



# Sure response to JCRA Market Review Call for Information (Case T-083)

**2 February 2024**



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## 1 Executive Summary

- 1 Having reviewed the contents of the JCRA's Call for Information ('Cfi')<sup>1</sup> regarding its plans for a review of the telecoms market in Jersey, Sure welcomes the approach of taking a holistic view of the market, instead of undertaking piece-meal market reviews that risk having counter-productive outcomes and are not able to reflect overall general developments that span several markets.
- 2 Sure considers that the proposed scope is very wide and appropriate for a one-off high-level review but that future reviews, whilst still attempting to take a holistic approach through the grouping of several markets, would not need to be as wide as proposed at this time. For example, the consideration of the licensing framework would likely be a one-off exercise and the outcome of that review would need to provide a stable basis for operators in Jersey to plan and run their businesses.
- 3 Of the subjects the JCRA has included in the Cfi, Sure believes the following are of the highest priority:
  - A review of Jersey spectrum policy
  - The introduction of Fixed Number Portability
  - The impact of alternative technologies and OTT services
  - Telecoms Security Regulations
- 4 Sure supports the review of all other subjects mentioned by the JCRA and will contribute actively to the review process.
- 5 In addition to the topics listed above, Sure believes it is important that the JCRA considers the impact of JT's ownership on the Jersey telecoms sector. The loyalty to JT displayed by the public sector represents a significant barrier to entry in the enterprise market and the lack of normal commercial pressures on JT means that its behaviour cannot be expected to respond to economic regulation in the same manner as commercial businesses of a similar size.

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<sup>1</sup> [www.jcra.je/media/598863/telecoms-market-review-call-for-information.pdf](http://www.jcra.je/media/598863/telecoms-market-review-call-for-information.pdf)

- 6 Sure considers that the timescale for the review, as proposed by the JCRA, may be optimistic to complete both the overall review (including reviewing the licensing framework) and reviews of all relevant markets in both fixed and mobile sectors. It would be preferable to have a realistic timetable and then identify any matters that need resolution earlier and finding routes to achieve that within the overall timeframe.

## 2 Question 1

***“Do you agree that a holistic review of the telecoms sector is timely and an appropriate way to frame current and future regulation? If not, please explain why, with supporting information.”***

- 7 Sure agrees that it is appropriate to undertake intermittent holistic reviews across the whole sector. Not doing so risks an absence of consistency between individual standalone market reviews, to the detriment of consumers in Jersey and to the overall Jersey economy.
- 8 Sure also agrees that this is a good time for a holistic sector review. Significant changes have taken place in the global telecoms sector, both from the perspective of consumer needs and behaviour and from a technology perspective. Additionally, Jersey has been at the forefront of ubiquitous fibre deployment.
- 9 Much of the regulatory structures in Jersey have remained unchanged for more than a decade and some elements, such as the licensing structure, for considerably longer than that. It is helpful to look at international developments and local market characteristics to identify which of the recent developments could be beneficial in Jersey and which would not be appropriate.
- 10 It is, however, important that this type of review is undertaken in a manner that does not cause significant discontinuity in the market and which does not introduce significant and sudden material changes that could affect the business models and viability of the island’s telecoms providers.

## 3 Question 2

***Do you agree with the proposed scope of the Review as set out in the call for information? If not, please explain what changes you think should be made, with supporting information.***



- 11 Sure welcomes the broad scope of the review and also that the JCRA is considering both fixed and mobile sectors during this initial Cfl stage, as any potential cross-sector issues should be identified during this stage, if at all possible. Although fixed and mobile telecoms are likely to remain separate markets, there can still be market dynamics or regulatory interventions in one market that affect the other.
- 12 As stated above, it is important that the review is done in the context of minimising disruption for providers that have existing investment in the Jersey telecoms sectors (fixed and/or mobile).
- 13 Sure considers that the review should also, explicitly, consider whether the state ownership of JT impacts the way it behaves as an organisation and whether that ownership could have consequences for the contestability of some services and markets. Sure has particularly experienced in the business connectivity market that the barriers to market entry in the public sector are much higher than what Sure has experienced in the consumer market, where Sure has successfully entered and achieved reasonable market shares.

#### 4 Question 3

***Do you think the phased approach, and indicative timeline for the Review, is appropriate? If not, please explain what changes you think should be made, with supporting information.***

- 14 Sure considers that the proposed phasing is appropriate and necessary, given the limited resources available both within the JCRA and within the telecoms providers operating in Jersey. Sure is not certain whether a two-year period will be sufficient for a review as broad as the one proposed here. As we understand it, as well as performing full market reviews on all relevant fixed and mobile telecoms markets in Jersey, the review will also consider changes to the licensing systems and potential other structural changes. If our understanding is correct, then we believe that another six to twelve months may be necessary.

#### 5 Question 4

***Do you have any other comments in response to this call for information? If so, please provide your views with supporting evidence.***



15 The first three questions discussed above address the scope and structure of the forthcoming overall review of all Jersey telecoms markets and the regulatory structures governing and applied to those markets. In Section Four of the Cfl document, the JCRA mentions a number of specific areas which it considers important for consideration during the review. Sure comments on them below and after that we set out any additional areas which we believe should be the focus of the upcoming market review process.

### 5.1 Modernisation of the licensing regime and obligations

16 Sure is aware that the use of individual licences is no longer common practice in developed economies. Whilst there are benefits from each provider knowing exactly which provisions apply to it, it is hard to keep individual licences updated and it is possible that unintended differences between licences are introduced – perhaps by the use of slightly different wording or the different interrelationships between different licence conditions in different licences.

17 Sure would welcome a complete review of the Jersey licensing system and the obligations applied to different providers. Sure considers that there may be legacy obligations in some older licenses that may no longer be appropriate and that the logic and rationale for why they are applied to some providers only may no longer hold water. Any new licensing framework would need to be able to accommodate different levels of obligations depending on clear objective parameters, for example some obligations will only apply to a provider that has been found to have SMP in a relevant market.

18 Wholesale change to a licensing system, however, can cause uncertainty. It is, therefore, imperative that the JCRA takes the appropriate time to carefully consider both intended and potential unintended consequences of any changes to the current licensing system. With reference to the structure and timing of this review, Sure proposes that any review of the licensing system should run in parallel with the conventional market reviews. As the main regulatory obligations on providers in Jersey should not change as a consequence of changes to the licensing structures, there should be no reason why this approach cannot be taken.



## 5.2 Development of a (telecoms) social policy

- 19 Since the initial liberalisation of the telecoms sector across the world, there has been tension between the application of economic regulatory principles to increase efficiency and introduce competition and that of safeguarding vulnerable consumers.
- 20 The Covid pandemic and the current cost of living crisis have put into clear focus the need to incorporate social policy into the regulatory approach in telecoms. However, it is also important that there are clear distinctions between social and economic regulatory activities and that any telecoms-specific interventions to, for example, protect vulnerable consumers, are assessed in terms of their potential impact on the market dynamics and the development and protection of a long-term sustainable competitive market.
- 21 Sure is familiar with Ofcom’s activities in this area and is apprehensive that providers in the UK express concerns that Ofcom is increasingly focusing on addressing potential symptoms of where competition is not as effective as it could be, rather than the underlying causes of that lack of effective competition. Short-term treatment of symptoms can have the unintended consequence of hampering the development of effective and sustainable competition and thus not be in the interests of consumers.
- 22 Overall, Sure is supportive of ensuring that regulation of the telecoms sector recognises the need to protect vulnerable consumers (the definition of vulnerability is, however, complicated), and welcomes the context the JCRA has provided for this subject, namely the “development of a (telecoms) social policy consistent with the operation of a competitive telecoms market”. [emphasis added].

## 5.3 Consistency in regulatory and government telecoms policy

- 23 Sure very much welcomes the JCRA’s recognition of the need for consistency between government and regulatory policy statements and actions.
- 24 Sure is familiar with and understands the government’s Strategy Action Plan and agrees that the JCRA should anchor its review of that document, but that it should also recognise developments since the Oxera review. Sure would welcome a review and prioritisation of remaining outstanding actions from that review.



25 The Digital Economy Strategy and the Delivery Frame for Sustainable Economic Development 2023-2026 are clearly also important directional references for the JCRA and Sure believes it is very important to, for example, review how telecoms providers can best support Net Zero objectives.

#### 5.4 Wholesale line rental

26 The application of a remedy to offer wholesale line rental (WLR) is becoming less relevant internationally<sup>2</sup>, but it is important to carefully consider the specific market conditions in Jersey before potentially concluding that the regulated WLR product is no longer required.

27 It would seem that a withdrawal of the WLR product could leave voice-only customers without a choice of provider. In that context it is also interesting to note that Ofcom in 2021 accepted BT's commitments<sup>3</sup> to only adjust its retail land-line-only customers by CPI+0%, recognising that 75% of all landline-only customers were BT customers and that BT has SMP in that market. That decision was made even in parallel with the imposition of the WLR remedy. Sure considers that a removal of the WLR remedy in Jersey would need to be considered very carefully.

28 That said, as JT operates a full-fibre network, for customers that take both voice and broadband services, the OLO could provide its own IP-based voice service across the wholesale fibre broadband product. The main obstacle to doing so is the absence of fixed number portability (discussed further below) and it would also be necessary to address the issue of the dependence of the broadband service of mains electricity. In the event of a power cut, as JT's current IP-based voice service is powered from the ONT and therefore only the ONTs would need battery back-up (for customers who are reliant on their landline), whereas if the IP-based voice service was provided by the OLO across the wholesale fibre broadband access product it would be necessary to provide battery back-up for both the router and the ONT at the premises of vulnerable customers. Operationally, this could prove troublesome, as management of the ONT battery back-up would be the responsibility of JT Wholesale but the router battery back-up would be the relevant retailer's responsibility. A further difficulty could arise in instances where a retail customer took their landline service from one provider and their broadband service from another.

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<sup>2</sup> For example, the BT WLR product is currently being discontinued.

<sup>3</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/216569/statement-protecting-voice-only-landline-customers.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/216569/statement-protecting-voice-only-landline-customers.pdf).





- 29 The need to supply customer premises battery back-up would constitute an additional cost burden for the retail provider and it could have a competitively distortionary effect as that additional cost would apply only to the OLO, not to JT, as JT could continue to rely on the ONT-side battery back-up (unless it were also required to provide the voice service via a retail router).
- 30 Sure recognises that WLR is increasingly deemed to be a legacy remedy and may no longer be the best solution to protect customers and safeguard competition. Sure would, therefore, wish to participate actively in work to explore future options for the competitive supply of voice service in Jersey, with and without broadband connections.

## 5.5 Price notification framework

- 31 Sure considers that a price notification framework is essential to the proper functioning of a competitive market that depends on the regulation of a dominant incumbent.

As the JCRA will be aware, there have been instances in recent years where JT has indicated its intention to launch an SMP related product or change its price in a way that the JCRA and/or OLOs have expressed legitimate concerns about. In some instances, JT has been required to take corrective action. Had JT not been required to comply with a regulatory notification process, instances of market abuse (whether intentional or unintentional) could have occurred without any visibility by relevant stakeholders.

- 32 Sure would be interested in gaining a better understanding of which aspects of the current price notification framework the JCRA would wish to review.

## 5.6 Cost-based charging regime for all wholesale regulated products and services

- 33 The market conditions in Jersey, with a state-owned incumbent and a fully deployed new full-fibre network are almost unique.
- 34 An incumbent for whom normal commercial investment criteria and commercial performance criteria are either irrelevant or significantly less relevant than for privately owned commercial providers, may need to be regulated differently from commercial providers with SMP. For example, a state-owned provider not subject to standard commercial pressures may not have the same incentives to build and operate its network in an efficient and cost-effective manner.



- 35 Given the context described above, Sure understands the JCRA's desire to impose stricter and more transparent pricing obligations on JT than might otherwise be considered proportionate, given the size of the Jersey market.
- 36 To impose cost-based charging, it would be necessary to reintroduce an obligation for JT to produce separated accounts<sup>4</sup>. In that case, Sure believes that it is essential that a framework be developed to enable independent audit, even if that requirement is only applied on an ad hoc basis, rather than through default annual scrutiny.
- 37 Additionally, Sure would suggest consideration be given as to whether any costing models produced to set specific cost-based charges should be built and operated by the JCRA. This would ensure consistency across the costing of different regulated products. Further, any outputs from the separated accounts should be subject to an assessment that the input assumptions are consistent with cost incurred by an efficient operator and not inflated due to lack of efficiency incentives on JT, given its ownership.
- 38 Given that most current charges are not cost-based, Sure has some concerns that the cost-based charges could result in both price increases and reductions. It is in the interests of consumers that the market is not destabilised by any material sudden changes, so careful thought would need to be given to the process for the introduction of cost-based charges. It would also be important that such changes were introduced in a manner such as to not (permanently or temporarily) change the relationships between different wholesale products and potentially create arbitrage opportunities.

## 5.7 Fixed number portability

- 39 Sure believes that the absence of fixed number portability (FNP) is a significant problem in the Jersey telecoms markets (both for consumer and business services). We have, twice, pushed for the implementation of FNP in Jersey, but on both occasions, JT has resisted our requests<sup>5</sup>.
- 40 JT completed its full fibre deployment several years ago and the market has stabilised. In particular, competition in the business connectivity market is constrained by businesses being unwilling to switch some services (for example leased lines) because other services cannot be switched, due to

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<sup>4</sup> We are aware that the JCRA is currently considering this: [www.jcra.ie/media/598774/regulatory-financial-reporting-draft-decision.pdf](http://www.jcra.ie/media/598774/regulatory-financial-reporting-draft-decision.pdf)

<sup>5</sup> The requests were made before the addition of Condition 40 (Network Access) in JT's Licence.



the lack of FNP. This have proved to be a blocker to certain corporate customers choosing to switch their services to Sure.

41 Because JT now has a single stable technology platform, Sure considers that there can be no justification for it not facilitating FNP on its network. This service can be delivered in a similar manner to mobile number portability (MNP) through an outsourced solution, which significantly reduces the costs to providers and shortens the implementation time.

42 Sure looks forward with the JCRA and other operators in Jersey to define the FNP solution for Jersey and to work on its rapid and cost-effective implementation.

## 5.8 Core connectivity on- and off-island

43 It is not entirely clear to Sure what the JCRA is referring to under the 'core connectivity' heading. We believe it could refer to the leased lines markets (on- and off-island) and Sure agrees that there is an interrelationship between those two markets. Sure would be interested in exploring those dynamics with the JCRA and the other stakeholders.

44 If the JCRA's understanding of 'core connectivity' is more generic and, for example, refers to the core transmission networks used by both fixed and mobile network operators in Jersey, then we are not clear on the relationship with off-island connectivity. In any event, those core networks can be created through the use of leased lines, albeit that a review of the technologies employed by JT would be appropriate.

45 In any event, it is clear that, as more and more demand-hungry applications increase the demands on core network capacity for both fixed and mobile networks, it becomes increasingly important that the regulatory framework is designed to deliver high-capacity connections on terms that enable the provision of attractive retail services to businesses and consumers across the island. Sure supports the JCRA's proposal to consider the best regulatory approach to achieve that.

## 5.9 Consumer contract terms and compensation schemes

46 Sure would support a review of both the specific contract terms offered by different providers in Jersey and the transparency of those terms in advertising and other consumer communications. Sure believes that, at present, consumers in Jersey may not be able to make fully informed purchasing decisions, due to different levels of transparency offered by individual providers.



47 Whilst Sure agrees with the need for accountability by providers for the performance of their services, Sure considers it more important that consumers have full sight and understanding of the contractual terms applicable to their telecoms services (and there are able to select based on the service parameters that they consider most important) than to potentially impose rigid compensation schemes on providers.

48 Due to the small market and small number of providers in Jersey, Sure considers that it should be relatively easy for consumers to compare and make informed purchasing decisions by visiting each telecoms provider's shop or website.

### 5.10 Price comparison initiatives

49 Price comparison websites are important in large complex markets, such as the UK's, where consumers are justifiably confused by the plethora of offers. In Jersey, however, with three main resellers of JT's wholesale services, Sure considers that the benefits consumers could gain for access to a price comparison site would likely be significantly outweighed by the costs of creating and maintaining such a site. It should be noted that the updating of information on a price comparison website would be an incremental administrative burden for providers, so those costs would need to be included in any cost-benefit assessment.

50 Given the several other subjects covered in the Cfi, where real benefits to consumers could be derived for consumers from detailed reviews and consequential changes, the consideration of the introduction of a price comparison facility would, in Sure's view, not be a beneficial area of focus.

### 5.11 Consumer switching

51 In the Channel Islands, the existing framework already allows for full 'gaining provider-led switching' (GPL). GPL is what Ofcom mandated in September 2021 and which the UK sector is still working to implement. The UK situation is complicated by the infrastructure competition policy, which contrasts with the policy in Jersey where a single island-wide fibre network exists, and the policy is to encourage competition on that network.

52 Sure is not aware of any concerns about the current switching rules in Jersey, but would be interested in understanding any concerns the JCRA has identified.



## 5.12 Universal service

53 As with consumer switching, Sure is not aware of a universal service problem in Jersey. Sure acknowledges that there may be affordability issues, but those could be dealt with through the review of 'social tariffs', quite separately from a universal service initiative. Sure will be interested to learn what the JCRA has identified to drive a focus in this area.

## 5.13 Alternative technologies offering telecoms services

54 Sure is acutely aware of the impact of services such as Microsoft Teams and WhatsApp on the voice and messaging markets (fixed and mobile). It is almost an exception if a consumer chooses to make an international voice call using the telephone network, rather than an OTT service.

55 There has been much discussion about the need for OTT platforms to contribute to the costs of building and operating networks (over which their services are delivered and for which they make no direct contribution), but Sure does not consider it a realistic proposition that Jersey could have a material impact on those matters.

56 With regards to the impact of OTT services on market reviews (fixed and mobile), however, Sure considers that this is a matter that the JCRA should consider very carefully. There are multiple angles that must be considered, for example if the substitutability is such that consumers regularly prefer the OTT service, then perhaps a regulator could conclude that the incumbent does not have SMP in the corresponding wholesale market. However, if customers still believe it essential to have a voice service (for example for emergency services and as a back-stop when OTT services do not work) then it would be essential for OLOs to have access to a wholesale interface that allows them to offer voice services that are compatible with and competitive against the incumbent's voice services. As described above, although OLOs could offer their own IP-based voice service using JT's wholesale fibre broadband access product, they would have to bear the incremental burden of providing customer premises battery back-up that JT does not have to do and for voice-only customers this option is very unlikely to be viable.

57 Sure, therefore, welcomes the JCRA's proposal to carefully consider the impact of OTT services on the relevant telecoms markets in Jersey, but urges caution against reaching any quick high-level conclusions.



## 5.14 Telecoms Security Regulations

- 58 Sure is familiar with the UK Telecoms Security Act ('TSA'), its regulations and the Code of Practice. We are also aware that deadlines in the UK have had to be extended for even the very largest providers, due to the complexity of the regulations and how they impact both network design and operation, as well as the commercial operations of those providers.
- 59 In the UK, the Code of Practice and the compliance deadlines are only applicable to very large providers. Smaller providers are still subject to the Act, but they have considerably more flexibility regarding its implementation.
- 60 Sure has already been engaging with the States of Jersey on how the TSRs could be proportionately and appropriately applied in Jersey and has requested that it carefully considers the level of detailed and prescriptive regulations it chooses to apply to the very small scale providers that operate in Jersey. The need for increased security is indisputable and Sure does not wish to, in any way, suggest that it disagrees that increased security measures must be introduced. We are, however, concerned that the current direction of the States of Jersey seems to be to adopt the UK TSA as closely as possible, including with respect to the level of penalties to be applied, civil liabilities for security compromises and notifications to end users about any significant risks. If this approach is implemented, it will significantly increase the costs of all providers in Jersey and therefore likely flow through to local consumers' charges. We have appreciated the recent dialogue it has had with the JCRA about our concerns and would welcome the JCRA's ongoing support to ensure that Jersey implements the equivalent of the UK TSA in the most appropriate and proportionate manner for the island.

## 6 Additional topics for inclusion in the market review

- 61 Sure believes that there is scope for improvements in the Jersey telecoms market beyond those listed by the JCRA; we list some below.

### 6.1 Improvements to the mobile number portability functionality

- 62 At present, it is necessary for customers to visit a telecom provider's shop to port their mobile number to another (local) provider. That was appropriate at the time MNP was introduced, in 2008,



but in today's online world it is inconvenient and out of date. Sure suggests that the MNP framework be updated to enable the option of online number porting. Very recently, we approached JT and Airtel on this matter. As a result, we are aware that there is general support for online porting, meaning that inter-operator formal agreement on this matter is likely. We would hope that the JCRA would therefore only need to become involved in this proposed update if difficulties arise in the upcoming inter-operator discussions.

## 6.2 Wholesale self-service for OLOs

63 Sure believes that it would be beneficial to consumers and both efficient and effective for operators (including JT) if OLOs (and ultimately, their customers) were able to self-provision JT's wholesale landline and broadband services and, for example, almost instantly change the speed of a retail broadband service. There are many examples internationally of OLO self-service for elements of regulated wholesale services and Sure consider it inefficient that an OLO has to submit a change request and then wait up to several days for that change to be effected by JT's provisioning team. That level of self-service would have been much more difficult where PSTN networks are still used, but in an all-IP full-fibre network those obstacles should no longer exist.

64 The ability for an OLO to rapidly make changes to their end-customers' services would offer a new level of service and flexibility to customers which we are certain would be very welcome.

## 6.3 Review of spectrum policy

65 The JCRA has been planning a review of its spectrum policy for some time and Sure considers that this is now an urgent matter to which the JCRA should turn its attention as a matter of priority.

## 6.4 Review of impact of JT's ownership in the relevant markets

66 As explained above, Sure believes that JT's unusual ownership has impacted the market in a number of ways, including:

- Loyalty to JT in the granting of public sector contracts;
- JT's ability to undertake capital projects that a commercial business of a similar size would not be able to consider; and



- the lack of commercial performance and investment returns on JT, compared to commercial businesses of a similar size.

67 Those characteristics inevitably impact on the overall market dynamics, and it cannot be expected that an organisation like JT will respond to economic regulation in the same manner as a commercial business of a similar size. Sure, therefore, believes it is essential that a holistic review of the telecoms markets in Jersey considers them explicitly.

## 7 Conclusion

68 Sure supports the JCRA's proposal to undertake a broad and holistic review of the Jersey telecoms sector. Such reviews need to be undertaken intermittently to ensure that the overall framework is fit-for-purpose and in line with international best practice.

69 Sure has provided initial thoughts on the subjects mentioned in the Cfl, as well as a few additional subjects that Sure believes need to be addressed. We look forward to working with the JCRA and the other telecoms providers in Jersey over the coming two or three years to address the topics already identified, as well as others that will undoubtedly emerge during the process.

70 There are some matters that Sure considers to be too urgent to be subject to the timescale set out by the JCRA. These include, amongst others, the review of Jersey's spectrum policy and the implementation of FNP. The JCRA has scheduled a meeting with Sure for March 4<sup>th</sup> to discuss the JCRA's plans and proposals and the contents of this response. Sure will be pleased to provide further insight to which issues it considers to be of the highest priority.