linked to the termination rates charged by Channel Island MNOs.

Additionally, as regards calls from the UK, CICRA appears to have forgotten or chosen to ignore the fact that in most cases calls to Jersey registered mobiles are not included within the pay monthly call bundles offered by UK mobile operators. This serves to increase the likelihood of a higher usage of OTT services when UK mobile customers call a mobile in Jersey, compared to when they call a mobile on a UK network. This is in line with the situation in Jersey where Sure expects that the use of OTT is less for calls that are included in call bundles. We believe that CICRA needs to better understand this position, rather than rely on out of date UK based evidence, which takes no account of the general exclusion of calls to Jersey mobiles within UK customers' mobile bundles. This position is entirely different to that which exists within the Channel Islands, where all three mobile operators (Sure, JT and Airtel) provide free calls to local mobiles within their customers' call bundles, which means that they never had the same incentives to look to alternatives (including OTT services) for such calls. CICRA may believe that were MTRs for calls from the UK to be included in UK customers' mobile bundles then customers would not choose to consider OTT alternatives. We believe, however, that there is no evidence that those consumers, having now reaped the benefits that OTT services can offer, would be minded to consider going back to using standard mobile voice calls.

Further, Sure believes that it is inappropriate for CICRA to continue to base its judgement of the relevance of OTT alternatives (as a substitute for calls to mobile numbers) on a study completed by Ofcom in March 2015, particularly when one of the key principles for the consideration of the

[7] www.ofcom.org.uk/__data/assets/pdf_file/0024/26826/cmr_uk_2016.pdf

relevance of a retail market is to undertake the study from a forward-looking perspective. The date of Ofcom's study is pertinent, given that WhatsApp did not start providing voice calls on iPhones until April 2015. As more than [✂] of all new Sure mobile phones issued are iPhones the impact felt in Jersey is likely to be significantly greater than elsewhere, particularly when this high percentage share is compared with the latest reported UK market share of iPhone sales of 41%[8] and an EU5 share of only 18%[9]. Considering how many years it has been since the JCRA's last review of Jersey MTRs it is highly unlikely that it would seek to review the termination market again for at least three years, during which time, based on the exponential growth of OTT services, we believe that the evidence of their use as a substitute to mobile call termination for calls from off-island would be overwhelming. Sure simply cannot accept a position where the potential differences in the local market conditions (compared to the UK) continue to be ignored by the JCRA, particularly as the gap appears to be widening; skewed, in particular, by the undeniable popularity of iPhones amongst Jersey's mobile subscribers.

In answering this particular question we note that the JCRA requests that respondents who disagree with the JCRA's provisional views provide 'all of its analysis and assessment of this market'. Whilst Sure is always keen to assist in market reviews, we believe that the JCRA needs to allow operators reasonable time to provide that information, particularly as the JCRA has a duty to ensure that it reaches outcomes based on objectively justified methodologies. A key network tool for the analysis of OTT usage is a Deep Packet Inspection ('DPI') facility. [✂].

We consider that the increasing scope and scale of substitutes to calls terminating on a mobile network is changing the extent to which direct regulation should be applied. We maintain that it is not within the JCRA's remit to regulate calls originating off-island to local mobile networks, but regardless, local operator could no longer be deemed to hold significant market power ['SMP') in that market anyway, due to the prevalence of OTT substitutes. Sure therefore does not accept the JCRA's retail market definition.

Based on the above market characteristics Sure believes that there are at least two separate retail markets for mobile calls to Jersey mobile numbers, and that only one of these markets is within the jurisdiction of the JCRA:

Retail markets	**Key delivery method**	**In JCRA jurisdiction?**
A voice call initiated by a calling party **outside Jersey** to the called party's mobile number	1. OTT (VoIP) or 2. Switched by mobile network	No
A voice call initiated by a calling party **within Jersey** to the called party's mobile number	1. Switched by mobile network	Yes

<u>Question 2</u> - Does the respondent agree with the JCRA's provisional views that there is no common pricing constraint linking in the MTR set by each of the MNOs and therefore the relevant market is each MNO? If the respondent does not agree with the JCRA's provisional views the respondent should provide all of its analysis and assessment of this market.

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[8] www.statista.com/statistics/271195/apple-ios-market-share-in-the-united-kingdom-uk/

[9] https://9to5mac.com/2016/08/10/apple-ios-market-share-q2-2016-kantar/ (EU5: France, Germany, Italy, Spain, UK)

Before setting out our position we feel that we need to correct an inaccuracy on the JCRA's part.

In Section 4.13 of its consultation it states that the starting reference product is:

'Wholesale termination services provided by each mobile communication provider for the termination of voice calls to each Jersey mobile number allocated to the MNO by Ofcom for which that MNO is able to set the termination rate'.

This position may have been relevant prior to mobile number portability ('MNP'), but since that became available (in November 2008) it is incorrect to state that MNOs only terminate traffic using numbers allocated to them by Ofcom. However, we note that by Section 4.15 of the document the JCRA had further considered the definition, which it then stated as:

'.. termination of all calls made to all mobile numbers allocated to each MNO for which the MNO charges the MTR'.

This adds uncertainty to the definition as to whether the numbers are just those allocated by Ofcom or, in the context of MNP, those, as a result of the MNP process that have been assigned[10] to them from an OLO (Other Licensed Operator)[11], less those that they have themselves been required to assign to an OLO.

From a practical perspective this reinforces the differences that exist at the wholesale level between those calls that were initiated outside Jersey and those that were initiated within Jersey. [✂]

Based on the above, we believe that it would be more accurate for the JCRA to redefine the wholesale reference product as:

'… termination of all calls made to all mobile numbers currently allocated or assigned to each MNO for use on its network for which the MNO charges the MTR.'

Even if the definition used by the JCRA were corrected to address the consequences of MNP, Sure would disagree with the position set out by the JCRA in Section 4.1.3 (b) of its consultation. It states that there is no prospect of effective wholesale demand-side or supply-side substitution in the period of this review (although, as noted elsewhere within this document, the period of review is currently undefined). [✂]

In Section 4.14 of its consultation, the JCRA goes on to consider the constraints that may exist through billing systems not being able to charge different MTRs to different mobile numbers. The

[10] In this context 'assigned' signifies individual mobile numbers that have been transferred from one MNO to another as a result of customers choosing to migrate their particular number(s) to another local mobile provider. For clarity, we have used the word 'allocated' when referring to mobile numbers that have been provided to an operator through the wider number range management process that Ofcom provides.

[11] Defined within Sure (Jersey) Limited's Licence as 'any person who, other than the Licensee, for the time being, has the benefit of a Licence granted under the Telecommunications (Jersey) Law'. Thus an OLO is an operator that is licensed by the JCRA to provide at least one form of telecommunications service within Jersey.

JCRA has never asked Sure to verify this statement, but in fact we are able to charge different MTRs to different mobile numbers, although we have chosen not to at this stage.

Sure's pricing of off-island initiated calls has been applied since it launched its mobile network in 2006. Sure believes that this situation should very much continue, as we believe that it is not within the JCRA's remit to regulate such charges. As is clear, the JCRA does not (and cannot) regulate BT [12] nor Vodafone[13] in the UK (the primary parties with which Sure interconnects for off-island voice traffic) and so Sure continues to assert that at the wholesale level (to which this question directly relates) the MTRs applied between those operators (and any other non-Jersey-based operator) and Sure do not fall under the remit of the JCRA. This position should be no different for arrangements in place between OLOs and any of their off-island interconnect partners.

[✂]. The outcome of such a move would almost inevitably lead to Sure (and OLOs) needing to offset any material losses at the wholesale level (in relation to call termination) with increased charges for local retail customers. As highlighted in the 'Introduction and General Comments' section, were this to occur it would be counter to the duties that the JCRA has with respect to protecting the interests of local consumers.

With regards to calls originating in Jersey, Sure agrees with the JCRA's position that no common pricing constraint links the MTR set by each MNO in Jersey and, therefore, the relevant market should be termination of mobile calls on each MNO's network (taking into account the need to allow for numbers ported in and out between Jersey MNOs).

Based on all of the above considerations Sure believes that the JCRA needs to recognise two distinct wholesale markets:

Wholesale markets	**Regulated by JCRA (Sure's view)**	**Sure SMP?**
Termination of a call initiated by a calling party **outside Jersey** made to a mobile number currently allocated or assigned to an MNO for use on its network and for which the MNO charges the MTR	No	No, as supply side substitution is possible
Termination of a call initiated by a calling party **within Jersey** made to a mobile number currently allocated or assigned to an MNO for use on its network and for which the MNO charges the MTR	Yes	Yes

<u>Question 3</u> – Does the respondent agree with the JCRA's provisional views relating to the call types included within the proposed product definition? If the respondent does not agree with the JCRA's provisional views the respondent should provide all of its analysis and assessment of this market.

As stated in our responses to Questions 1 & 2, we do not agree with the JCRA's views in relation to its proposed assumptions and definition of the markets at either the retail or wholesale level.

[12] British Telecommunications plc
[13] Vodafone Limited

We understand that the JCRA's considerations in relation to Question 3 relate to the wholesale level only. Our response, which we set out in the form of a table, below, therefore focuses solely on wholesale MTRs. The format of the table matches that used by the JCRA in Table 1 (of its consultation) with an additional column added to set out Sure's position in relation to each call type:

Call type	**Consultation Proposal (JCRA)**	**Sure's position**
Voice calls	Terminated on a mobile number	Various types of OTT service (including WhatsApp and Facetime) make use of a subscriber's mobile number as the unique identifier within their database of users. It is therefore incorrect to infer that the use of a mobile number must be solely in relation to a standard mobile voice call. If one of the means of call delivery is purely VoIP based technology (as listed by the JCRA) then that would capture OTT based services. We do not believe that they are relevant to wholesale MTRs.
Off-net	YES	For the reasons set out elsewhere within this document Sure does not believe the JCRA's remit allows it to regulate off-net calls that are initiated outside Jersey, nor does Sure accept that it has SMP in the market for such calls. Sure however agrees that off-net calls originated in Jersey should form part of the market.
On-net	NO	Sure agrees with this view. MTRs are not relevant where there is no inter-operator interaction.
Ported In	NO	If a number is ported in then the mobile termination is provided by that gaining operator. It charges the operator that was allocated that particular mobile number by Ofcom at the standard regulated on-island MTR [✂]. If the call originates on-island then it is routed directly to the terminating MNO so the charge is entirely appropriate. This scenario should therefore be set as 'YES'. However, for a call that originates off-island (which, for the avoidance of doubt, Sure does not accept as being part of the relevant market) the UK originating or transit operator has no visibility of the Jersey MNP database, so the call can only be routed to the operator to which that number was allocated by Ofcom. That operator is then required to provide an on-island mobile transit (rather

Call type	Consultation Proposal (JCRA)	Sure's position
		than termination) service to route the call to the relevant on-island terminating MNO that has since been assigned that number. Regardless of the JCRA's current views, it should be noted that if it determines that the same MTR should apply for calls from off-island as for calls initiated on-island then, in the case of ported numbers, each operator required to provide an on-island mobile transit service would have to do so at no charge, as the MTR applied by the terminating MNO would be the same as that charged by the on-island mobile transit operator to the relevant UK operator. This would leave the on-island mobile transit operator with a routing requirement for which it would receive no revenue – thus leaving that operator unable to recover its efficiently incurred costs. This would be an entirely unjustifiable requirement and one that Sure would be unwilling to commit to and which the JCRA has no authority to mandate. Moreover, Sure remains adamant that calls initiated outside Jersey cannot be subject to a regulated MTR anyway as they do not form part of the relevant market and the JCRA has no jurisdiction to regulate those call in any case.
Ported Out	YES	Please refer to our comments above relating to 'Ported In'. Any operator required to provide an on-island mobile transit service must be able to recover the cost of doing so. Applying the same MTR for off/on-island initiated calls would not allow that to occur. To be clear, Sure would not provide a free on-island mobile transit service, which we note is also entirely different to a mobile termination service. We believe that the flag for this item must be set to 'NO'.
Calls to voicemail	YES	Sure agrees with this view. The voicemail service is provided by the terminating mobile network operator. This should however only include calls to voicemail which qualify under one of the above categories.
Voice calls to mobile numbers terminating on IP	YES	Sure agrees with this view, but only to the extent that the call should be treated as a termination on a mobile operator's network [✂]. This should however only include calls which qualify under one of the above categories.

Call type	Consultation Proposal (JCRA)	Sure's position
Call forwarding (including international)	YES	Sure agrees with this view as the incoming call is terminated on the mobile network, with it then creating an associated outbound call to facilitate the customer's requirement for forwarding. This should however only include calls which qualify under one of the above categories.
Calls to Jersey number roaming abroad	YES	Sure agrees with this view as the incoming call is terminated by the MNO, with it then creating an associated outbound call to reach the network on which the particular mobile subscriber is roaming. This should however only include calls which qualify under one of the above categories.
Calls to non-Jersey numbers roaming in Jersey	NO	Sure agrees with the view set out by the JCRA (Section 4.22 of its consultation).

Question 4 - Does the respondent agree with the JCRA's provisional views relating to the geographic market for the wholesale market? If the respondent does not agree with the JCRA's provisional views the respondent should provide all of its analysis and assessment of this market.

Sure notes that as the geographic market is that of Jersey, with the need for points of interconnection to be in Jersey (and the restriction within the Jersey licensing regime, that only a provider licensed to operate in Jersey has the right to interconnect in Jersey) this further supports the argument that the relevant market cannot include calls originating outside Jersey that are handed to Sure outside Jersey.

Separately, in paragraph 4.25 of the consultation document, the JCRA refers to an MNO's ability to determine the MTR in relation to its allocated Jersey mobile numbers. As set out in our responses to Questions 2 & 3, as a result of MNP, this is incorrect.

For the avoidance of doubt, Sure opposes the inclusion of calls originating outside Jersey in this market definition. The definition of the geographic market proposed by the JCRA seems to support Sure's positon. Whilst this appears to be inconsistent with the position set out by the JCRA in other parts of this consultation document, Sure very much welcomes the JCRA's recognition that its review can only address the terms and conditions for the termination of calls in Jersey of calls passed to an MNO at a point of interconnection in Jersey.

Question 5 - Does the respondent agree with the JCRA's provisional views relating to the proposed market definition? If the respondent does not agree with the JCRA's provisional views the respondent should provide all of its analysis and assessment of this market.

Based on our responses to the previous questions Sure cannot support the JCRA's proposed market definition, as we believe that it is materially incorrect.

In addition to the JCRA's inaccuracies that we have highlighted in our responses to the above questions, it is clear that the variables set out within the JCRA's 'Table 1' (as included within our response to Question 3) need to be allowed for when providing the overall definition of the market in relation to MTRs. We therefore do not believe that it is possible or appropriate to try to define the MTR market in one sentence and would instead propose that the definition is sought by the inclusion of a table to specifically set out the relevant call types that need to be included or excluded.

Finally, to further reinforce our position, we believe that the JCRA's remit does not allow it to regulate calls terminating on a mobile network within Jersey, where those calls are initiated outside Jersey. Nor do we believe that, if such a market were to exist, Sure would have SMP in that market. This needs to be taken into account in the definition of the regulated Jersey MTR market.

<u>Question 6</u> - Does the respondent agree with the JCRA's provisional views relating to the proposed relevant mobile call termination markets? If the respondent does not agree with the JCRA's provisional views the respondent should provide all of its analysis and assessment of this market.

As a result of the implementation of MNP in 2008 it is no longer appropriate (or possible) to associate an operator's Ofcom allocated number range(s) with relevant markets for MTR purposes. Where applicable to MNP those number ranges are only indicative of the operator that needs to provide an on-island mobile transit (rather than termination) service.

Sure therefore disagrees with the JCRA's provisional views relating to the proposed relevant mobile call termination markets.

<u>Question 7</u> - Does the respondent agree with the JCRA's provisional views relating to the barriers to entry and countervailing buyer power? If the respondent does not agree with the JCRA's provisional views the respondent should provide all of its analysis and assessment.

Whilst Sure agrees that there are substantial barriers to entry in the market for termination of conventional voice calls on mobile networks, it is critical that the JCRA understands that the increased use of OTT platforms on mobile devices is increasingly offering a viable (and often very attractive) alternative. The added functionality of OTT services together with no or very low usage charges (over and above the data charges to the MNO) is likely to increase the level of substitution between conventional mobile voice calls and those made using OTT platforms. Barriers to entry should therefore not only be viewed as barriers to doing exactly the same as the existing provider does – different technologies and business models can also constitute substitutes and if these do not have substantial barrier to entry, then neither does the market in which they deliver services. Whilst the substitution to OTT would be at the retail market, this naturally has an impact on the level of market power that can be ascribed to the MNO at the wholesale level.

With regards to countervailing buyer power, Sure is confident that mobile operators outside Jersey could exert counter-vailing buyer power in the wholesale market for termination of mobile calls (originating outside Jersey) in Jersey. This is an additional reason why Sure firmly believes that such calls cannot and should not form part of the relevant market.

In relation to how the JCRA perceives the dynamics of the Channel Island mobile termination markets, it is unhelpful that these are referred to as 'monopolies' when there is clear evidence of substitution to the use of OTT platforms. This type of language indicates that the JCRA does not understand how markets are developing, nor the speed with which that is happening.

Question 8 - Does the respondent agree with the JCRA's provisional views that ex-post competition law would be insufficient to address the lack of effective competition in the markets defined and prevent the problems identified in this consultation? If the respondent does not agree with the JCRA's provisional views the respondent should provide all of its analysis and assessment.

With the significant caveat that Sure firmly opposes the JCRA's proposal to include calls originating outside Jersey within the scope of the market, Sure agrees that the nature of competition in the call termination market is one which lends itself more naturally to the application of *ex-ante* remedies, where SMP has been found after an open and thorough market analysis.

Question 9 - Does the respondent agree with the JCRA's provisional views on ex-ante remedies? If the respondent does not agree with the JCRA's provisional view the respondent should provide all of its analysis and assessment.

With the significant caveat that Sure firmly opposes the JCRA's proposal to include calls originating outside Jersey within the scope of the market, Sure agrees that the *ex-ante* remedies set out by the JCRA are appropriate for the market for mobile call termination in Jersey for calls originates within Jersey.

Question 10 - Does the respondent agree with the JCRA's provisional findings on the justification for a BU-LRIC approach to the setting of the MTR? If the respondent does not agree with the JCRA's provisional findings the respondent should provide all of its analysis and assessment.

Sure supports the application of consistent MTRs across the Channel Islands, even though mobile networks in Guernsey are materially smaller in market size and network footprint than their Jersey counterparts (being that, inherently, an even greater level of inefficiency must apply there, by comparison).

Based on its response to the corresponding question posed by the GCRA in Guernsey, Sure believes that it should therefore be given the opportunity to develop a Mobile Network Reference Offer in Guernsey (along with the establishment of a cost-justified MTR), before further consideration is undertaken by CICRA in relation to the setting of future MTRs on a pan-islands basis. Irrespective of island, Sure remains adamant that a BU-LRIC model would be entirely inappropriate for use in a small-island jurisdiction.

<u>Question 11 -</u> Does the respondent agree with the JCRA's provisional view that the Ofcom MTR model is a suitable proxy to be used as a BU-LRIC MTR model to be applied to the Jersey market? If the respondent does not agree with the JCRA's finding the respondent should provide all of its analysis and assessment.

Even if we were, in any way, to support the JCRA's view that a bottom-up LRIC ('BU-LRIC') model approach, based on Ofcom's MTR model, is the best means of setting Jersey's future MTRs, we believe that there are so many issues in relation to the adjustments that would be required to recognise the specific characteristics for mobile termination in Jersey (or other small-island jurisdictions) that it would materially call into question the relevance of the underlying LRIC model – particular one that has been defined for use across the UK (the third biggest country, by population, within the EU).

The JCRA, through its consultant, has indicated that the Ofcom model is 'very big and complex with over 2.5 million cells'[14]. Sure would question how straightforward it would be to appropriately scale this down to Jersey. There are numerous differences between UK & Jersey mobile operators, which appear to have been glossed over when comparing the JCRA's LRIC presentation and the more in depth Analysys Mason report[15].

A number of factors would need to be fully considered by the JCRA, such as issues around scalability, network design and network sharing. The design of local mobile networks is vastly different to that of the UK. Coupled with this is the fact that a significant amount of network sharing is undertaken in the UK whereas in Jersey is limited to a few sites where masts are shared. Sure and other local operators have no option but to buy mobile core network equipment that is designed to serve hundreds of thousands of customers. There is no "small operator equivalent" and this a fundamental point that has not been considered.

For that and many other reasons Sure cannot agree that the Ofcom model, or any LRIC model, would be suitable for the setting of MTRs in Jersey.

Submitted on behalf of Sure (Jersey) Limited

[14] Slide 6 of Brockley Consulting presentation

[15] https://www.ofcom.org.uk/__data/assets/pdf_file/0024/80817/annex_8_analysysmason_report.pdf

ANNEX 1 (CONFIDENTIAL) **– Used primarily in relation to the Guernsey MTR market, but diagram serves as background for Jersey related considerations.**

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