TELECOMS MARKET REVIEW – T-083 – DRAFT DECISION

SURE (JERSEY) LIMITED NON-CONFIDENTIAL RESPONSE

EXECUTIVE SUMMARY

1. This is Sure (Jersey) Limited's ("Sure's") formal response to the Jersey Competition and Regulatory Authority's ("the JCRA's") Telecoms Market Review Draft Decision ("the Draft Decision"), dated 26th February 2025.

2. This version of our response is non-confidential and the JCRA is welcome to publish it on its website. A confidential version has also been submitted, but is only available to the JCRA.

3. We welcome this opportunity to comment on the JCRA's carefully considered proposals. We are grateful to the JCRA for providing Sure with an opportunity to comment on the Draft Decision and [✂].

4. Sure is broadly supportive of the JCRA's conclusions, methodology, and approach. As a result, we have not commented on every aspect of the Draft Decision, and have instead focussed this response on areas where Sure specifically supports, disagrees with, or has concerns regarding, the JCRA's conclusions. Our feedback is contained within the narrative response in paragraphs 5 to 70.

5. In this formal response, we put forward and explain the following positions:

   5.1. **Three Criteria Test** – We are somewhat surprised by the JCRA's use of the three criteria test ("the 3CT") in the Draft Decision. Whilst we welcome the JCRA's decision to follow regulatory best practice in the form of the EU approach, we are worried that the JCRA's use of the 3CT for retail broadband, retail fixed access, and retail leased lines is not aligned with regulatory best practice, nor the European regulatory framework to which the JCRA claims to have followed in the Draft Decision. The corollary is that the JCRA may, by adopting this approach, (i) set an unhelpful precedent of departing from regulatory best practice when applying the 3CT, which could undermine future market reviews, and (ii) may have incorrectly concluded that JT holds significant market power ("SMP") in those retail markets (thus imposing an unnecessary regulatory burden). We believe it would be helpful for the JCRA to better explain why it considers the above-mentioned retail markets to meet the 3CT, and do so in a manner that better aligns with regulatory best practice (i.e. not simply reference the size of the markets in Jersey). If a best practice approach to the 3CT denotes that the test is not met for the above-mentioned retail markets, then Sure is supportive of deregulation as an outcome.

5.2. **Retail Market Remedies** – Notwithstanding Sure's concerns regarding the application of the 3CT, we do not agree with the JCRA's preliminary conclusion that it will not impose remedies in retail markets where JT is found to SMP[1]. Such a conclusion is contrary to European regulatory good practice and, in essence, means that market failures identified in the retail broadband, retail fixed access, and retail leased line markets go unaddressed. Where JT is found to have SMP in any of the above-mentioned retail markets, to the extent that those markets appropriately meet the 3CT, then Sure contends that the JCRA should impose remedies or explain how regulation at the wholesale level will suitably address market failures observed at the retail level (this has not been established despite the JCRA concluding that retail market remedies will not be adopted).

5.3. **Standalone Broadband** – Unfortunately, Sure is not yet able to support the JCRA's consideration of a standalone broadband service in Jersey. There are significant technical barriers to its implementation which have been caused by past regulatory and commercial decisions in the Channel Islands. These barriers could take a number of years to resolve. Additionally, the creation of a broadband-only service will not necessarily deliver the outcome that the JCRA and/or consumers and the local media expect – namely lower broadband prices. Rather than hastily, and in our view prematurely, imposing an obligation on JT to make available a wholesale broadband-only service, Sure proposes that the JCRA develops a telecoms wholesale technology plan, to guide both wholesale and retail providers towards a standardised provision of broadband and voice services.

5.4. **Fixed Number Portability ("FNP")** – Sure fully supports the introduction and implementation of FNP and is eager to support the proposals set out in Box 4 of the Draft Decision. Sure has provided supporting comments in this formal response regarding the "key issues" cited by the JCRA. For the avoidance of doubt, Sure believes that <u>any implementation of FNP must be undertaken on a pan-Channel</u>

[1] Case T-083 Telecoms Market Review – 26th February 2025 – paragraph 4.24, 5.32, and 6.35.

Islands basis, to ensure consistency across complementary markets, project efficiency and cost minimisation.

5.5. **Dark Fibre** – Sure is supportive of the introduction of dark fibre for mobile backhaul connectivity purposes, but not at this time. This is because we do not believe that data bandwidth requirements are such that implementation of a dark fibre remedy would be appropriate and proportionate. [✂]

5.6. **Data Centres** – We welcome and support the JCRA's decision to give further consideration to the topic of data centres ("DCs") in Jersey. As briefly evidenced in this response, and for which we are willing to provide further evidence and information to the JCRA on request, we believe that JT's behaviour regarding access to, and connectivity within its DCs, is anti-competitive and driving unnecessary cost into the market. We believe that there are pragmatic steps that the JCRA could take, including enabling third parties to access JT's data centres and requiring cross-connects to be made available for rack-to-rack connectivity, that will reduce these costs and better facilitate connectivity in Jersey.

APPLICATION OF THE THREE CRITERIA TEST

6. The JCRA has provisionally concluded that the retail markets for fixed broadband, fixed voice, and leased lines ("the Relevant Markets") pass the 3CT. That is, the JCRA has provisionally concluded that each of the above-mentioned markets is characterized by (1) high and non-transitory barriers to entry, (2) insufficient competitive dynamism in the market to overcome barriers to entry, and (3) the insufficiency of competition law to promote and preserve competition[2].

7. Sure is somewhat surprised by this provisional conclusion for the above-mentioned retail markets and would welcome further explanation and clarification from the JCRA. This is for two reasons:

   7.1. The JCRA's approach to assessing Criterion 1 of the 3CT does not initially appear to align with the European regulatory best practice cited in the Draft Decision; and

   7.2. The evidence relied upon by the JCRA to conclude that the retail markets are susceptible to regulation does not appear probative in answering the Criterion 1 question, and some evidence relied upon elsewhere in the Draft Decision appears to contradict the JCRA's findings in paragraphs 4.24, 5.32, and 6.35 ("the Findings").

8. We consider each of these reasons in turn. For the avoidance of doubt, Sure's analysis focuses solely on Criterion 1 of the 3CT because we agree with the JCRA that Criteria 2 and 3 are likely to be met within the context of those markets.

9. Sure notes that the JCRA has chosen to follow the EU (EECC) approach in undertaking this market review. We welcome this decision and agree that the EU (EECC) approach to market reviews represents the best regulatory practice. However, the EU regulatory framework regarding the 3CT goes beyond simply Article 67, and includes important guidance documents from the European Commission, such as the 'Commission Recommendation on Relevant Product and Service Markets within the Electronic Communications Sector' ("the Commission Recommendation") and the associated 'Commission Staff Working Document – Explanatory Note' ("the Staff Working Document")[3]. We therefore believe that the JCRA should take into account these guidance documents and the methodologies included within them when undertaking the 3CT for retail and wholesale markets in the Draft Decision.

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[2] Revised ERG Common Position on the approach to Appropriate remedies in the ECNS regulatory framework – May 2006

[3] Commission Recommendation (EU) 2020/2245 of 18 December 2020, found at EUR-Lex - 32020H2245 - EN - EUR-Lex

The application of Criterion 1

10. The JCRA has provisionally concluded that Criterion 1 of the 3CT is met for the Relevant Markets because *"the small size of Jersey means that there are economic barriers to entry at both the wholesale and retail level"*[4]. No other detail or explanation is provided for each of the Relevant Markets (apart from retail fixed voice markets where the declining nature of the market is an additional factor).

11. Firstly, and whilst Sure does not wish to be critical of the JCRA's Draft Decision[5], we consider that the JCRA's explanation of the Findings is insufficient; it lacks important detail regarding how the JCRA has reached such a conclusion, why scale can have an impact on both retail and wholesale markets (apparently in the same way) despite the Modified Greenfield approach being adopted, and does not explain why or how the small size of a market is relevant to market entry or expansion. Given that transparency is a fundamental expectation within Jersey public law and a vital aspect of procedural fairness within decision-making that affects rights or legitimate expectation, Sure does consider it to be surprising that the JCRA, as a public body in Jersey, has not taken appropriate steps to explain such an important finding.

12. Secondly, Sure contends that simply relying on the small size of a jurisdiction to pass Criterion 1 may be misaligned with the EU (EECC) framework. Article 67 (1) of the EECC states that:

    'A market may be considered to justify the imposition of regulatory obligations set out in this Directive if all of the following criteria are met'

    The first criterion is that:

    'high and non-transitory structural, legal or regulatory barriers to entry are present'

13. The Commission Recommendation and the Staff Working Document provide clarity as to what is meant by "structural, legal, or regulatory barriers". Specifically, and examining only "structural barriers" as this appears to be most relevant to the issue of jurisdictional size, it is explained that:

[4] Case T-083 Telecoms Market Review – 26th February 2025 – paragraph 4.16, 5.32, and 6.35.
[5] As explained above, Sure welcomes the JCRA's approach and considers the Draft Decision to be broadly clear, comprehensive, and accurate.

"Structural barriers to entry derive from ***different cost or demand conditions that determine asymmetric conditions*** *between incumbents and new entrants, impeding or preventing market entry of the latter.* ***High structural barriers*** *may also be found, for instance, when the market is characterised by* ***absolute cost advantages or substantial economies of scale and/or network effects, capacity constraints and/or high sunk costs."***[6] [emphasis added]

14. The Staff Working Document further clarifies that barriers to entry must be such that *"even an undertaking that is more efficient than the incumbent is unlikely to be able to enter"*,[7] and that such barriers must be considered *"in the context of a modified Greenfield approach"*[8].

15. Indeed, neither the EECC, Commission Recommendation, nor the Staff Working Document make reference to the size of a jurisdiction when explaining the structural barriers that may cause Criterion 1 to be passed. Whilst we agree that the size of a jurisdiction could be a contributing factor to the existence of one or more of the market conditions cited above, jurisdictional size alone is clearly not indicative of there being high and non-transitory barriers to entry in the Relevant Markets.

16. It therefore follows that the JCRA does not appear to have followed the regulatory best practice cited in the Draft Decision. To the extent that the JCRA wishes to align its approach with the EU (EECC) regulatory framework, as asserted in the Draft Decision, we request that the JCRA re-assesses the Relevant Markets in the context of the EU approach, and specifically considers the factors that the EU considers to be probative of high and non-transitory barriers to entry. Naturally, should the JCRA still consider the Relevant Markets to be susceptible to ex ante regulation after the amended assessment, then Sure would support this decision. However, should the updated assessment indicate that the Relevant Markets are not susceptible, given Criterion 1 is not passed, then Sure contends that the Relevant Markets should be de-regulated.

Evidence of barriers to entry

17. Furthermore, Sure queries whether the size of a jurisdiction alone can be probative of high and non-transitory barriers to entry in the Relevant Markets.

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[6] Commission Recommendation (EU) 2020/2245 of 18 December 2020, para. 9.
[7] Commission Staff Working Document – Explanatory Note – accompanying the document Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation […] – page 11.
[8] Ibid, page 11 and 12.

18. As explained in the Staff Working Document, high and non-transitory barriers to entry in the Relevant Markets must be considered in the context of the modified Greenfield approach[9]. That is, the JCRA must take into account existing market conditions, including upstream regulation that may affect the Relevant Markets as well as foreseeable market developments over the review period. This is because access obligations upstream of the markets under review can, and do, have a significant impact on the presence of high and non-transitory barriers to entry in those markets.

19. For each of the Relevant Markets in Jersey, all of which are <u>retail</u> markets, corresponding upstream/wholesale markets are subject to SMP regulation. These are the wholesale broadband access market, the wholesale leased lines market, and the wholesale fixed access market (though which Wholesale Line Rental, "WLR" is made available). As a consequence of this upstream regulation, other licensed operators ("OLOs") have access to white-labelled broadband (where a managed service), leased line, and landline products on non-discriminatory terms, conditions, and prices, and which are available on an island-wide basis (collectively "wholesale access products").

20. The corollary of these wholesale access products being available is that OLOs are able to provide services to end-users in the Relevant Markets:

    20.1. anywhere on the island (wholesale access products are available on an island-wide basis);

    20.2. At the same marginal cost as all OLOs, including JT, due to the fact that wholesale access products are price regulated and made available on a non-discriminatory basis; and importantly

    20.3. Without needing to incur a significant amount of upfront cost or make substantial upfront investments due to the white-label nature of the wholesale access products[10]. Services can be provided to end-users using wholesale access products on a scalable basis.

21. Sure contends that, absent material upfront costs (such as the cost of network build) and given OLOs' ability to easily scale services to meet demand (because wholesale access can

[9] Commission Staff Working Document – Explanatory Note – accompanying the document Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation […] – page 12.
[10] Sure notes that some upfront investment may be required to develop core network capabilities for retail broadband services in Jersey, but this is not necessarily the case where JT offers a managed service to an OLO.

be purchased on a circuit-by-circuit basis), entry into the Relevant Markets is significantly de-risked and the critical mass of users required by OLOs for market entry to be viable is much smaller than in markets where OLO network build is required. Indeed, OLOs wishing to enter a Relevant Market would only need to achieve sufficient scale to be able to offset retail-specific costs, many of which are also scalable (staff, associated consumer equipment, customer support, marketing and promotions etc), and make a suitable return on investment. Therefore the volume of end-users needed to facilitate market entry on a profitable basis is likely to be relatively low (given entry costs are low), and market entry into the Relevant Markets in Jersey is entirely feasible even though Jersey is a small jurisdiction.

22. Additionally, because wholesale access products must be made available by JT on reasonable request, and on a non-discriminatory basis, this enables timely and stable OLO market entry to occur, including in a sub-scale market such as Jersey.

23. As a consequence, we do not believe that the small size of Jersey alone is probative of high and non-transitory barriers to entry existing the Relevant Markets. In our view, the JCRA must consider other factors that may be probative of such barriers (absolute cost advantages, <u>substantial</u> economies of scale and scope, capacity constraints, or high sunk costs) before concluding that they exist.

24. Finally, Sure notes that the JCRA references the success of OLO market entry and expansion as a reason not to impose remedies in the Relevant Markets, despite JT being found to have SMP. In the Draft Decision, the JCRA notes that "competitors have gained market share and the number of competitive wholesale connections has steadily increased"[11]. This statement suggests that OLOs have been able to enter the market and expand their customer bases in response to JT's SMP, and thus denotes that high and non-transitory barriers do not, in fact, exist. In our view, the JCRA's rationale for not imposing remedies is contradictory to its 3CT assessment, and such a contradiction should be resolved by the JCRA before it proceeds to consideration of appropriate remedies.

RETAIL MARKET REMEDIES

25. Without prejudice to Sure's position regarding the 3CT, Sure disagrees with the JCRA's proposal not to impose remedies on JT where it has been appropriately found to have SMP in the Relevant Markets. This is for two reasons:

[11] Case T-083 Telecoms Market Review – 26th February 2025 – paragraph 4.24 and 6.35.

25.1. Firstly, such a proposal is misaligned with regulatory best practice; and

25.2. Secondly, the JCRA's proposal, if implemented, would mean that market failures identified in the retail broadband, retail fixed access, and retail leased line markets go unaddressed.

26. As explained in paragraph 9, the JCRA has opted to follow the EU (EECC) approach in undertaking this market review because it represents best regulatory practice. We support this approach.

27. The EU regulatory framework, both historic and current, make clear that, where market analysis reveals that competition on the market is not effective, and the Authority designates one or more operators as having SMP on that market, at least one appropriate ex ante remedy must be applied. Such a requirement was outlined in Article 16 of the Framework Directive[12] and the Access Directive 2002/19/EC, and is currently explained in Article 68.2 of the EECC[13]. Regulatory authorities are expected to impose one or more of a defined list of ex ante remedies, including access obligations, transparency, non-discrimination, or price controls etc. These remedies are intended to proactively address market failures, which have been identified via the market definition and SMP assessment phases of a market review, and do so **before** harm occurs. Therefore, the JCRA's proposal not to impose remedies in the Relevant Markets, despite JT having been designated as having SMP, would clearly be at odds with the EU (EECC) approach and therefore contrary to its commitment to follow the EU regulatory framework for this market review. Whilst the JCRA is not under a legal obligation as a National Regulatory Authority to follow Article 67 and 68 of the EECC, it is ostensibly a departure from regulatory best practice.

28. Secondly, by not imposing any remedies in the Relevant Markets, or undertaking any kind of regulatory intervention, there is a risk that JT could leverage the SMP that it has been deemed to have and behave in a manner that is anti-competitive. For example, absent transparency obligations (such as notifying the market of new products, terms, and prices prior to implementation), JT could engage in price or non-price discrimination which harms consumers (e.g. by enabling inappropriate discrimination between customers with available

[12] Directive 2002/21/EC, Article 16.

[13] Where an undertaking is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 67, national regulatory authorities shall, as appropriate, impose any of the obligations set out in Articles 69 to 74 and Articles 76 and 80. In accordance with the principle of proportionality, a national regulatory authority shall choose the least intrusive way of addressing the problems identified in the market analysis.

alternatives and those without) and/or stifles emerging competition (e.g. by preventing market entry or expansion for OLOs) within the Relevant Markets. A complementary non-discrimination remedy could further minimise this risk.

29. To the extent that JT continues to have SMP in the Relevant Markets, and is able to leverage that SMP to the detriment of consumers and competition, then regulatory inaction in this context would risk entrenching monopolistic outcomes, contrary to regulatory best practice and the interest of the market. We therefore urge the JCRA to continue to impose remedies on JT in the Relevant Markets where it continues to find JT to have SMP in those markets.

STANDALONE BROADBAND

30. We note the JCRA's statements, in sections 4.1 and 4.12, that broadband services can be purchased on a stand-alone basis. Section 4.12 contains a footnote, in which reference is made to an indication, from wording on a particular JT website page, that services are supplied on a stand-alone basis. We are confused, in that regard, as to the best of our knowledge, JT has not, in recent years, marketed its Jersey broadband services without reference that it 'includes landline rental'. We are aware that a key driver for this is the need for compliance with the Advertising Standard Authority's ("ASA's") requirements[14] for a landline to be marketed alongside broadband (where line rental is offered by a provider).

31. As the JCRA acknowledges, in section 4.22, 'JT's supply of fixed wholesale broadband services still requires simultaneous provision of a landline'. Indeed, this is also the case for the provision of all retail broadband services, served by JT's network. The JCRA goes on to mention the concept of a 'broadband line only wholesale service', which we comment on below, in [insert ref.]. However, we believe that it would be pertinent to set out here some of the fundamental network design requirements and constraints in play across the Channel Islands, which differ in comparison to the provision of landline and broadband services in the UK, Isle of Man and many other jurisdictions.

32. Sure has long been a champion of Fixed Number Portability (FNP) and we believe that it should have been introduced a number of years ago, as with Mobile Number Portability (MNP), on a pan-CI basis.

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[14] Based on guidance provided by the Committee of Advertising Practice ("CAP"), the most recent of which was published on 01/04/25: www.asa.org.uk/advice-online/broadband-and-telecoms-pricing-and-charges.html#GPI

33. The absence of FNP in the consumer market has meant that in both Jersey and Guernsey the technical solution for voice services provided over a Fibre To The Premises (FTTP) network has necessitated the provision and use of a dedicated voice port on an Optical Network Terminal (ONT), located within each customer's premises. A customer's ability to choose their retail voice service provider is achieved through the existence of Wholesale Line Rental (WLR), via the ONT. Based on comments made by the JCRA elsewhere within its Draft Decision, it may be that the importance of WLR, in this regard, has not been fully appreciated. It serves a proxy to facilitate fair retail voice competition, in a way that is not relevant in jurisdictions where FNP exists. In such instances, the industry norm is for a customer's voice service to be provided via a voice port on their broadband router. In that scenario, the retail voice provider is not reliant on the network provider's ONT or voice switching gateway, to achieve that solution, as the broadband router passes voice calls to/from the retail provider's own voice gateway.

34. In an ideal and more usual world, FNP would exist before the mass rollout of an FTTP network within that jurisdiction, meaning that the design of the network could and should be aligned with the outcomes achievable through FNP. However, in Jersey (and Guernsey) it would not now simply be a case of retrofitting FNP into the process, for the consumer market. That isn't to say that a consumer related FNP facility should not be developed across the Channel Islands – we support its implementation, albeit the key focus should be on business lines – but there are some considerations that would need to be taken into account:

34.1. JT's (wholesale) bitstream service allows retail broadband providers to manage their customers' retail broadband speeds and contention ratios, but JT currently controls the Quality of Service (QoS) variables itself. The ability for retail broadband providers to control and therefore appropriately prioritise voice service data (including that of 999 traffic) would need to be added into the specification of JT's bitstream service. This is by no means insurmountable; indeed, this could have been included when bitstream was launched, in 2020.

34.2. An upgraded power solution may be required to support vulnerable customers during a power cut, as for those whose voice service were provided via their broadband router, it would need to have a battery backup, in addition to the battery currently supporting their ONT. Commercial solutions that would power both a router and an ONT are widely available, to achieve that result, so again, this is not an insurmountable issue.

35. We comment on the benefits of FNP to the business market in paragraphs 43 to 59 and this is where we see that the truly beneficial outcome would be achieved.

36. That brings us back to the concept of a stand-alone broadband solution. In the traditional telecoms world, where voice services were provided using the Public Switched Telephone Network (PSTN), each customer's landline connection terminated on a network concentrator, attached to a dedicated fixed network switch. These were expensive assets, which incurred high annual support and maintenance costs. Sure undertook detailed analysis of its landline costs in Guernsey, back in 2012, and found that 18% related to the provision of a dial tone (thereby enabling calls to be made), leaving 82% associated with the cost of copper connectivity between a customer's premises and their nearest telephone exchange. Customers who also wanted a broadband service would have that provisioned 'over the top' of the physical landline link.

37. Taking that as an example, had a standalone broadband service existed then, it would have been based on 100% of the broadband costs and 82% of the landline costs, thereby theoretically saving the customer the 18% relating to the voice element. However, with the full swap-out to an IP based network in Jersey and the provision of connectivity via an FTTP infrastructure, the legacy costing logic has fallen away.

38. In an IP based network, as used by JT, information is transmitted and received as packets of data. The total packet volume required for the provision of a voice service, compared to that used by data (e.g. broadband) is so minimal, it is negligible and almost not worth costing separately. In addition, whereas a traditional voice service, provided over a landline, took up a physical port on a concentrator, in an IP environment the process is virtualised, so the equivalent per-user port cost does not exist. As a result, the logic of a landline element and a separate broadband element have all but fallen away too, but it means that whether providing one or both, the total network cost is only minimally different. The result is that providing a standalone broadband service will no longer have anywhere near to the equivalent of an 18% cost saving for the voice element. The separation of costs between the elements of landline and broadband are therefore much more theoretical (and generally irrelevant). Ofcom appears to recognise this outcome in the advice it provides to UK consumers, where it states '[T]here are some broadband-only packages out there, which don't include a landline service. But they generally don't cost less than a broadband and home phone bundle'.

39. We have direct experience of broadband-only services, through our associated Sure business in the Isle of Man. There, Manx Telecom provides wholesale and retail broadband-

only solutions for fibre customers[15], whilst broadband customers who rely on the legacy copper network are still required to take an associated landline service. Wholesale customers with end users of both copper and fibre technologies pay the same, irrespective of whether their service is broadband-only. For example, a customer with an entry level copper broadband service would pay £[✂], plus line rental of £[✂], i.e. a total of £[✂]. An entry level fibre broadband-only service is also charged at £[✂]. Manx Telecom has a licence requirement to provide cost based charging, so in line with Ofcom's general observations, plus our own considerations of the costing of IP based networks, it appears that there is no discernible cost saving in the provision of a fibre based broadband-only service.

40. Regardless of operators' views, stakeholders should consider and appropriately manage the expectations of end users who, unsurprisingly, would anticipate that a broadband-only service would be cheaper. Considering the recent and recurring local consumer and media interest, it may be beneficial for the JCRA to provide an equivalent to Ofcom's clarification information.

41. For the reasons set out above, Sure cannot currently support the JCRA's consideration of a broadband-only service in Jersey. We believe that there will be a place for it, but we are not yet at that stage in the development of wholesale telecoms services, which, in the absence of FNP, have needed to take a markedly different approach to fibre than the standard applied in most other jurisdictions. The provision of FNP in Jersey would provide a major push towards a more standardised and commercially equitable outcome, but Jersey's (and Guernsey's) unusual reliance on the provision of fixed voice services via wholesale, rather than retail infrastructure, has no short-term fix. For the long-term benefit of Jersey broadband subscribers and the thousands of customers who still rely on or choose to use fixed voice services, we recommend that the JCRA develops a telecoms wholesale technology plan, to guide both wholesale and retail providers towards a standardised provision of broadband and voice services. Changes to the network processes would likely take a number of years to enact, but would result in alignment with FTTP related industry practices.

42. As can be seen, there are many interrelated topics at play here. We would be happy to discuss them, in detail, with the JCRA and other interested parties.

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[15] Based on an FTTP network architecture that was designed post the implementation of FNP (counter to what has occurred in Jersey).

FIXED NUMBER PORTABILITY

43. Sure fully supports the implementation of FNP. We believe that for consistency, project efficiency and cost minimisation, it must be developed on a pan-CI basis.

44. As discussed earlier in this response, we believe that there are benefits in developing FNP for consumer-based services, however the major benefit would be for business customers. Technological developments in recent years, not least the integration of voice services in Microsoft Teams, have brought renewed focus to the types of solutions available when a business' phone numbers are 'freed' from their telecoms provider's control.

45. Sure fully supports competition in the retail voice market, but it must be achieved on a fair and non-discriminatory basis, in line with the requirements of the JCRA's licence conditions. In our associated Guernsey business, we have experience of unlicensed retailers seeking to access our number ranges for resale purposes. Our support of such practices would not only be in breach of the Guernsey Telecommunications Law, but it would also not comply with the numbering requirements set out by Ofcom. We will avoid going into the details here, but the types of solutions that these unlicensed retailers are seeking to deploy are indicative of the breadth of the fixed voice options that are now available, many of which are also being developed by locally licensed operators. It is for the latter that FNP is an important enabler. Counter to the perception that voice services are becoming less important, locally licensed operators are seeing a noticeably higher level of interest from business customers – again, not least because of Microsoft Teams.

46. Whilst WLR was developed to enable Jersey (and Guernsey) consumers to choose which local retailer provides their voice service(s), JT, at the time, refused to develop an ISDN (business line) equivalent. JT has since swapped out its ISDN network to a SIP-based equivalent, where a wholesale variant would not be as readily suitable. As a result, local business customers who wish to retain their phone numbers remain tied to their existing provider. As JT holds the vast majority of the local fixed line number ranges, it maintains significant control over the local business voice market. This is a blocker to fair competition, as even if a business chooses to take the likes of leased lines, IP and mobile services from another locally licensed operator, it is still tied to JT in relation to fixed voice services. FNP is the key enabler in breaking that link and is the final step in a customer's ability to cease their relationship with JT – the incumbent operator.

47. Of course, it is not all to JT's detriment. JT would acquire the ability to gain customers (albeit in significantly smaller volumes) from Other Licensed Operators (OLOs), in instances where,

for example, new businesses chose to take their fixed line services with an OLO, rather than JT.

48. Looking at the JCRA's particular considerations, as set out in Box 4 of its Draft Decision, we comment on each aspect, below:

User demand for FNP (consumer and businesses)

49. In the past 12 months there has been a noticeable surge in requests for FNP by business customers – in Sure's case, both in relation to customers wishing to bring their phone numbers to Sure and some of those currently with Sure who are seeking to move their numbers away from us. This demand is being seen on a pan-CI basis and we know that it is not unique to us.

50. It may be beneficial for the JCRA to seek to ascertain the level of interest in FNP, via an information request to locally licensed operators, in terms of the quantity of phone numbers/ranges that business customers are looking to port to another provider. We would certainly support such analysis. It may be equally beneficial, for the JCRA to seek feedback directly from local businesses.

51. We have had indications from Jersey corporate customers that they intend to port over [✂] thousand DDI phone numbers to Sure once FNP is available. This quantity continues to rise as interest in our Sure Connect for Microsoft Teams increases. [✂]

Technical options, including feasibility and timescales

52. Whilst we could go into the details of an FNP process here, the reality is that it is fairly straightforward to implement, as might be expected. The majority of local providers, along with the JCRA (and GCRA) have already lived through the development of number portability, when MNP became available across the Channel Islands, in 2008.

53. Sure has experience of FNP through its associated Isle of Man business. FNP has operated successfully in the Isle of Man since 2017. In the same way that MNP had existed there for a number of years, we would expect a Jersey (and Guernsey) version of FNP to be achieved primarily in association with or as an extension of the MNP framework. Whilst there are some fixed network specific requirements, the general principles of number portability are the same, irrespective of whether fixed or mobile numbers are being ported.

54. Also, in the same way that not all Isle of Man fixed network providers were party to the existing MNP process and that it was a fairly simple process for them to be embedded into the FNP solution, we would expect a conducive outcome in the Channel Islands, for any non-MNP related providers (Newtel, for example) to achieve their FNP capability.

55. Our latest view, in terms of the timeframe for development and implementation is that it should be achievable within a 10-12 month period, from project launch.

Outline costs and benefits of FNP

56. Sure views FNP as increasingly important to corporate customers, following a period of years in which a decline in customer interest of voice services had occurred. Integration into Microsoft Teams and equivalent cloud voice platforms has very much brought FNP back into focus. Some corporate customers have been very surprised to learn that FNP is not available in Jersey (nor Guernsey), especially in situations where multi-national companies are entirely used to number portability facilities, which exist in most if not all of the other jurisdictions in which they operate.

57. We understand from information provided by the JCRA, in around 2017, that JT 'blocked' the previous push for FNP in Jersey on the basis of what we understand to be an estimated cost of circa [✂] pounds. We questioned the credibility of that cost, at the time, and continue to disbelieve that an estimate of anywhere near to that amount could ever have been justified. However, whatever defence JT used, it worked and the project was shelved.

58. A lot has changed since 2017, not least because JT's network is now fully IP based, with its fixed voice services being provided over an entirely fibre based network. Its converged IP network switching equipment will also be used for its mobile services, including MNP, so were JT to suggest that a [✂] figure sum (or anything close to it) was reflective of the current costs of FNP development, Sure would have serious concerns. We know that JT has generally opposed the introduction of FNP, a topic that was first formally considered locally in 2010, but we would urge the JCRA to press JT for detailed and credible evidence, were it to continue to claim that the cost of development of FNP is prohibitive. If operators in the Isle of Man (a similar sized jurisdiction) were able to achieve it, without major cost or upheaval, then one would need to strongly question why a Jersey-based operator could not achieve the same outcome.

Practicabitlity and work programme

59. Sure (and Airtel, while it is still operating as a separately licensed operator) fully support the development of FNP, on a pan-CI basis. The JCRA would need to ascertain from other relevant Jersey operators whether they are likely to support or oppose FNP, before any meaningful consideration can be given to what an appropriate work programme would look like. We are keen to offer our support to that market feedback process.

DARK FIBRE

60. We have previously highlighted the potential for the future use of dark fibre for mobile backhaul connectivity purposes, although we do not believe that data bandwidth requirements will make that a necessity for a number of years. As the exact timeframe is currently unknown, we agree with the JCRA's view that dark fibre should be maintained as a regulatory option and not imposed as a remedy at this stage.

61. Our current 5G network rollout plans are based on the existing wholesale leased line portfolio offered by JT. [✂].

62. [✂].

63. [✂].

DATA CENTRES

64. We welcome and support the JCRA's proposal to further develop its thinking on this topic.

65. The subject of Jersey's data centres (DCs) has been contentious at times, in recent years. We provide an open door policy at our Foreshore DC (meaning that any operator is able to access and locate equipment within our DC), whereas JT has a closed door policy at its two DCs (Five Oaks and Rue des Pres).

66. We note the JCRA's comment that 'JT has indicated it would consider OLOs deploying equipment and connectivity services in its data centres', but this is not an indication that JT has ever provided to Sure. To the contrary, JT has been strongly resistant to the concept of any form of Sure connectivity being provided into or within JT's DC sites. Clearly, we would welcome a change in JT's stance so that we (and others) can compete on a level-playing field, with the way that JT treats its own retail customers within its DCs. Any encouragement on the JCRA's part for this to occur would be helpful.

67. Our (and, we understand, other operators') issues are not limited to connectivity into JT's DCs, but also connectivity between racks within each of its DCs. JT maintains a ludicrous stance that it does not provide specific connectivity to link between racks within its DCs (using cabling known as cross-connects), however operating a DC without such internal connectivity would be almost entirely pointless. Of course JT provides cross-connects. It is simply that JT refuses to allow Sure (and likely, others) to access these connections between racks. We are not demanding that we provide our own cross-connects, but simply that JT should, like other DC owners (both locally and globally) provide a cross-connect facility, so that customers within a JT DC can appropriately communicate with other customers within that same DC.

68. Instead of offering this industry standard facility, JT makes us (and again, we believe, other operators) purchase one of its wholesale on-island leased lines, for every cross-connect that we wish to have in place. As the JCRA is aware, leased lines are relevant where customers wish to connect two or more geographically different locations to one another. They are certainly not relevant when a connection is being sought within the same premises. We have heard claims that for the wholesale leased lines that JT forces us to purchase, in place of cross-connects, it actually routes them out of the particular DC to the JT exchange and back again. Whether JT does this or whether it simply provides a cross-connect directly within the same DC, it is offensive for it to charge us for a wholesale leased line, when there is absolutely no need for one to exist. It appears to be nothing more than a strategy for a less than subtle anti-competitive outcome.

69. The constrains placed on Sure (and others) can be summarised, as follows:

Requirement	JT's DCs	Sure's DC
Connectivity **INTO** DC	Only JT	Sure, JT and OLOs
Connectivity **WITHIN** DC	JT only provides cross-connects for its retail customers. OLOs are required to purchase expensive wholesale leased lines, in place of cross-connects.	Cross-connects provided to ALL customers, at standard industry-based charges.

70. Whilst JT asserts that it has the right to connect and service its DCs in the commercial manner that suits it best, our concern is that it is discriminating between the users of its DCs, based on their status as a retail or wholesale customer. As JT should provide and charge the same for the services within in its DCs, irrespective of customer type, we consider its current stance to be anti-competitive.