



**JT's response to CICRA's Business Connectivity  
Market Review Consultations**

**2<sup>nd</sup> June 2014**

## **1. Introduction**

1. This response is provided by JT (Jersey) Limited and JT (Guernsey) Limited referred to jointly as JT. JT welcomes the opportunity to provide its views on this very important topic of Business Connectivity in Jersey and Guernsey
2. Section 2 of this response sets out JT's position on a number of the key issues raised in the business connectivity consultations. The specific questions from the Jersey and Guernsey consultation are answered in Section 3 and Section 4 respectively, referencing the relevant sections in JT's main response.

## **2. Executive Summary**

3. CICRA states that it is adopting the EC "best practice" methodology for defining markets and imposing remedies. However, the analysis presented by CICRA does not appear to be following this EC methodology correctly. There are arguments against the use of this methodology, which has been designed for larger countries, and instead to look at a more proportionate approach before introducing regulation into small markets.
4. The process followed by CICRA means that it is counter-intuitively introducing regulations when the EC methodology would conclude that none was necessary. There is insufficient evidence presented by CICRA to support intervention in the retail leased lines market, and we expect that if CICRA adopted the "best practice" methodology correctly, it too would conclude that regulation was unnecessary.

### 3. JT's response to Key Issues

#### ***CICRA's Market Assessment methodology***

5. CICRA states in the first paragraph of the introduction to both consultations that *"if there is SMP, then the market is not effectively competitive and ex ante regulation should be imposed"*<sup>1</sup>. Whilst in many cases, it may indeed be correct to impose ex-ante regulation in these circumstances; there are other instances where it would be inappropriate. For example when the market is not susceptible to ex-ante regulation, when remedies in other markets may be sufficient or when the cost of imposing remedies outweighs the benefits. CICRA needs to undertake a number of additional steps and analysis before determining whether it is correct to impose ex-ante regulation.
6. This generalisation perhaps typifies CICRA's heavy-handed approach to regulation. This approach is counter to what is considered best practice regulation. In contrast, Ofcom's statutory duties ensure correctly that it will "operate with a bias against intervention", this Business Connectivity consultation appears to have been designed in such a way as to increase the regulatory burden.
7. In Section 5, CICRA has explained that it is adopting the EC "best practice" methodology for defining markets and imposing remedies<sup>2</sup>. There are arguments concerning whether it is correct for CICRA to adopt this methodology, which has been designed for larger countries. It is instead more proportionate in small markets to take more care before introducing regulation that has been designed for larger operators in larger markets.
8. However, given CICRA's position, what is more problematic is that the analysis presented by CICRA does not appear to be following this EC methodology correctly, leading to more regulation than would be imposed on German, French and British incumbents. The methodology differs from the EC best practice in two key ways.
  - Susceptibility to ex-ante regulation step; and
  - Order for reviewing wholesale and retail markets.

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<sup>1</sup> CICRA, Business Connectivity market Review: Jersey, 8 April 2014, p4

<sup>2</sup> Ibid p15

## **Susceptibility to ex-ante regulation step**

9. CICRA's approach to the market assessment is defined by three key steps:

Step 1	Market Definition
Step 2	SMP Assessment
Step 3	Remedies

10. However the EC “best practice” methodology, which CICRA purports to follow, incorporates an additional step in the process, prior to commencing the SMP assessment:

Step 1	Market Definition
Step 2	Is market susceptible to ex-ante regulation ?
Step 3	SMP Assessment
Step 4	Remedies

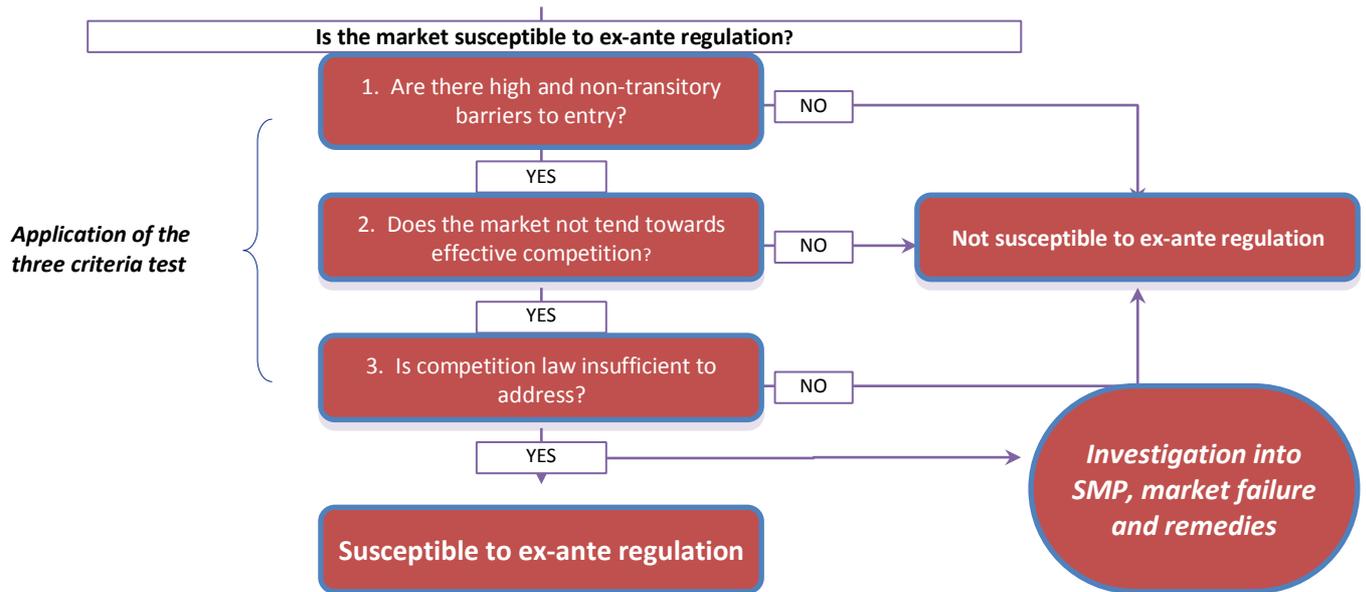
11. This critical step in the process considers whether the defined market is “susceptible to ex-ante regulation”. The EC has pre-defined a set of seven markets, for which it has already undertaken this assessment. When considering these markets, NRAs can make a presumption they are susceptible to ex-ante regulation and move straight to an SMP assessment.

12. However if an NRA wishes to regulate an additional market that is not on its pre-defined list of regulated markets, it must present additional evidence that the market is susceptible to ex-ante regulation<sup>3</sup>. This susceptibility is identified through the application of the three criteria test, which needs to be carried out prior to assessing SMP and investigating potential remedies. The steps of the three criteria test are shown in Figure 1.

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<sup>3</sup> Explanatory Note to the European Commission Recommendation on Relevant Product and Service Markets, 13 November 2007, p11 found at [https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/sec\\_2007\\_1483\\_2\\_0.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/sec_2007_1483_2_0.pdf)

**Figure 1: Three Criteria Test to assess susceptibility to ex-ante regulation**



13. The EC explains that if an NRA wants to regulate a market that is not on its pre-defined list of regulated markets, it should present additional evidence that the problems identified do (not) pass the Three Criteria Test, meaning: (i) the market is characterised by high and non-transitory barriers to entry; (ii) the market structure does not tend towards effective competition within the relevant time horizon; and (iii) competition law alone is insufficient to adequately address the market failure(s) concerned.

14. CICRA itself refers to this step in this process when noting that according to the EC, only the wholesale terminating segments of leased lines should be considered as susceptible to ex ante regulation<sup>4</sup>. CICRA notes that there is still some regulation of retail leased lines, and mentions the UK as an example. In the UK, when Ofcom decided to introduce regulation to the very low bandwidth services, it applied the three criteria test to decide if this was appropriate.

*“In relation to retail markets, we have had regard to the fact that these are not included in the list of markets in the EC’s Recommendation in which, at the European level, ex ante regulation is likely to be required. We have therefore applied the so-called ‘three criteria test’ to assess whether such regulation is appropriate to national circumstances in the UK”<sup>5</sup>*

15. Despite purporting to follow the EC “best practice” methodology, CICRA has not carried out this necessary three criteria test. There is no evidence presented to support imposing ex-ante regulation in retail markets. Specifically, CICRA has not effectively

<sup>4</sup> CICRA, Business Connectivity market Review: Jersey, 8 April 2014, p16

<sup>5</sup> Ofcom, Business Connectivity market Review, 28 March 2013, Para 1.46

shown that these retail markets have high and non-transitory barriers to entry, despite wholesale remedies being in place, and that competition law would not adequately deal with any market failures. Additionally, CICRA has not identified any market failures.

16. JT considers that if CICRA had properly undertaken this test it would have come to the same conclusion as the EC, i.e. retail markets are not susceptible to ex-ante regulation given the presence of adequate remedies and competitive pressure in the upstream wholesale leased line markets. These combine to significantly reduce the barriers to entry into the retail leased lines market, meaning that the first criterion is not passed.

### **Order for reviewing wholesale and retail markets**

17. The EC's "best practice" methodology sets out clearly the order in which assessments should be carried out. For identifying the markets, it is appropriate to first define the retail markets before then focusing on the corresponding wholesale markets.

*"The starting point for the identification of markets susceptible to ex ante regulation is the definition of retail markets over a given time horizon, taking into account demand-side and supply-side substitutability. Having defined retail markets, which are markets involving the supply and demand of end-users, it is then appropriate to identify the corresponding wholesale markets which are markets involving the demand and supply of products to a third party wishing to supply end-users"<sup>6</sup>*

18. However when analysing the market, to determine whether it was susceptible to ex-ante regulation and if an operator had SMP, the EC methodology considers it appropriate to first review the wholesale markets.

*"In general, the market to be analysed first is the one that is most upstream in the vertical supply chain. Taking into account the ex ante regulation imposed on that market (if any), an assessment should be made as to whether there is still SMP on a forward-looking basis on the related downstream market(s). This methodology has become known as the "modified greenfield approach". Thus the NRA should work its way along the vertical supply chain until it reaches the stage of the retail market(s). A downstream market should only be subject to direct regulation if competition on*

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<sup>6</sup> Explanatory Note to the European Commission Recommendation on Relevant Product and Service Markets, 13 November 2007, p6 found at [https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/sec\\_2007\\_1483\\_2\\_0.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/sec_2007_1483_2_0.pdf)

*that market still exhibits SMP in the presence of wholesale regulation on the related upstream market(s)<sup>7</sup>.”*

19. The rationale for the switch of focus to the wholesale market first is to avoid duplication and unnecessary regulation in the retail markets. Wholesale regulation can have a dual beneficial effect, negating any competition problems in both the wholesale and retail markets. Any SMP finding or remedies in the retail markets would only follow if, after the imposition of wholesale remedies, there is considered to be any residual competition problems in the retail market.

**Figure 2: EC’s best practice approach for reviewing retail and wholesale markets**



20. In contrast, CICRA has reviewed the retail markets first, which goes against EC best practice and could lead to a situation where two remedies are put in place when in fact one would suffice.

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<sup>7</sup> Ibid, p13

**Figure 3: CICRA’s approach for reviewing retail and wholesale markets**



21. Given the deficiencies in the market assessment process undertaken by CICRA, we expect it to conduct this assessment again, following the EC “best practice” methodology that it claims to be adopting.

### ***Geographic markets for on-island and off-island leased lines***

22. The geographic market definitions presented by CICRA differ for the retail and wholesale products. This is despite CICRA stating explicitly

*“Generally, wholesale and retail leased lines are parallel markets – the products are often the same, with the difference being in the pricing.”<sup>8</sup>*

23. CICRA have defined separate markets at the wholesale level for on-island and off-island leased lines, a delineation which we agree with. These products are priced separately, depending on the end-point. However on-island and off-island connectivity are included within the same retail market as CICRA consider there are no differences in the demand or supply conditions. CICRA explain that *“it doesn’t matter to the customer whether the end point is on-island or off-island”<sup>9</sup>*.

24. We consider this to be an incorrect assumption. In fact the end-point will be critical to the purchaser of a retail leased line. The products will be priced separately and the same reasons for defining two distinct markets at the wholesale level need to apply at the retail level.

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<sup>8</sup>ibid p9

<sup>9</sup>Ibid p26

25. This inconsistency between the market definitions is not just an academic issue. Instead the combining of the retail markets leads to the perverse outcome whereby JT is considered to have market power in the provision of retail off island connectivity despite an effectively competitive wholesale market.
26. We would expect CICRA to reconsider the market definition for retail on-island and off-island leased lines, providing more evidence to support its position.

### **Other Market Definition issues**

27. In the December presentation to CICRA, JT argued for a broad market definition.

*“We are of the view that the appropriate definitions of business connectivity economic markets are a) On Island (Jersey), b) On Island (Guernsey), and c) Off Island. We see that there could be a case for sub-dividing the on island markets between lower and higher bandwidth services, however, we believe there is an increasingly effective chain of substitution through the speeds and rapid replacement of low capacity services is expected in the near future”*

28. We can appreciate the arguments for why some may consider it appropriate to segment the wider Business Connectivity market on the basis of bandwidth, delivery technology or geographic region in the island. However given the size of the overall market, which is undergoing rapid technological advancement, we agree with CICRA that it is more appropriate to use a broad market definition to incorporate all bandwidths, delivery technologies and geographic regions within one Business Connectivity market. We also agree with CICRA that the market should not be extended to other similar services which are either bought in conjunction with leased lines (e.g. VPNs) or potentially in place of leased lines (e.g. Broadband) for which the delineation is not clearly defined.
29. Even whilst defining the market in this way, CICRA should note that segments of the market (e.g. high bandwidth products within St. Helier) have greater levels of competition at both the wholesale and retail levels than others. Whilst the differences may not be sufficient to justify separate markets, they should be factored in when considering the imposition of remedies. A remedy which seems appropriate in many areas of the island, could act to force JT to compete with one hand tied behind its back in areas and products where investment is critical. This is something that CICRA should look at when assessing whether remedies are appropriate.

### **Control of Infrastructure and Vertical Integration**

30. CICRA’s assessment for the retail leased line market is that neither of the two alternative communications providers would be likely to replicate JT’s ubiquitous network, because

their focus is on connecting to particular customers. As a result “*JT has advantages associated with control of a network which is not easily replicated*”<sup>10</sup>.

31. However in the provision of retail leased lines, ubiquity is not an essential part in order to compete. Rather the customer will want to be connected to a specific end point and will use any provider who can provide the connectivity. The infrastructure that would be required is something that JT, Sure and Newtel could easily build to meet the customer demand. As CICRA itself notes, “*OLOs can and do extend their networks on a customer-by-customer basis*”<sup>11</sup>.
32. Moreover, given the order of its SMP and Competition Assessment, CICRA has not fully taken account, in its review of the retail market, the fact that all operators will be able to gain access to JT’s network at the wholesale level. This effectively gives all operators the same access to a ubiquitous network. This should allow all operators to replicate the retail leased lines services provided by JT.
33. The retail leased line market has not been regulated before as JT has not been found to have SMP. CICRA has not explained why JT would start to have any incumbency-related advantages now, 10 years after the market was first liberalized, and given the presence of wholesale remedies. If CICRA does believe this is the case, the appropriate response would be to tweak the wholesale remedies, or wait to see the effects of recent retail minus control changes, rather than bringing in retail remedies in addition.
34. CICRA explain that “*in the retail leased line market, a vertically integrated supplier which had SMP in the upstream wholesale market could, for example, bundle its retail leased lines with other non-regulated services such as IP feed, data storage and/or other value-added downstream service in a way which would restrict a market entrant’s ability to compete*”<sup>12</sup> to support its view that a vertically integrated operator could leverage its power in the wholesale market to the retail market.
35. CICRA does not explain why any other service provider could not do the same bundling, given the regulated access that is available to JT’s wholesale products. The point of wholesale regulation is to give all service providers the same ability to effectively “vertically integrate”. If CICRA believes the wholesale regulation is not working effectively in this way, we would expect to see a strong evidence base to support this point.

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<sup>10</sup> Ibid p31

<sup>11</sup> Ibid p31

<sup>12</sup> Ibid p33

## Pricing of retail services

36. CICRA criticizes JT for the pricing of its retail services, without presenting any evidence used to reach these conclusions. As a result we have not been able to review the analysis carried out by CICRA.

37. We are disappointed that CICRA has made critical statements of JT's retail pricing in this consultation and in the recent Chairman's statement in its annual report.

*"Channel Islands businesses are poorly served in respect of both on-island and off-island connectivity - prices being a multiple of those that apply elsewhere."*

38. Statements like this which are not supported by comparative pricing of similar jurisdictions, such as the Isle of Man, are damaging. The limited information presented by CICRA in Annex 2 does not indicate that JT prices higher than comparative operators for on-island retail leased lines. In most instances JT is cheaper than all the comparable operators. As shown in Table 1 for the twelve e JT is cheaper than all the comparable operators indicate that JT prices higher. This does not seem to be an operator that is pricing higher than comparative benchmarks.

**Table 1: Price comparison presented by CICRA for on-island leased lines<sup>13</sup>**

Distance	Capacity	Comparison with MT in Isle of Man	Comparison with Sure in Guernsey
<b>Less than 300m</b>	10Mbps	JT is cheaper	JT is more expensive
<b>Less than 300m</b>	50Mbps	JT is cheaper	JT is cheaper
<b>Less than 300m</b>	100Mbps	JT is cheaper	JT is cheaper
<b>Greater than 300m</b>	10Mbps	JT is more expensive	JT is more expensive
<b>Greater than 300m</b>	50Mbps	JT is cheaper	JT is cheaper
<b>Greater than 300m</b>	100Mbps	JT is cheaper	JT is cheaper

39. For off-island leased lines, CICRA notes a similar comparison between the pricing of JT in Jersey and Sure in Guernsey, with JT cheaper for higher capacity circuits. CICRA notes that both JT and Sure are sometimes more expensive than *"operators in other countries"* but does not provide any data or even benchmark references to support this.

<sup>13</sup> Ibid p76-77

The extent of the analysis and supporting evidence provided is shown in the extract below

*“CICRA compared retail prices published on operators’ websites with information provided by operators outside the CI, and both JT and Sure prices are consistently higher for higher capacity retail leased lines which terminate off-island, and sometimes, but not always, higher for lower capacity leased lines. This is supported by quotes provided by companies located on and off the islands.<sup>14</sup>”*

40. CICRA does not provide a comparison with the off-island price charged by Manx Telecom in the Isle of Man, which, in reference to the on-island price benchmarking, is described as a “good comparator” given its population and cost driver characteristics. It will be interesting to see whether the operators being compared to here are equally “good comparators” on these measures.
41. Given the limited data provided by CICRA, we are obviously unable to respond in any meaningful manner to the conclusions reached that off-island leased lines are more expensive in Jersey and Guernsey than operators outside the CI, nor to the assumption that these operators are appropriate comparators to use. It is imperative that CICRA provide the full data set and analysis carried out so that we can respond in full.

### **Market Shares**

42. In Guernsey, JT recently won the tender to supply leased lines to the Government, and consequently instantaneously become the largest player in the retail leased lines market. The relative importance of one large contract, which can be flipped easily between providers, shows why market shares are not always a good indicator of market power, particularly in such small markets.
43. It should be noted by CICRA that given the size of this States of Guernsey contract, the retail market shares could look very different if the tender is flipped to Sure at the next tender. We trust that CICRA is not basing its conclusions on a static view of the market.

### **Countervailing Buyer power**

44. In the Guernsey market review, the GCRA concluded that no operator had SMP at the retail level, something that was not found in the Jersey market review. The main reason for the different conclusion, given the *cut and paste* analysis presented was due to the countervailing buyer power that the States of Guernsey was deemed to have.

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<sup>14</sup> Ibid p77

45. Whilst a similar shift in market shares has not happened yet in Jersey, given the size of the leased lines purchased by the States of Jersey, the same countervailing buyer power surely exists. If the States of Jersey decided to use Newtel or Sure for its leased lines, the market shares presented would look very different. This threat similarly mitigates any market power that CICRA may believe JT has at the retail level – i.e. the States of Jersey also has countervailing buyer power.
46. We do not consider that CICRA has properly accounted for this countervailing buyer power in its assessment in Jersey, and the potential impact that a tendering of the contract for the States of Jersey could have within the period of this market review. This countervailing buyer power means that the market in Jersey for retail leased lines is very contestable, certainly no less so than the market in Guernsey
47. It would be perverse if CICRA ended up coming up with divergent retail SMP decisions because one Government tendered its leased line contract in the period immediately before the market review and one Government did it immediately afterwards. CICRA needs to take a longer term dynamic view, to prevent its regulatory policy being a hostage to historical misfortune.

### ***Retail market remedies***

48. CICRA makes passing reference in the consultation to “competition problems” that are currently evident in the retail market despite the presence of wholesale remedies<sup>15</sup>. However it does not describe any competition problems or provides any examples of problems in the retail market.
49. The remedies proposed suggest that CICRA believe there is a particular competitive problem related to bundling. However this is only mentioned in passing, with no evidence to support this assertion. If CICRA is seeking to propose a remedy, it needs to be clear about what specific competition problem exists, with corroborating evidence. This has not been provided in the consultation.
50. Instead CICRA is relying on hearsay, with no justification or evidence to support this.
- “Responses to the Call for Evidence, and interviews with operators, end-users and stakeholders indicate that a problem specific to the retail market is the actual and potential bundling...”<sup>16</sup>*
51. This is clearly not sufficient as a basis for confirming a competition problem.

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<sup>15</sup> CICRA, Business Connectivity market Review: Jersey, 8 April 2014, p35

<sup>16</sup> *ibid*

52. Even if CICRA had undertaken the necessary analysis to confirm that there was a competition problem, there is further analysis that needs to be undertaken prior to recommending a remedy. CICRA should be showing how the remedy is targeted appropriately at the competition concern.
53. When regulators have looked to regulate bundles (e.g. Comreg's imputation test<sup>17</sup>) the issue at large was whether the bundle could be replicated (i.e. is there sufficient wholesale access for the regulated product) and not how an operator was pricing its (competitive) non-regulated product.
54. Wholesale remedies mean that there is sufficient competition for the regulated services within the bundle, so it is not clear what issue is generated through the bundling described by CICRA. The services of the bundle which are not regulated can presumably be replicated by all competitors. It is not clear what benefit is generated through imposing price regulation on these competitive products, as proposed by CICRA in its Option 2<sup>18</sup>. This suggests that the remedy is not targeted correctly at CICRA's competition concern.
55. Even if the competition problem was evidenced and the remedy targeted properly, prior to imposing regulation, CICRA needs to undertake a robust cost benefit analysis. This necessary analysis will determine whether the benefits accrued through the imposition of a remedy outweighed the costs of implementation and knock-on effects to the market.
56. As explained by CICRA, "*bundling can be advantageous for both operators and users*"<sup>19</sup>. CICRA will therefore need to consider the effect that regulation will have in reducing these consumer benefits. Some of the benefits are shown in Table 2 below

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<sup>17</sup> [http://www.comreg.ie/\\_fileupload/publications/ComReg0805a.pdf](http://www.comreg.ie/_fileupload/publications/ComReg0805a.pdf)

<sup>18</sup> Ibid p60

<sup>19</sup> CICRA, Business Connectivity market Review: Jersey, 8 April 2014, p35

**Table 2: Benefits of bundling**

<b>Benefit</b>	<b>Explanation</b>
<b>Welfare enhancement</b>	If the value that a consumer places on two goods is higher than the price of the bundle of the two goods, then consumer surplus increases as the customer is paying less than their valuation of the two products individually.
<b>Cost efficiency</b>	Due to economies of scale/scope, in some scenarios a company may save on packaging and inventory costs by bundling products rather than carrying them separately. Factors a company must consider include whether the bundled products compete with each other and whether the demand for the bundled products is positively or negatively correlated
<b>Competitive strategy</b>	A marketer of a successful product may bundle a newer or less successful product with its stronger product as a means of edging its way into a new market. In a broader marketing sense, bundling is often intended to entice value- and convenience-seeking customers who would otherwise buy from another supplier or multiple suppliers by offering unique or appealing combinations of goods relative to their competitors.
<b>Convenience for customers</b>	The bundle brings simplicity to set of choices for a consumer, thus solving a problem.

57. We would expect to see such an analysis prior to proposing specific remedies, especially when CICRA is undertaking such a counter intuitive measure in bringing in retail regulation when all other regulators are working to remove these obstacles.
58. If CICRA maintains its SMP finding in the retail market, we think that it would be appropriate to rely on remedies in the wholesale market to address any issues it believes exist.

### **Wholesale market remedies**

59. JT does not consider that there has been any change in the wholesale market for leased lines to justify any changes to the remedies that are already in place. If CICRA wishes to impose new remedies, it needs to present evidence showing the deficiencies with the current situation.

### **Consistency of approach across Channel Island**

60. The JCRA and OUR were brought together to form CICRA as *“pan-Channel Islands working enables us to deliver a consistent regulatory framework across the Channel*

*Islands.*<sup>20</sup> Given the cross-island competitive effects (with JT acting as a strong alternative network in Guernsey and Sure acting as a strong alternative network in Jersey), CICRA needs to consider the knock-on effects that will result from inconsistencies in regulation.

61. Introducing retail regulation in one jurisdiction, when the underlying conditions are so similar, will act to stifle the cross-island competitive effects. We do not feel that CICRA has factored in this bigger picture issue.

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<sup>20</sup> CICRA, 2014 Strategic Plan and Work programme, March 2014, p7

## **4. Response to Jersey consultation questions**

**Q1. Do you agree with the JCRA's proposed approach to market definition? If not, what alternative do you suggest?**

Yes

**Q2. Do you agree with the JCRA's proposed approach to competition and SMP assessment? If not, what alternative do you suggest?**

Please see paragraphs 9-16 for our comments relevant to this question

**Q3. Do you agree with the JCRA's proposed approach to remedies, should there be a finding of SMP? If not, what alternative do you suggest?**

Please see paragraphs 48-58 for our comments relevant to this question

**Q4. Do you agree with the JCRA's preliminary view that the retail market should not be narrowed to reflect the delivery technology used? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q5. Do you agree that the retail market should not be broadened to include downstream services bought in conjunction with leased lines? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q6. Do you agree that the retail market should not be broadened to include business connectivity services provided over broadband? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q7. Do you agree that all retail leased line bandwidths fall within the same market? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q8. Do you agree that separate geographic markets exist for Guernsey and Jersey? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q9. Do you agree that the retail market encompasses both on-island and off-island leased lines? If not, why not?**

Please see paragraphs 22-26 for our comments relevant to this question

**Q10. Do you agree that there are no particular areas within Jersey where the conditions of retail competition are such that they may constitute separate geographic markets? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q11. Do you agree with the JCRA's preliminary conclusion that JT is dominant in the provision of retail leased lines in Jersey? If not, why not?**

Please see paragraphs 30-47 for our comments relevant to this question

**Q12. Do you agree with the JCRA's proposal to designate JT with SMP in the retail market for leased lines in Jersey? If not, why not?**

Please see paragraphs 30-47 for our comments relevant to this question

**Q13. Do you agree that the JCRA's preliminary conclusions outlined above in relation to the retail leased lines market are mirrored in the wholesale market? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q14. Do you agree that the wholesale market should not be broadened to include dark fibre and/or duct access? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q15. Do you agree that resellers should not be included within the market? If you do not agree, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q16. Do you agree that the wholesale market should not be defined on a narrower basis to reflect customer use of leased lines? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q17. Do you agree that self-supply should not be included in the wholesale market? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q18. Do you agree with the GCRA's preliminary conclusion that separate geographic markets exist for Jersey and Guernsey? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q19. Do you agree that there are separate geographic markets for on-island and off-island wholesale leased lines? If not, why not?**

Please see paragraphs 22-26 for our comments relevant to this question

**Q20. Do you agree that separate markets do not exist for wholesale off-island leased lines between Jersey and Guernsey, and off-island leased lines elsewhere? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q21. Do you agree that there are no particular areas within Jersey where the conditions of wholesale competition are such that they may constitute separate geographic markets? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q22. Do you agree with the JCRA's preliminary conclusion that JT is dominant in the provision of wholesale on-island leased lines within Jersey? If not, why not?**

Yes.

**Q23. Do you agree with the JCRA's proposal that JT should be designated with SMP in the market for wholesale on-island leased lines? If not, why not?**

Yes.

**Q24. Do you agree with the JCRA's preliminary conclusions on dominance in the provision of wholesale off-island leased lines within Jersey? If not, why not?**

Yes.

**Q25. Do you agree that a specific off-island licence would assist in ensuring that there is no impediment to accessing off-island capacity? If not, what alternatives do you suggest?**

We have not explicitly answered this question in our response

**Q26. Do you agree with the JCRA's proposal that no operator is or is likely to be dominant in the market for wholesale off-island leased lines in Jersey? If not, why not?**

Yes.

**Q27. The JCRA has identified 3 options as to how it could address JT's proposed SMP in the retail leased line market. Which of these options would you favour? Why?**

Please see paragraphs 48-58 for our comments relevant to this question

**Q28. Do you agree with the JCRA's proposals on imposing access obligations? If not, why not?**

Please see paragraph 59 for our comments relevant to this question

**Q29. The JCRA has identified 3 options as to how it could address the requirement to ensure access to off-island capacity. Which of these options would you favour? Why?**

Please see paragraph 59 for our comments relevant to this question

**Q30. Do you agree with the JCRA's proposals on imposing non-discrimination obligations? If not, why not?**

Please see paragraph 59 for our comments relevant to this question

**Q31. Do you agree with the JCRA's proposals on imposing transparency obligations? If not, why not?**

Please see paragraph 59 for our comments relevant to this question

**Q32. Do you agree with the JCRA's proposals on imposing accounting separation obligations? If not, why not?**

Please see paragraph 59 for our comments relevant to this question

**Q33. Do you agree with the JCRA's proposals for imposing cost accounting and price control remedies?**

Please see paragraph 59 for our comments relevant to this question

**Q34. Are there topics or priorities not covered in this consultation which you would like to raise?**

Please see Section 2 for the topics that we consider to be most important for this market review.

## **5. Response to Guernsey consultation questions**

**Q1. Do you agree with the GCRA's proposed approach to market definition? If not, what alternative do you suggest?**

Yes

**Q2. Do you agree with the GCRA's proposed approach to competition and SMP assessment? If not, what alternative do you suggest?**

Please see paragraphs 9-16 for our comments relevant to this question

**Q3. Do you agree with the GCRA's proposed approach to remedies, should there be a finding of SMP? If not, what alternative do you suggest?**

Please see paragraphs 48-58 for our comments relevant to this question

**Q4. Do you agree with the GCRA's preliminary view that the retail market should not be narrowed to reflect the delivery technology used? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q5. Do you agree that the retail market should not be broadened to include downstream services bought in conjunction with leased lines? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q6. Do you agree that the retail market should not be broadened to include business connectivity services provided over broadband? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q7. Do you agree that all retail leased line bandwidths fall within the same market? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q8. Do you agree that separate geographic markets exist for Jersey and Guernsey? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q9. Do you agree that the retail market encompasses both on-island and off-island leased lines? If not, why not?**

Please see paragraphs 22-26 for our comments relevant to this question

**Q10. Do you agree that there are no particular areas within Guernsey where the conditions of retail competition are such that they may constitute separate geographic markets? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q11. Do you agree with the GCRA's proposal not to designate any operator with SMP in the retail market for leased lines in Guernsey? If not, why not?**

Please see paragraphs 30-47 for our comments relevant to this question

**Q12. Do you agree that the GCRA's preliminary conclusions outlined above in relation to the retail leased lines market are mirrored in the wholesale market? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q13. Do you agree that the wholesale market should not be broadened to include dark fibre and/or duct access? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q14. Do you agree that resellers should not be included within the market? If you do not agree, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q15. Do you agree that the wholesale market should not be defined on a narrower basis to reflect customer use of leased lines? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q16. Do you agree that self-supply should not be included in the wholesale market? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q17. Do you agree with the GCRA's preliminary conclusion that separate geographic markets exist for Jersey and Guernsey? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q18. Do you agree that there are separate geographic markets for on-island and off-island wholesale leased lines? If not, why not?**

Please see paragraphs 22-26 for our comments relevant to this question

**Q19. Do you agree that separate markets do not exist for wholesale off-island leased lines between Jersey and Guernsey, and off-island leased lines elsewhere? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q20. Do you agree that there are no particular areas within Guernsey where the conditions of wholesale competition are such that they may constitute separate geographic markets? If not, why not?**

Please see paragraphs 27-29 for our comments relevant to this question

**Q21. Do you agree with the GCRA's preliminary conclusion that Sure is dominant in the provision of wholesale on-island leased lines within Guernsey? If not, why not?**

Yes.

**Q22. Do you agree with the GCRA's proposal that Sure should be designated with SMP in the market for wholesale on-island leased lines? If not, why not?**

Yes.

**Q23. Do you agree with the GCRA's preliminary conclusions on dominance in the provision of wholesale off-island leased lines within Guernsey? If not, why not?**

Yes.

**Q24. Do you agree that a specific off-island licence would assist in ensuring that there is no impediment to accessing off-island capacity? If not, what alternatives do you suggest?**

We have not explicitly answered this question in our response.

**Q25. Do you agree with the GCRA's proposal that no operator is or is likely to be dominant in the market for wholesale off-island leased lines in Guernsey? If not, why not?**

Yes.

**Q26. Do you agree with the GCRA's proposals on imposing access obligations? If not, why not?**

Please see paragraph 59 for our comments relevant to this question

**Q27. The GCRA has identified 3 options as to how it could address the requirement to ensure access to off-island capacity. Which of these options would you favour? Why?**

Please see paragraph 59 for our comments relevant to this question

**Q28. Do you agree with the GCRA's proposals on imposing non-discrimination obligations? If not, why not?**

Please see paragraph 59 for our comments relevant to this question

**Q29. Do you agree with the GCRA's proposals on imposing transparency obligations? If not, why not?**

Please see paragraph 59 for our comments relevant to this question

**Q30. Do you agree with the GCRA's proposals on imposing accounting separation obligations? If not, why not?**

Please see paragraph 59 for our comments relevant to this question.

**Q31. Do you agree with the GCRA's proposals for imposing cost accounting and price control remedies?**

Please see paragraph 59 for our comments relevant to this question

**Q32. Are there topics or priorities not covered in this consultation which you would like to raise?**

Please see Section 2 for the topics that we consider to be most important for this market review.