



Response to Draft Decision: Backhaul Services for Wireless Service Providers

Sure (Guernsey) Limited and Sure (Jersey) Limited (collectively referred to as “Sure”) are submitting this response to CICRA document 19/26, Draft Decision: Backhaul Services for Wireless Service Providers (“Draft Decision”), which was published on the 29th May 2019.

This is the **non-confidential** version of our response, which we are happy for CICRA to share with other parties and publish on its website.

We provide our comments below on the proposed directions as set out in Section 7 of the Draft Decision. We do so having reviewed CICRA’s analysis of the comments submitted to the Call for Information that was issued by CICRA in October 2018. We note, however, that the response submitted by JT consists solely of a brief letter previously submitted to CICRA in September 2018, whilst all of Airtel’s response has been submitted on a ‘confidential to CICRA only’ basis, such that we have to rely on CICRA’s summary of Airtel’s views in this Draft Decision. Even then, much of what seems to be relevant information is redacted.

This lack of visibility of other operators’ views and comments - and especially those of Airtel - is very significant especially when it seems that CICRA is basing its proposed directions entirely on Airtel’s views. Furthermore, the proposed directions include a requirement for Sure in Guernsey (and JT in Jersey) to introduce backhaul based on dark fibre solutions. There was no mention of dark fibre solutions in the Call for Information, which means we have not previously been given the opportunity to provide any information on the economic or technical feasibility of such a solution. [X.]

In terms of the regulatory framework for its proposed direction to Sure in Guernsey, CICRA has quoted Condition 32.1(b) and Condition 34 of Sure’s Licence, both of which allow the GCRA to give certain directions to Sure. As we will explain in more detail below, we do not believe that the GCRA has provided sufficient evidence in this Draft Decision to justify regulatory intervention using either of these Licence Conditions. To the contrary, we provide evidence that shows that we have engaged constructively with Airtel - and other licensed operators (OLOs) – with respect to any requests they may have had for Network Access, including backhaul.

We are particularly concerned that CICRA’s proposed direction to Sure (and indeed to JT in Jersey) is for the provision of products that have yet to be defined from a technical perspective – or even specifically discussed between Sure and OLOs (given that they have not been the subject of any reasonable requests received by Sure). CICRA is also proposing that those operators with SMP provide those products in what we consider to be completely unrealistic timeframes.

There are, therefore, huge gaps in the appropriate regulatory process, with CICRA currently looking to achieve an outcome that is anything but evidence based. Sure does not believe that such an outcome would stand up to scrutiny, should any procedural review become necessary in relation to this topic.

In fact, we have to contrast the apparent haste with which CICRA is proceeding with these proposed directions with its delay in becoming actively involved in the (re)introduction of the 50Mbps and 100Mbps broadband services by JT in Jersey, along with the introduction of bitstream in Jersey. We are still waiting for the outcome of that regulatory process even though we have demonstrated to both JT and CICRA that we have made reasonable requests and there is a proven customer demand for those services.

CICRA's concerns about current backhaul services

We note from Section 3 of this Draft Decision that CICRA has identified the following three concerns with respect to current backhaul products and services, namely whether they:

1. meet the requirements of the relevant government policies, especially with regards to the introduction of 5G networks;
2. meet the speed and capacity requirements of mobile network operators as higher data speeds are introduced in the 4G standards and future 5G networks; and
3. allow all mobile network operators the opportunity to compete equally efficiently and effectively in the Channel Islands' marketplace.

We address each of these concerns in turn below and, in doing so, demonstrate that CICRA has not provided the necessary evidence to substantiate and justify its provisional view that fixed network operators should consider the development of specific services to better meet the needs of all wireless network operators licensed in the Channel Islands.

Notwithstanding that we do not believe that CICRA has justified the need for regulatory intervention, we would also note at this stage that the lack of a requirement for a statutory process in Guernsey would undermine CICRA's stated aim of adopting a pan-Channel Island approach to this matter. This could lead to even more regulatory imbalance between Guernsey and Jersey, were CICRA minded not to allow a period for further consultation in both jurisdictions. This is especially important, given that CICRA is currently intent on directing Sure to introduce dark fibre backhaul services in Guernsey without any specific consultation on the matter.

1. Do current backhaul product and services meet the requirements of the relevant government policies, especially with regards to the introduction of 5G networks?

CICRA has cited the States of Jersey telecoms policy issued in January 2018 and the States of Guernsey telecoms policy issued in June 2018. Sure recognises that both policies make some references to backhaul: the Jersey policy in particular refers to fair, reasonable and non-discriminatory (FRAND) access to fibre backhaul, whilst the reference to backhaul in the States of Guernsey is more high level. The fundamental point, however, is that the overall policy for 5G in both Bailiwicks is still very much under discussion. Indeed, CICRA's consultation on its draft Statement of Intent¹ ("the 5G consultation") was only closed for responses in the middle of June 2019 and no-one has seen the outcome of that consultation as yet. Crucially, the States of Guernsey has said that responses to the 5G consultation will inform its final policy position on 5G, which will then be debated in September 2019. It is, therefore, extremely premature for CICRA to be issuing Draft Directions on backhaul for 5G services when the respective final policy positions for 5G - let alone the precise technical (including backhaul) and commercial requirements - have yet to be determined and agreed.

How can a specific backhaul solution suitable for 5G services be produced when there are significant questions that have yet to be answered and agreed? Such questions include whether 5G services will be provided through a single wholesale network - either per Bailiwick or pan-Channel Islands - that is then made available to MVNOs, or via three (or potentially more) competing networks. It is not reasonable for CICRA to expect either Sure in Guernsey or JT in Jersey to expend resources - whether

¹ 5G Spectrum: Draft Statement of Intent, CICRA, 3rd May 2019.

technical, commercial or financial - to develop backhaul solutions when the nature of what is likely to be required is not yet even known.

Putting 5G aside – as we believe we must, given the current status of the debate – the question then becomes whether Sure in Guernsey and JT in Jersey are providing backhaul services that meet the other relevant government policy objectives especially in terms of supporting competition. We have seen no evidence presented by CICRA in this Draft Decision to support the view that the current backhaul solutions are not able to support sustainable and effective competition. As we discuss further below, Sure has actively engaged with OLOs to understand their requirements, having undertaken our own consultation on wholesale leased lines in October 2018 [§].

2. Do current backhaul products and services meet the speed and capacity requirements of MNOs as higher data speeds are introduced in the 4G standards and future 5G networks?

As noted above, we do not believe that it is appropriate to be addressing 5G requirements within this current consultation, so we do not discuss this any further in any detail.

Sure believes that all Channel Islands MNOs' mobile backhaul requirements are currently well served by the existing wholesale leased lines portfolios available in the Channel Islands. To demonstrate this, we respond to some of the specific points raised by CICRA below:

- *Is fibre a necessity?*

CICRA repeatedly refers to what it sees as the necessity for mobile backhaul to be provided using fibre (rather than wireless solutions), which we assume is due to it taking Airtel's claims at face value. Even if Airtel's erroneous claims had been factually correct, CICRA appears to have missed the point, when claiming that JT and Sure have a material commercial advantage. For example, Sure is in a not dissimilar position to Airtel in Jersey in relation to its island-wide transmission needs for mobile backhaul. Yes, Sure has a small fibre ring around St. Helier, but the vast majority of the island's mobile radio sites are outside of this area. We, therefore, have the commercial choice of being heavily reliant on JT (the island's incumbent fixed network operator) or creating our own wireless backhaul alternative. According to CICRA, Airtel claims that in relation to 5G, wireless backhaul is not a suitable alternative (see, for example, Section 5.51), however, Sure does not share that view and neither does our wireless backhaul equipment provider [§]. It provides high-speed point-to-point wireless solutions that encompass even the likes of millimetre-wave links and all of it is achieved by scoping it to the requirements of the particular network operator and without any reliance on fibre-based services. Sure makes extensive use of [§] mobile backhaul equipment, even in the Isle of Man, where distances between mast sites can be considerably greater than those in the Channel Islands. It would appear that Airtel's apparent insistence that fibre based backhaul is the only feasible solution is somewhat naïve, particularly as wireless backhaul can provide a cost-effective solution and is under the full control of the mobile operator, not a third party (as would be the case were Airtel to rely on fibre based mobile backhaul).

- *Airtel's current Guernsey mobile backhaul requirements*

CICRA states that Sure is the sole provider of wired mobile backhaul for Airtel in Guernsey. We had not previously been aware of this but that being the case, we therefore have full visibility of the services that Airtel is currently buying for its backhaul requirements. This not only shows how few

circuits Airtel is using (and therefore how much of its backhaul is already provided by wireless backhaul), but also how little its annual fixed network backhaul cost is. The following table sets out details of the current services being rented by Airtel from Sure[~~§~~]

As can be seen or easily deduced:

- Airtel has not purchased any new leased lines since [~~§~~].
- The next most recent circuits were installed in [~~§~~]. These were [~~§~~] 500Mbps capacity circuits, which Sure added to its wholesale leased line portfolio after a formal request for that specific speed from Airtel. This not only proves that Sure is entirely amenable to the development of new leased line capacities, following a reasonable request from an OLO, but also that Airtel must have believed that 500Mbps was the correct capacity for its needs.
- Around [~~§~~], Airtel, again, approached Sure [~~§~~] seeking a 250Mbps service. However, within a two-week timeframe, Airtel withdrew its request. We would, therefore, be extremely interested to see the evidence, as claimed to have been provided by Airtel to CICRA that Airtel ‘has not received satisfactory responses to its requests’².
- In paragraph 5.48 of the Draft Decision, CICRA refers to Airtel’s traffic volumes, however the values have been redacted so they serve no meaningful purpose to stakeholders. Regardless, from the table above [redacted], it can readily be seen that in most cases Airtel is currently renting circuits from Sure at capacities some [~~§~~] smaller than those already available in Sure’s wholesale leased lines portfolio (up to 10Gbps). If Airtel’s issue is, therefore, more about the granularity of the capacities available then why would it request the development of a 500Mbps capacity option and then only rent [~~§~~] of them and request a 250Mbps capacity and then quickly withdraw its request? We are amenable to considering any request for a particular capacity, but as a minimum gate for consideration it must make commercial sense to at least one of the parties, rather than neither, as currently appears to be the case.
- The total annual rental cost charged by Sure to Airtel is only [~~§~~] – immaterial in relation to Airtel’s annual revenue (already known to CICRA) and its other operating expenses. As a result, we find it surprising that Airtel should consider that Sure’s charges are materially limiting its ability to provide its mobile broadband services (as is suggested by CICRA).

Based on the above, whilst we do not wish to appear blunt, we would suggest that Airtel needs to invest some time in a full internal review of its current and short-to-medium term mobile backhaul requirements (both wired and wireless) and then approach the relevant incumbent operator of each jurisdiction with a request for any wired circuits of the capacities that it believes will fulfil those needs. It may be helpful, for sense-checking purposes, for us to mention here that even wireless backhaul speeds of around 5Gbps [~~§~~] can be achieved through equipment purchase of as little as circa [~~§~~].

In paragraph 5.7, CICRA states that it does “not intend to second guess the Airtel requirement for leased line services”. That is all well and good but neither can, nor should, Sure. We do believe, however, that it would have been prudent for CICRA to establish and understand more about the details of Airtel’s mobile backhaul requirements, so as to be able to gauge the validity of Airtel’s

² Section 5.34 of CICRA’s Draft Decision.

current request, which appears to have led to a disproportionately high level of regulatory interest (and proposed direction) before the relevant facts have even been established.

[REDACTED]

- *Sure's Questionnaire to OLOs*

As noted above, Sure issued a questionnaire to Guernsey OLOs in October 2018 entitled "*Call for Inputs – Sure Request to OLOs on Wholesale Leased Line Products*". The intention of the questionnaire being "...to solicit feedback from our wholesale customers about Sure's current wholesale services, along with any views and preferences relating to potential replacement/additional services." The benefit to Sure of responses to that document was that we could understand more about ant upcoming needs of OLOs and therefore plan from a network scoping perspective how best to ready ourselves for such requirements. [REDACTED.]

3. Do current backhaul products and services allow all mobile network operators the opportunity to compete equally efficiently and effectively in Channel Islands' market place?

Sure is concerned that CICRA seems to hold the underlying belief that mobile-only operators are disadvantaged through their lack of ownership of a fixed network. This suggests that CICRA believes that there is some form of discriminatory behaviour being practised by the incumbent fixed operators such that they are favouring their own mobile businesses at the expense of other mobile competitors. We would like to see the evidence that CICRA has to support this view as, certainly in the case of Sure, the prices we provide to OLOs are non-discriminatory, being the same prices we use when costing our own retail services. There is, therefore, no wholesale pricing disadvantage to operators that do not have their own fixed network and so if some mobile network operators are claiming that they cannot compete on an equally efficient basis we believe that the reason is nothing to do with the terms on which wholesale products, including backhaul, are made available to them.

We would also note that the comparisons with UK pricing are not particularly helpful or relevant, given the different costs that apply in the Channel Islands compared to the UK. Some of these differences are due to economies of scale, whilst others may be due to different topographies, less contractor competition in the Channel Islands, or even Government policy, such as that mandated in IRIS Policy 2014 relating to roadworks including costs and moratoriums. Certainly, the costs shown within the table sourced from Ofcom (see paragraph 5.53) bear no relation to what is achievable in Guernsey, where the costs per 100 metre of road for trenching, ducting and fibre cable are more than [REDACTED] the UK figures shown. We would be happy to share the (confidential) evidence to CICRA to support this.

Indeed, we note that CICRA does seem to acknowledge in paragraph 5.56 that UK based pricing may be a useful indicator but cannot be considered as evidence as to the costs incurred in the Channel Islands. However, it then contradicts itself by stating in paragraphs 6.27 and 6.29 that prices should be in line with pricing that is currently available in the UK. We cannot see how CICRA can make this statement without any evidence to back it up. Instead, it seems to be putting the onus on the operators to provide a transparent cost justification, even though it is aware that the extent to which the operators will be able to do this will be limited now that there is no longer a regulatory requirement to produce annual separated accounts. [REDACTED.]

We also note CICRA's view that products should be available in both islands at the same price and technical capability but, again, CICRA has not presented any justification or evidence to support this view. It should be aware that there are both technical and cost differences between the two Bailiwicks,

with JT in Jersey benefitting from greater economies of scale in terms of the number of leased lines and fibre provided.³

There are other statements within section 6 of the Draft Decision where Sure is concerned to see that CICRA is making assumptions without any evidence to back them up. We do not see, for example, how CICRA can state with such confidence in paragraph 6.20 that its Draft Decision will not result in the cannibalisation of existing products or revenues but, instead, will result in advantages for all operators, including additional revenues for the service supplier. We would certainly welcome any such additional revenue but [redacted].

We would add that there is also a risk of revenue loss should an OLO take a “mobile only” backhaul service and then use it for other purposes. How does CICRA envisage it could prevent this from happening and what action would it take if it discovered that OLOs were using the service for other purposes? We discuss our concerns below.

Sure is also concerned to see that in paragraph 6.3, CICRA suggests that States of Guernsey policy requires backhaul to be provided at regulated cost. But this is in the context of 5G and interconnection costs for 5G sites where they and backhaul transmission are shared. CICRA has, therefore, taken this sentence out of context to suit its current, unsubstantiated argument on existing mobile backhaul (i.e. prior to any 5G requirements having been established).

Sure always supports and promotes fair competition, but the outcome on which this level playing field can be reached must be based on a robust regulatory framework – one that, without doubt, must be evidence based. CICRA has shown, through its numerous unsubstantiated claims within its Draft Decision, that it has yet to gather the key evidence required, so it is far from reaching a position where it could robustly progress to a Final Decision on this matter.

Given the above considerations of the three concerns identified by CICRA in Section 3 of the Draft Decision, we now turn to the fundamental question that has to be asked of this Draft Decision, namely:

Is CICRA’s provisional view that fixed network operators should consider the development of services to better meet the specific requirements of all wireless network operators licensed in the Channel Islands justified by the available evidence?

Sure believes that CICRA has failed to provide any compelling evidence that demonstrates that there is a market failure such that regulatory intervention of this nature is required. This is with respect to both the proposed direction for a backhaul solution and that for backhaul utilising Dark Fibre.

It seems that CICRA is seeking to resolve a perceived issue for a distinct and minor (by quantity) subset of the wholesale leased lines market and to do so in isolation of any appropriate market review. CICRA is already aware of Sure’s view that, for the benefit of that market, a full review is now overdue – the last such review having been undertaken in 2014 - and our view has been reinforced as a direct result of [redacted]. We will discuss this matter separately with CICRA, but it certainly brings into question whether Sure’s designation of Significant Market Power is still appropriate across the entire extent of the Bailiwick of Guernsey. That being the case, this could impact any intended CICRA requirement for dark fibre to be mandated. As set out below, we have concerns as to the potential ability for an operator [redacted] to misuse a dark fibre service and we believe that this aspect needs full consideration

³ As per Section 7 of www.cicra.gg/media/597846/t1352gj-cicra-telecommunications-statistics-and-market-report-2017.pdf, total leased lines in Jersey were 1,107 versus only 642 in Guernsey.

by CICRA before it makes any decision as to whether or not to mandate a requirement for Sure to provide dark fibre across the Bailiwick of Guernsey.

Potential unintended consequences for upcoming Sure services

CICRA also needs to be aware that if we remove Sure's active equipment from a wholesale leased line to create a dark fibre solution, then this would have implications for individual service integrity. Any faults or degradation of service could only be investigated through invasive means, with temporary service disconnection required in all cases to enable Sure to use its own equipment, so as to be able to test the fibre itself. This is not the case for all existing wholesale leased lines where Sure can add diagnostic equipment and undertake testing without disconnecting active equipment. Nor could we provide multiple services (both wholesale and retail) using the same fibre, which could be materially harmful to any future [redacted]. Worse, CICRA's current plans for operators with SMP to be required to provide dark fibre may result in an outcome which appears anti-competitive. [redacted.]

This means that if CICRA proceeds with its proposal to direct Sure to introduce dark fibre - despite the absence of any evidence to justify doing so - this could have negative consequences, not just for existing wholesale leased line services but also in relation to the commercial viability of future wholesale [redacted] services. This is troublesome. Sure needs to base its commercial decisions on stable and transparent regulatory frameworks, knowing that any further regulatory requirements are only introduced when there is clear and compelling evidence presented by CICRA to justify them. That is certainly not the case here.

Should CICRA proceed with its Draft Decision, the resulting market uncertainty would certainly result in us having to consider the commercial risk of any future [redacted] services. We would note that the architecture of these services is intended to offer a significantly different solution to that currently available to Guernsey OLOs and their retail customers. [redacted.]

However, if Sure is forced by unsubstantiated regulatory intervention to introduce dark fibre for Bailiwick-wide mobile backhaul purposes (for any relevant OLO, [redacted]), then this would mean less fibres remaining for multiple usage purposes, including as part of a future [redacted] architecture. CICRA appears to not be aware of nor to have appropriately considered the risks that would be brought about through any imposition of dark fibre, but this further suggests that CICRA is seeking to intervene without having analysed the market first. In doing so, it is unaware of the potential materiality that such an intervention could have, to the detriment of [redacted] wholesale and retail customers within the Bailiwick.

Further, it appears that CICRA has not yet given due consideration for any potential abuse of dark fibre. [redacted.] CICRA has not suggested how it would be able to monitor and enforce that such fibre can only be used for wireless, which is a major flaw with its proposals.

Sure's overall conclusion: CICRA has failed to provide evidence of market failure to justify regulatory intervention and so should not proceed with the Draft Decision.

We must dispute CICRA's position that there is regulatory evidence of a failure on Sure's part to engage on any formal request from Airtel (or any other OLO). [redacted.]

In summary, CICRA has not proven the case for regulatory intervention at all. To the contrary, we consider that we have actively engaged with Airtel and indeed we believe that we have evidence that proves this.

On the basis of the above, we believe that CICRA is – perhaps unwittingly – proposing to act without evidence, in seeking to enforce a regulatory solution for which no market failure has been identified or even discussed.

We must emphasise that Sure is always keen to listen to its wholesale customers and we, therefore, remain eager to engage with OLOs, CICRA and the market to establish the best and fairest outcomes to any issues that may arise. But such outcomes must be based on fact and not hearsay. To help achieve the most meaningful outcome in relation to backhaul services we therefore suggest that:

- [X]

Submitted by Sure (Guernsey) Limited and Sure (Jersey) Limited