Case No. C-042: Proposed acquisition of Jersey Airtel Limited by Sure (Guernsey) Limited

Final Commitments Proposal of Sure (Guernsey) Limited

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1. Introduction

1.1 The Jersey mobile services market is small, crowded and fully penetrated. With a population of around one hundred thousand, Jersey is barely a sixth of the size of the smallest EU Member State. As a small, subscale island telecommunications market, there are limited opportunities to make the investments necessary in Jersey, particularly to address the forthcoming increased security requirements. The proposed acquisition by Sure (Guernsey) Limited **(Sure)** of Jersey Airtel Limited **(Airtel)** therefore represents a unique opportunity to deliver next generation, security compliant, mobile network infrastructure to Jersey.

1.2 We are aware that the JCRA has some concerns regarding the horizontal effects of a reduction from three to two mobile network operators in the market and whilst Sure believes the proposed acquisition will in fact deliver a stronger competitor in the Jersey mobile market, we are prepared to offer a number of binding commitments that will address those concerns. This paper therefore describes the overall benefits that the proposed acquisition will deliver to Jersey and the binding commitments that Sure is prepared to make to address the JCRA's horizontal effects concerns.

2. Relevant Customer Benefits

2.1 Sure has identified three merger specific, relevant customer benefits (**RCB**) that the transaction will deliver to the States of Jersey and Jersey consumers:

(i) **RCB 1: Quality and Service**. Sure will build a new network to support customers of the merged entity in both Jersey and Guernsey across 4G and 2G services. This new network will offer both quality and speed advantages to customers of both Airtel and Sure due to greater network capacity, increased site density and resilience as well as environment benefits from fewer total sites than across both existing networks. As above, it is the transaction that unlocks the additional investment to enable this to happen. Whilst Sure is not making a Jersey-specific commitment as to timing, the timings are nevertheless constrained by the new structural remedy offered (Remedy 1) to complete refarming and spectrum divestment within 36 months of clearance.

(ii) **RCB 2: Security**. Sure's new mobile network will be built to a higher security specification than any of the existing networks on Jersey. This will not only ensure that no HRV vendors are present on the core and RAN but will also ensure that the new network is well-placed to meet anticipated telecommunication security requirements (TSRs) in Jersey from the outset. Such a focus on increased security will drive investor confidence in Jersey generally, whilst ensuring that Jersey consumers benefit from enhanced security as part of the new network significantly ahead of likely legislative deadlines. As with RCB 1, it is the transaction that unlocks the scale and additional investment to enable this to happen for the new network. Whilst Sure is not making Jersey-specific timing commitments, delivery of this benefit will be enhanced by the binding timing commitments within Remedy 1; and

(iii) **RCB 3: Investment and Innovation.** Launch of a 5G network in Jersey. The transaction leads to the significant investment required in a 5G core and RAN as part of its new network. Whilst precise timings and scale of the launch of 5G will be driven by Sure's licence obligations (which are subject to Ofcom accepting the JCRA's recommendations and issuing the necessary WTA spectrum licence) as well as market conditions, there are clear benefits arising from the Transaction to incentivise Sure to do so faster and more comprehensively. The economics of building a new network are such that there are synergies available in choosing to build a 5G ready core at the same time as building Sure's new HRV-compliant network. This provides a further incentive to Sure to roll out its 5G network more aggressively than would be the case under the counterfactual.

3. Final Commitments Proposal

3.1 Sure is proposing a comprehensive package of two structural remedies (a spectrum divestment remedy and an MVNO-enabling remedy) supported by four binding behavioural remedies:

(i) **Remedy 1**: A structural commitment to work with the JCRA to refarm and reallocate some of Sure (and JT's) existing spectrum within 36 months of clearance. This commitment is contingent on the roll-out of Sure's new mobile network. In order to deliver the greatest benefits to the States of Jersey and Jersey consumers, this remedy will require the co-operation of JT and hence the proposal is also aimed at definitively addressing any concerns that the JCRA may have that Sure will gain a spectrum allocation advantage as a result of the Transaction. This Remedy is aimed at ensuring that a two-player MNO market would be able to operate as efficiently and competitively as possible by ensuring that both Sure and JT have access to similar amounts of capacity and in larger contiguous blocks, in turn unlocking capacity and speed benefits to customers. Further details on the specific spectrum proposals have been provided and Sure suggests that these should be made available on request to the JCRA by entities holding an appropriate Operating Licence in Jersey, subject to appropriate confidentiality protections. Any concerns about the long-term effects of a move to a two-player market[1] are comprehensively addressed by Remedy 2 and

[1] Noting, as above, that Clear Mobitel holds both existing operating and spectrum licences and there remains significant unallocated spectrum, such that access to spectrum is not a barrier to any potential new MNO entrant.

Sure's commitment to ensure that fair access is available to credible MVNO entrants on its new mobile network once deployed;

(ii) **Remedy 2**: Upon completion of Sure's new mobile network and the refarming set out at Remedy 1, Sure will commit to negotiate in good faith with any credible potential MVNO entrant and to ensure that the JCRA is the final arbiter of any disputes that arise from such negotiations. This commitment ensures that where an MVNO entrant has identified a credible business case to enter, it will be able to obtain access to Sure's new mobile network on reasonable terms. The MVNO would be able to use Sure's new RAN and associated spectrum and as such this commitment enhances Remedy 1 and ensures that there will be no regulatory or spectrum capacity barrier to prevent an MVNO with a commercial case from entering the Jersey market. Sure notes that the JCRA should take additional comfort from other Jersey-specific market features, such as the availability of significant unallocated spectrum, including in the 1800MHz band, as well as the existence of Clear Mobitel, an entity that not only holds an operating licence granted by the JCRA, but also spectrum licences in the 2100MHz and 3600MHz bands. It is clear that access to spectrum is not a barrier to any new MNO seeking to enter;

(iii) **Remedy 3**: A commitment not to withdraw legacy Sure and Airtel tariffs for existing customers for up to 36 months from clearance. These tariffs will therefore remain at no more than current prices (subject to the right to increase in line with RPI). This will be supported by a commitment to ensure that existing Sure and Airtel customers currently on those tariffs are informed of their right to remain on these tariffs upon expiry of their contracts for up to 36 months from clearance. This commitment will not prevent Sure from offering enhanced terms on these tariffs (e.g. lower prices, increased bundles, higher speed caps etc);

(iv) **Remedy 4**: A commitment to ensure that Airtel's Basic Plan tariff[2] will remain available to existing Airtel and new customers for up to 36 months from clearance (subject to the right to increase in line with RPI). As with Remedy 3, this commitment will not prevent Sure from offering enhanced terms (e.g. more inclusive minutes or texts, or more data as part of the data add on). Sure will also commit to ensuring that this tariff remains marketed online and in-store with the same prominence as all available plans;

(v) **Remedy 5**: A commitment to ensure that Sure's 4G Unlimited tariff will remain available to existing Sure and new customers for at least 36 months from clearance

[2] https://www.airtel-vodafone.com/discover/products-and-services/pay-monthly-plans/24-jersey. In Jersey, this offer currently consists of a £8.82 (inclusive of GST) monthly tariff which is inclusive of 150 minutes and 500 SMS. 2GB of data can also be included for a total price of £9.87 (inclusive of GST)

(subject to the right to increase in line with RPI). Sure will also commit to ensuring that this tariff remains marketed online and in-store with the same prominence as all available plans; and

(vi) **Remedy 6**: A commitment within 12 months from clearance to notify all eligible existing Airtel customers who also take a fixed line broadband service from Sure of their eligibility to access Sure's "Big Bundle" discounts. This commitment will ensure that Sure completes the migration of Airtel customers onto its network in a timely fashion to enable Sure to identify eligible customers. New Sure and Airtel mobile customers beyond that date who also take Sure fixed line broadband products (and existing Sure and Airtel mobile customers who move their fixed line broadband to Sure) will also be eligible for these discounts, resulting in a typical saving today of £13.25 a month for customers on Sure's unlimited Big Bundle plan.

3.2 If there has been a new MVNO or MNO entrant to the Jersey market, Sure considers that Remedies 2-6 inclusive (to the extent they have not already expired) should fall away within 12 months of the launch of the new services as the new entry would result in the market replicating the pre-merger 3-player market and hence definitively addressing the JCRA's horizontal effects concerns.

3.3 The above package of remedies, combined with the relevant customer benefits, addresses any remaining horizontal concerns the JCRA may have (following consideration of the revised submissions from Airtel concerning the counterfactual) concerning the potential for upwards pressure on pricing, and/or reductions to service and/or innovation resulting from the reduction in MNOs on Jersey from 3 to 2 in both the immediate and medium/long-term. It also directly addresses the JCRA's subsidiary concerns that Sure may have an advantage in spectrum holdings.

3.4 The remedies proposed also ensure that whilst there will be no spectrum capacity or other regulatory barriers to a new MVNO seeking to launch in Jersey, there is equally no requirement on Sure to make a business case on any terms for such a launch.

3.5 Remedy 2 is designed to ensure that, should market conditions change in the medium or longer term, any such proposed credible MVNO entrant would be able to access Sure's new network on reasonable terms and for the JCRA to be the ultimate arbiter of any such negotiations. The existence of the MVNO enabling remedy (Remedy 2) also serves as a distinct and independent longer term constraint on both JT and Sure as the remaining MNOs in Jersey.

3.6 Furthermore, the remedies are consistent with EU precedent cases, whilst ensuring they are proportionate to the Jersey market and reflect the significant structural differences that prevail in Jersey. These include the fact that there remains significant capacity and unallocated spare spectrum such that new entry (whether MNO or MVNO) is not constrained by consolidation between existing MNOs. Hence it will be essential for the JCRA to consider:

(i) The subscale size of the Jersey telecommunications market, with a total population of just c100k;

(i) The existence of unallocated spectrum across the frequency bands (including at least 2 x 15 MHz in the 1800 band and a further 2 x 10 MHz in the 2600 band). Sure notes that any new entry is likely to focus on data, where access to sub-1GHz is not necessary. Sure also notes that both One2One and Orange initially entered the UK market without access to sub-1GHz spectrum and whilst there would be a modest increase in expected costs to launch an island-wide voice and data service without access to sub-1GHz spectrum, this would not necessarily be the case for a data-only launch. Furthermore, Sure is proposing to make spectrum available in the sub-1GHz bands to address even any theoretical concerns that may arise; and

(ii) The existence of Clear Mobitel holding (unused) spectrum licences in the 2100 MHz and 3600 MHz bands as well as a Class II Operating Licence, first issued by the JCRA in 2009, but yet to be used.

4. Conclusion

4.1 The combination of Sure and Airtel offers a unique opportunity to deliver the certainty of enhanced investment into a new, HRV compliant mobile network that is best placed to meet the TSRs once legislation is passed in Jersey. It will also unlock the investment required to launch 5G services and synergies that could mean such a launch proceeds faster and further than would be the case in the counterfactual. This certainty must be set against the counterfactual where Airtel's future in the market is highly uncertain, casting doubt on the strength of the JCRA's identified horizontal concerns. Sure has also confirmed that its ability to deliver the investment required to unlock the significant benefits is contingent on the deal being allowed to proceed.

4.2 In any event, Sure's proposed remedies package comprehensively addresses all of the JCRA's concerns, whilst offering further potential benefits from spectrum refarming to deliver contiguous blocks of spectrum. By divesting spectrum across the 800MHz, 900MHz and 2600MHz bands, the JCRA will be well placed to ensure that spectrum is available to operators best placed to use it in their networks, including in the sub-1 GHz bands. The proposed refarming and reallocation in the 800MHz requires the cooperation of JT and hence Sure proposes that the JCRA would work with JT and Ofcom to ensure that the 800MHz spectrum divested by Sure is allocated to JT. At higher frequencies, Sure expects that the JCRA would in any event undertake a similar exercise to ensure that the spectrum returned is used to deliver customer benefits on both networks, including the additional capacity and speed advantages that derive from larger blocks of contiguous spectrum. In addition, there will remain a considerable amount of unallocated spectrum, particularly in the 1800MHz and 2600MHz bands.

4.3 In short, the remedies package is good for competition, good for consumers (by offering more capacity on existing networks through refarming that frees up larger blocks of contiguous spectrum), and offers a comprehensive solution to ensure that access to an MNO's network is not a barrier to the launch of any new MVNO services on Jersey. It also reflects the market-specific features of the Jersey market, where access to spare capacity in spectrum has not been and will not be a concern.