



Sure's comments on T1453J Non-Statutory Draft Decision – 50 and 100Mbps Broadband Access.

Sure (Jersey) Limited (“Sure”) welcomes CICRA’s Draft Decision on the re-introduction of 50Mbps and 100Mbps wholesale broadband products to the Jersey market, which was published on the 29th May 2019 as CICRA Document 19/25. We firmly believe that this Draft Decision is necessary in order to support differentiated competition in the Jersey market – in line with the States of Jersey Policy – as well as enhance consumer protection.

In summary, we stand by our responses to the Call for Information and are broadly satisfied with CICRA’s summary and interpretation of that response as included within this Draft Decision. There are a few sections of the Draft Decision that Sure would like to comment on, as set out below, before we comment on the Draft Decision itself. These mainly relate to the responses submitted to CICRA by JT to the questions posed in the Call for Information, so for ease of reference, we have included the original relevant questions below.

In terms of the proposed Draft Decision Notice, we have suggested below that CICRA makes three slight amendments, the most important of which is to ensure that CICRA takes a more active role with respect to any future proposed withdrawals of products by JT, so that JT cannot again choose to withdraw products from the market without taking proper account of the demand for those products.

Question 1: Does the respondent agree that the States of Jersey Policy is clear in its statement requiring “that wholesale access seekers get access to wholesale products, which allow access seekers to compete based on differentiated retail services”? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority’s considerations and next steps.

Sure agrees with CICRA that the States of Jersey Policy is clear in its statement requiring “that wholesale access seekers get access to wholesale products, which allow access seekers to compete based on differentiated retail services.” Sure also agrees with CICRA that service differentiation is essential to effective competition.

In paragraph 5.22, CICRA notes that JT’s response asserts that the definition of retail differentiation within the States of Jersey’s policy is open to interpretation, arguing that it should be based on a number of features additional to the core broadband service. Sure does not disagree with JT that there are a number of aspects on which a provider can differentiate its services, and would highlight that Sure does invest in this space, with a wide range of additional hardware and technical support available to customers (for example, the recent launch of Tech Team in Jersey). We have previously invested heavily in a hybrid FreeView/IPTV service, however, with FreeView, FreeSat and Sky already heavily embedded in the market, and the rapid growth of global behemoths Amazon and Netflix, there is no longer a space that a small telecoms operator can viably compete in. Therefore, Sure has now withdrawn its TV service from the market.

We would therefore refute the suggestion by JT, as reported in paragraph 5.24, that Sure and CICRA are fixated on speed as the only differentiating factor. For example, we would draw attention to our high-profile campaign focused on happiest customers, using CICRA’s own independent customer

satisfaction survey as substantiation. Speed is barely mentioned in our broadband advertising – much greater emphasis is placed upon Sure’s offering of unlimited packages combined with great customer service.

The fact that there are other aspects of the service available for differentiation does not diminish the importance of being able to differentiate on speed, nor the importance of having a service portfolio that is tailored to meet customers’ needs, rather than a one size fits all approach that suits the provider and not the customer.

In our response to the Call for Information, we did highlight that speeds in excess of 50Mbps or 100Mbps are far greater than the vast majority of customers’ requirements, which means that the vast majority of customers are not obtaining “overall package value for money” from JT’s packages as it claims. Rather, it seems that almost all of Jersey broadband customers are paying for much greater broadband speeds than they are actually using; based on JT’s report to Sure earlier this year, less than 1% of Jersey broadband customers are using even a tenth of the bandwidth that is available with a 1Gbps service.

As such, if any operator is fixated on speed it is JT, with its focus on taking all customers to 1Gbps - whether or not they want or need that speed - and if experience of JT’s uplift from 100Mbps to 250Mbps in 2018 is any indicator, likely following up each speed increase with a subsequent increase in wholesale price for these services. We hope, however, that CICRA is now wise to the cynical tactics of JT such that they will not be allowed to repeat this strategy and CICRA can continue to protect Jersey’s competitive landscape and consumers.

JT’s opinion, as reported in paragraph 5.26, seems to be that customers **must** benefit from higher speeds, regardless of whether they want to. Sure believes that a competitive market (or one that is effectively regulated to achieve as close as possible to a competitive outcome) should allow customers to be able to **choose** whether they want higher speeds or whether they would prefer to take slower speeds at lower prices. The ability for customers to exercise such a choice is, Sure believes, one of the fundamental underlying principles of differentiated retail competition.

In that respect, we note that throughout Europe, the availability of a range of different speed broadband services is the norm rather than the exception, including within countries where ultrafast broadband speeds are widely available. We would refer CICRA to the recently published EC Report “Connectivity Broadband market developments in the EU”.¹ This Report clearly shows that a range of broadband speeds are available - including from 12Mbps - 30Mbps and 30Mbps - 100Mbps - in all the countries considered. Even in those countries that are identified as the leaders in terms of access to ultrafast broadband services - namely Malta, the Netherlands and Belgium – customers are still able to choose to have lower broadband speeds should they wish. Similarly, in Latvia, Spain and Sweden, where over 70% of homes subscribe to FTTP services, customers also have access to lower speed services.

We therefore agree with CICRA that the consumer market in Jersey is not creating demand for high speed services (and we also observe that in Guernsey in terms of the relatively low take-up of our VDSL service) and that is why, as CICRA correctly says, Sure has requested lower speed wholesale broadband services. Sure very much wants to provide retail services that customers actually want so we are very pleased to see that CICRA seems to be in agreement that JT’s removal of lower broadband speeds achieves the opposite of this. By JT forcing customers to increase speeds, they are having to

¹ “Connectivity, Broadband market developments in the EU”, Digital Economy and Society Index Report 2019, European Commission. We would particularly refer CICRA to slides 7, 8, 9, 30 and 31.

pay more per month than they would if the lower speed products were reintroduced at the wholesale level, such that retail competitors like Sure could reintroduce choice to the market.

Question 2: Does the respondent agree that JT should be required to reinstate the 100Mbps wholesale broadband service? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

Question 3: Does the respondent agree that JT should be required to introduce a 50Mbps wholesale broadband service? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

Question 4: Does the respondent consider that, if JT includes (a) the 100Mbps and (b) the 50Mbps in its wholesale broadband product portfolio, this would meet the respondent's requirements for wholesale products in order to effectively compete in the market with differentiated retail services? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

Sure agrees with CICRA's Draft Decision on the reintroduction of 50Mbps and 100Mbps wholesale services and that the introduction of these two services will meet Sure's short term needs. This is, however, subject to CICRA ensuring that a bitstream service is developed as soon as possible, rather than leaving it to JT to control the pace and scope of that new product introduction.

Sure has to take issue with several parts of JT's response to Question 2 in the Call for Information. First, in relation to JT's comparison of the price of its wholesale 250Mbps product to Sure's 20Mbps ADSL product in Guernsey (see paragraph 5.43), we would note that JT's wholesale price was already above that of Sure's even before JT further increased its wholesale price by 9%. Further, included within Sure's wholesale service in Guernsey is the BNG, whereas JT removed this from its Jersey service, forcing OLOs to invest and therefore increasing their costs. Wholesale services and prices in Guernsey and Jersey are therefore not directly comparable.

Secondly, JT's claims (in paragraph 5.45) that somehow Sure's product request in Jersey is based on the product availability in Guernsey are unfounded and the comparison between the two jurisdictions is fundamentally flawed. In Jersey, JT has secured significant States' backed funding for the rollout of fibre, similar to other markets where governments have taken the decision to invest in national broadband networks. These decisions are generally taken for political reasons, or in some cases, are driven as international vanity projects. In any case, Sure is not a States-owned company and therefore does not have access to that kind of funding and instead must make commercial investment decisions.

Whilst Sure is in active discussions with the States of Guernsey regarding future broadband investments to keep Guernsey appropriately connected, we have not to date received any government funding for our investments in our broadband services. Despite this, we have continued to invest in our broadband network to enable us to deliver higher speeds to our customers – but only to the level where we know there is a recognised and reasonable demand for those speeds. We believe that Jersey customers should also be given the choice to have the speeds they actually want, rather than being presented with the choice of "any speed as long as it is 1Gbp".

We appreciate that in its analysis of JT's response, CICRA has acknowledged that Sure has indeed continued to enhance its broadband services in Guernsey and that CICRA has also recognised that any

comparisons with Batelco's investments in Bahrain need to take account of the context within which that investment has been made. Indeed, we are surprised that JT cannot see certain parallels between Bahrain and the decision of the States of Jersey to invest in fibre in Jersey.

We also welcome CICRA's view that Sure's investment in routers is not relevant to the consideration of whether the 100Mbps service is reintroduced. We agree and would also strongly refute JT's assertion (paragraph 5.45 (b)) that Sure tried to gain financially from selecting routers that were only capable of supporting speeds up-to 100Mbps. To the contrary, and as JT is well aware, the subsidy provided by JT was insufficient to enable Sure to purchase 1Gbp routers for all its customers. Sure has had no such financial gain and - as JT (and CICRA) are aware - we have been through a thorough cost justification exercise, which has in fact reduced the financial load on JT, rather than Sure.

We are therefore totally in agreement with CICRA's conclusion that there is a requirement for JT to reintroduce the 100Mbps service. Indeed, with Sure, Home Net, ClearMobitel and CICRA all aligned in this view, JT has a responsibility to listen to and fulfil the needs of its wholesale customers.

We believe the same applies to the introduction of the 50Mbps service. As CICRA has noted, it seems that JT has instead decided to ignore these requests without any evidence to support its view that customers no longer want these lower speeds; in fact, all the evidence provided suggests that lower speeds and lower prices are exactly what customers want.

We do note that Home Net has expressed a requirement for wholesale broadband services at speeds lower than 50Mbps. We are supportive of Home Net's plans, but we agree with CICRA that the introduction of 50Mbps and reintroduction of 100Mbps will be sufficient to fulfil the needs of most customers in the short term. We believe that any further differentiation could be better achieved through the introduction of JT's bitstream service and like CICRA, are also concerned that expanding this decision to cover speeds below 50Mbps will only add further delay to this already long-drawn out process.

From a subscriber perspective, Sure wishes to reiterate that the forecasts that we have submitted are feasible to deliver through a combination of new customer acquisition and migration of existing customers. Once live, we will actively target customers to migrate them to the service that is appropriate for their needs.

Question 5: Does the respondent agree with The Authority's conclusion that the potential introduction of (a) a 100Mbps and (b) a 50Mbps service does not require any product development and impacts only on systems? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

Sure agrees with CICRA that the introduction of the 50Mbps and reintroduction of the 100Mbps services are very unlikely to result in JT incurring significant development or systems costs.

Sure read with interest the list of all the various developments that JT has stated it will need to undertake for the introduction of 50Mbps and 100 Mbps services. We were particularly amused by the references to undertaking margin squeeze assessments, when the requirement for such seems to have escaped JT's attention for quite some time. Similarly, with the LC33 notification requirements, which JT seem to conveniently overlook when it suits it. In fact, we would observe that the frequency with which JT makes changes to its pricing and service attributes means that this should all be run of the mill for them so we cannot see why this should create undue delays within the current context.

Question 6: Does the respondent consider that if a decision were made by the Authority to direct JT Wholesale to introduce (a) the 100Mbps and (b) the 50Mbps wholesale broadband services, this should be undertaken within 3 months of the completion of the Authority's statutory process on this matter? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

Sure considers that three months should be more than enough time for JT to introduce these services and encourages CICRA to not increase this timeframe. In fact, we believe it should be reduced to two months.

We are pleased to see that JT has stated it could provide these services within three months but its true commitment to that timescale is probably best judged by its subsequent view that the introduction of bitstream within a six months' timeframe removes the requirement for the 50Mbps and 100Mbps services as interim solutions. We could not disagree more and feel that this only illustrates JT's delaying tactics and its ability to spin matters out for months on end. We are therefore pleased to see that CICRA is also sceptical of JT's claims regarding the introduction of bitstream and has decided that the 50Mbps and 100Mbps services should be introduced within three months of the conclusion of the statutory process. Given the time that has passed, we would prefer that this timeframe was reduced to two months and believe that would be perfectly achievable, especially considering that the 100Mbps product was only withdrawn from JT's portfolio last year.

Question 7: Does the respondent agree that the potential 50Mbps wholesale broadband service should be priced at £16.23 per month? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

Question 8: Does the respondent agree that the potential 100Mbps wholesale broadband service should be priced at £17.84 per month? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

Question 9: Does the respondent agree that it is appropriate that the potential wholesale prices included in this Call for Information should remain fixed for a period of three years? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

Sure has nothing further to add to the comments it has already made in respect of the pricing of these services. We agree with CICRA's overall conclusion although we would suggest that the prices are fixed at the above levels in terms of these prices being the **maximum** prices that JT should be allowed to charge for the three years following launch. Should empirical evidence come to light within this time period that the prices are wrong and overstated, then CICRA should retain the ability to direct JT to reduce them.

Question 10: Does the respondent agree that JT Wholesale should enter into a consultation process to remove the 50, 100 and 250Mbps service only following the successful introduction of a Bitstream service? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

In section 5.129, Sure is pleased to see that CICRA supports enhanced consultation on wholesale product changes. We do, however, believe that this conclusion needs to be strengthened. As it stands, JT could continue to consult and then ignore any responses that it disagrees with or continually extend the consultation process to deal with anything outside its own proposed product specification. Indeed, this is exactly why we are in the current position whereby JT withdrew a wholesale product (the 100Mbps service) last year despite there being significant concerns raised by Sure, including evidence to show that there was continuing demand from consumers for this product.

As such, we remain of the view, as noted in paragraph 5.120, that the consultation process should not be under the sole control of JT and that CICRA should actively oversee the process. This will minimise the risk of disputes and therefore potential disruption to end users' services, which is what we are currently faced with. We would expect that this overseeing role would be delegated to CICRA's officers and not require Board approval for every decision. In fact, CICRA's oversight in WLR was particularly important as JT would otherwise have continued to slow the process. We would expect CICRA to provide operators with a clear, documented process, with associated timeline for decision making.

CICRA's Proposed Draft Decision

From the above, we hope it is clear that Sure is completely supportive of CICRA's proposed direction to JT as set out in Section 6 and believe that it is essential in order for there to be effective competition in the Jersey broadband market, in line with the States of Jersey policy.

The only amendments we would suggest to the Draft Decision are as noted below:

6.1 (f) Sure requests that this should be amended to within two months rather than three months.

6.1 (g) Sure requests that this is amended to read: "The **maximum** prices of the 50Mbps and 100Mbps services should remain fixed for a period of three years from introduction".

6.1 (h) Sure requests that CICRA specifies that they will oversee the consultation process, and in the case of dispute, CICRA will have decision power over whether the proposed change goes ahead or not.

Finally, Sure feels it must comment on the time it has taken CICRA to reach this decision. JT have consistently played Sure, Jersey customers and CICRA to ensure maximum profit, and minimum competition. The cynical tactics and obfuscation are incredibly frustrating but evidently very effective, and we would request that CICRA steps up the work with JT's shareholder to ensure that JT is operating as a reasonable corporate citizen. The current situation makes a mockery of the concept that JT is operating in line with the States of Jersey policy.

Sure (Jersey) Limited

21st June 2019