



Response by Sure (Guernsey) Limited to GCRA document 17/08: Mobile Call Termination 2017 – Draft Decision Market Definition & Finding of Dominance

1. Sure (Guernsey) Limited ('Sure') welcomes the opportunity to respond to the GCRA's Draft Decision into the market definition and Significant Market Power ('SMP') analysis for the provision of mobile termination ('MT') services in Guernsey. The market for the provision of mobile voice and data services is one undergoing rapid change, resulting from a combination of new mobile technologies (4G and 5G) and the increased importance of over the top ('OTT') platforms offering direct competition to conventional mobile services, such as voice calls and SMS messages.
2. Where possible, Sure has responded to the GCRA's Draft Decision ('the DD') using the section and paragraph numbering convention employed within that document. In considering the DD Sure has focused its efforts on the matters most relevant to the GCRA's proposed Decision (as set out on page 37 of the DD). During the next phase of the GCRA's assessment Sure intends to comment more widely on the other aspects discussed by the GCRA, in its previous consultation on mobile termination rates ('MTRs'), as these are more relevant to any proposed remedies, should Sure be found to be dominant in the provision of MT services on its mobile network.

Section 3 – Review of the Mobile Call Termination Market

The powers of the GCRA

3. **3.6:** The GCRA states that Licence Condition 33.2 of Guernsey telecommunications licences provides that the GCRA "*may determine the maximum level of charges the Licensee may apply for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant*".
4. Firstly, Sure must assume that the GCRA meant to refer to Condition 28.2, rather than 33.2, of Sure's mobile licence, as this is where the above wording can be found.
5. Secondly, it is interesting to note that the GCRA has not disclosed within its DD the criteria under which a determination may be made (that being the remaining text of Condition 28.2). The three scenarios are set out below, along with Sure's consideration of each:
 - a. *provide for the overall limit to apply to services or categories of services or any combination of services;*

The words 'overall limit' are key here, as they very much reflect the basis on which this Condition was intended to apply (and that which the GCRA has used to date) – that being a 'price controlled basket'. Such baskets can exist at either the wholesale or retail level and allow for pricing to be flexed, as long as the 'overall limit' is not exceeded. Interconnection services, on the other hand, are never priced this way, as they are required to be based solely on the (justified) cost of each service. Sure

therefore considers that Condition 28.2(a) cannot credibly be associated with a MT service.

- b. restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*

The framing of this Condition is clearly aligned to a basket-style price control mechanism, where, for example, an RPI-X% formula has previously been applied by the GCRA, but even then, only in relation to Sure's associated fixed network licence.

- c. provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.*

Yet again, this requirement fits with a wholesale or retail basket-style price control mechanism.

6. It seems apparent from the GCRA's 2013 consultation on the notification process for price controlled services¹ that Condition 28 (of Sure's Mobile Licence in Guernsey) was not intended to relate to interconnection services, as its proposals covered wholesale and retail services only. Clearly, it would be incorrect to treat interconnect as part of wholesale, as the former should be provided on a cost basis, whereas the latter can be priced in a number of ways. In addition, interconnection rates are not published, whereas wholesale rates are.
7. It could also be argued that the reason that the GCRA is placing emphasis on Licence Condition 28.2 for the regulation of MTRs is that it recognises that it no longer suits its aims to directly associate MTRs under Section 10(2) of the Telecoms Law². This is because on numerous occasions the GCRA has stated that MTRs form part of an interconnection service. Suddenly, within its DD, it has chosen to try to categorise it as an access service instead. Later within this document Sure discusses the inadequacies and inappropriateness of the GCRA's change in stance, but one could consider that the GCRA would be 'clutching at straws' if it were to actively seek to regulate MTRs in the same way as wholesale or retail services (via Condition 28.2 of Sure's mobile licence).
8. It is important to note that the GCRA's recent emphasis on Condition 28.2 [corrected from 33.2] in relation to Guernsey mobile operators has not been replicated by the JCRA in Jersey. That is because the equivalent licence condition [which is correct as 33.2] only applies to JT (Jersey) Limited, leading to a weakness and disparity, both between operators on the same island (in Jersey) and operators in the different regulated jurisdictions (Jersey and Guernsey). Sure discusses the Jersey related issue within its equivalent response to the Initial Notice issued by the JCRA³, but in summary, believes that before it could intervene, the JCRA would first have to prove that the MNO(s) concerned had, in relation to the setting of any MTR, breached the Fair Competition condition⁴ within its licence. Without that, even if mobile operators are found to be dominant in relation to mobile termination, it may be difficult for the JCRA to mandate a reduction in the MTR.

¹ www.cicra.gg/_files/CICRA%2013-34.pdf

² www.guernseylegalresources.gg/CHttpHandler.ashx?id=71673&p=0

³ http://www.cicra.gg/_files/Mobile%20Call%20Termination%202017%20Initial%20Notice%20-%20FINAL%20VERSION.pdf

⁴ Condition 34 of JT's licence; Condition 27 of Sure's and Airtel's

Section 4 – Responses to the Consultation

Market Analysis

9. **4.3:** The GCRA states that its review is a forward-looking one, which the GCRA proposes should cover a period of 3 to 5 years. It is, however, important that the GCRA is specific about the period covered by that forward-looking analysis. Whether the period is 3 or 5 years can make a material difference to the issues that need to be included in the review and the likely future market scenarios that need to be considered. The GCRA states, in paragraph 3.10⁵, that it has taken account of the European Commission’s Guidelines in relation to its forward-looking market analysis procedure, but has provided no evidence as to how it has appropriately applied that procedure.
10. As the OTT market in particular is increasing at a fast pace it may prove difficult to accurately forecast its impact on the MTR market as far out as a 5 year period. Sure therefore believes that a forecast period of 3 years would present a more relevant data set for this analysis.
11. In the past, the GCRA (and CICRA and previously, the OUR) has failed to undertake regular market reviews, with the most recent review for MTRs, having been undertaken 10 years ago. A 3 year interval for reviews has been mandated for national regulatory authorities within the EU and should be considered good practice for other jurisdictions. Taking this into account, along with the pace of change in the mobile market, Sure would like to reinforce its previously shared opinion that the market review period for MTRs should be 3 years. Anything beyond that is likely to cause market distortions and regulatory uncertainty, which could ultimately be to the detriment to local customers and users.

Market definition

Retail market – product market

12. **4.6 (onwards):** The GCRA commenced the process of the wholesale MT market definition process by first determining the scope of the associated retail downstream market – that of making and receiving calls on mobile devices in Guernsey. Sure agrees that this is the correct approach and provides comments on the GCRA’s analysis below:
13. The GCRA relies on research undertaken by other regulators and specifically refers to analysis by Ofcom in its 2015 Mobile Call Termination (MCT) Review to support the GCRA’s position that OTT services should not form part of the relevant retail market for mobile calls.
14. Ofcom’s supporting evidence, which CICRA has relied on, is some three to four years out of date being sourced from numerous reports dating back as far as June 2013⁶. Sure finds it disappointing that the GCRA considers research and conclusions made this long ago to still be appropriate to support its decisions in this rapidly changing market. Sure does not accept that those data and conclusions can still be applicable and believes the GCRA must rely on up-to-date data, preferable directly relevant to Guernsey, or the Channel islands more

⁵ Note the incorrect numbering within the GCRA’s DD. Sure’s reference to 3.10 relates to that on page 8 of the DD, whereas the GCRA also uses 3.10, in reference to another matter, on page 7.

⁶ Analysys Mason, *The connected consumer survey: voice and messaging*, June 2013.

broadly. For a regulatory body that places emphasis on evidence based regulation the lack of the GCRA's (or, more widely, CICRA's) relevant and up-to-date analysis of OTT technologies is concerning, especially considering the materiality of the MTR markets across the Channel Islands. It is also not consistent with the GCRA's statement that it has undertaken a forward-looking approach to this market review.

15. Ofcom recognised that there was substantial growth in the OTT market. Considering that OTT penetration had reached 64% of the UK's mobile subscriber base by 2015 it is concerning that the GCRA still does not recognise the impact that this must be having on the wholesale market (and therefore MT).
16. In its response submitted in January 2017 to the GCRA's consultation on MTRs, Sure pointed out that WhatsApp did not start providing voice calls on iPhones until as recently as April 2015 and that its understanding in general is that the use of OTT platforms are the preferred medium of several customer groups, regardless of the price levels of conventional mobile calls. This is to a significant extent due to the additional functionality of OTT platforms (such as group and video calling).
17. The GCRA puts forward a number of reasons why it considers that calls made over OTT platforms should not be part of the retail market for mobile calls in Guernsey, Sure comments on some of those arguments below:
18. Whilst the GCRA is correct in stating that end users require to log into OTT platforms, typically, OTT applications require a user to log in only once and thereafter the user remains logged in perpetually. Sure therefore does not believe that this is a barrier to consumers using OTT services.
19. Due to the relatively low data consumption of OTT voice calls – typically less than 750Kb for a one minute call, OTT platforms are well catered for to receive calls on either a 3G or 4G network within the Channel Islands. Sure has in excess of 99.5% outdoor 4G coverage and this figure would be even higher when including 3G. In addition, for the receipt of calls over a Wi-Fi connection, Guernsey is ranked as the 7th highest in the OECD for broadband household penetration.
20. When looking at this connectivity Sure would argue that high-quality data connections are almost universally available within the Bailiwick of Guernsey, which allows OTT calls to be terminated on a user's handset either in the home or out and about.
21. Interoperability, for the avoidance of doubt, is not a major issue when considering availability of OTT applications on different operating systems, such as Android or iOS. Given the simplicity of downloading a new application onto a mobile device, Sure does not view the lack of interoperability between OTT platforms as an issue for consumers. Indeed, when looking at OTT applications throughout the World (with the exception of China) two applications dominate, namely WhatsApp and Facebook messenger. Both of these applications are well respected and offer text, voice and video calling. The ability to share files and photos within either platform is a major allure for customers.
22. It is noteworthy that without a mobile telephone number a user will not be able to create a WhatsApp account. The mobile number acts as a unique identifier for the user's WhatsApp profile. Furthermore a text message is sent to that mobile number as part of the sign up process to validate the mobile number.

23. 99% of Sure's handset sales in the past three years have been exclusively smartphones, resulting in an estimate that Guernsey smartphone penetration is now in excess of 80% of the total devices in use on local operators' networks.

Relevant product market

24. **4.35:** Based on the above, Sure believes that it is inappropriate for the GCRA to try to dismiss the relevance of the impact of OTT services on the underlying MT service. Sure is not suggesting that retail OTT services are directly competing with the wholesale MT, but they are clearly indirectly causing a constraint on it.
25. We are actually unclear as to what point the GCRA is trying to make in paragraph 4.35 and in our view, this aspect needs clarification before the matter can be considered to have been appropriately actioned.

Other points

26. **4.48:** The GCRA states that *'as explained elsewhere in this Draft Decision, the service for the termination of a mobile call is the same (and therefore involves the same costs) irrespective of where the call originated. The GCRA is 'not ignoring the fact that there is a variable cost of transit/conveyance in order for a Guernsey based [mobile] operator to be able to terminate the call (by use of the MCT service); it simply notes that the transit/conveyance services are outside of the scope of this review of the Mobile Call Termination market'*.
27. It appears that the GCRA has failed to acknowledge the complete reversal in its position, compared to the principles that it employed in the calculation and application of the current MTR. Its latest view, being that transit requirements should be out of scope, is counter to the current regulatory requirement, which, as highlighted in paragraph 2.6 of its DD, necessitates the MT service to include a free on-island fixed network transit facility, even though Sure's Fixed Network ('Sure Fixed') and Sure's Mobile Business ('Sure Mobile') provide separately licensed services (and operate on an arm's length basis).
28. The requirement to offer this free on-island fixed transit as part of the existing MT service is only applicable to locally licensed operators (which can additionally access Sure Fixed's regulated transit service, should they also wish to make use of this service for other purposes). The on-island transit service is not available to off-island providers and even if it were, those providers would have no reason to ever make use of that service (as they have no on-island network of their own to link to). It is clear, therefore, that the means by which traffic arrives on Sure Mobile's network is currently entirely relevant to the MTR that is applied - counter to the GCRA's view that in relation to MT 'there is only one, undifferentiated termination service being provided by the operators'⁷. Sure does not object to moving to the principle of an undifferentiated mobile termination service [provided to locally licensed operators], but in doing so, Sure would not be willing to continue to provide a free fixed network transit service; nor would it be willing to provide a free mobile network transit (in the case of ported numbers – see paragraph 4.79).
29. Based on the GCRA's latest view Sure should currently have the right to apply an appropriate transit charge to all traffic that it provides a local transit service for in relation to Sure Mobile. As discussed in relation to paragraph 4.102 of this document, Sure is

⁷ Para 4.47 of the DD

planning to offer a direct interconnection service from Sure Mobile to OLOs (only), which, in time, will negate the need for this fixed transit facility/charge.

Retail geographic market

30. The GCRA has not addressed the topic of the retail geographic market in either its Consultation⁸ or its DD. It is clear that there is a knock-on impact from OTT to an operator's freedom to set MTRs. The GCRA seems to suggest that the fact that there is substitution at the retail level is irrelevant – that is not the case.
31. Sure considers it necessary for the GCRA to undertake the complete retail market definition process in order that the upstream wholesale market can be defined appropriately.

Wholesale market – product market

32. **4.52 onwards:** In principle, there could be several wholesale markets supporting the retail market defined above. These could include call origination, call transit and call termination, as well as the physical linking of networks.
33. Sure agrees with the GCRA that the significant wholesale market in respect of the market for calls made or received in Guernsey on a mobile device is the market for call termination (MT).
34. A portion of the calls in the relevant retail market are conventional mobile calls which are terminated by the mobile network operator (MNO) on whose network the called party is hosted. For that MT service, the MNO charges a mobile termination rate (MTR).
35. Another large (and growing) portion of the calls are OTT calls, which are terminated over data connections, whether Wi-Fi or the receiving customer's mobile data allowance. In the latter case, there is clearly a charge payable to receive the call, but it is paid by the receiving party, not the originating party.
36. The GCRA asks in the DD, "*Is consumers' behaviour in [the retail] market capable of acting as a constraint on pricing at the wholesale level*" and Sure believes that it is.
37. It is without doubt that many users of OTT platforms do so due to the significantly lower costs of OTT calls compared to conventional mobile calls. As the use of OTT increases, there will clearly be increased pressure on MNOs to reduce the pricing of conventional calls, or they stand the risk of losing a very significant portion of the overall calls market to OTT platforms. Whilst the MNO can (sometimes) levy a charge for the data used to receive or make OTT calls, that charge will almost certainly be significantly lower than retail call charges.
38. Whilst the consumers may not know the level of the MTR, it is clear that the MTR forms part of the cost inputs that an MNO needs to recover through the retail call charges. The GCRA states in the DD that Sure agrees that the MTR is not relevant for retail charges. That is a misunderstanding. Sure agrees that end consumers do not know about the MTRs and their levels, but that is not synonymous with the MTR not being relevant to retail charges and therefore to end consumers.

⁸ www.cicra.gg/_files/MTR%20Consultation%20Guernsey.pdf

39. As Sure pointed out in its response to the MTR consultation, OTT substitution is particularly relevant for international calls or other calls outside the bundles included in post-paid packages offered by MNOs (and other providers such as MNVOs or resellers, where these exist). End customers can therefore actively choose whether to make a call that causes an MTR to be incurred or one that does not. As set out clearly above, the use of OTT platforms is easy and near-ubiquitous across many consumer groups, with one-time log-ons and full transparency of features (e.g. a mobile phone rings when an incoming WhatsApp call is detected and the consumer answers the call in exactly the same way as for a conventional mobile call).
40. The GCRA argues⁹ that in a SSNIP test, a 5-10% increase in the MTR would not cause a sufficient number of customers to move to OTT to make that increase unprofitable. Sure considers that this is an erroneous attempt at shoehorning a SSNIP test into an assessment between related retail and wholesale markets. Ofcom does not use this approach, for good reason.
41. In any case, in applying the SSNIP test in the manner described above, the GCRA is ignoring that a considerable number of customers have already switched to OTT because conventional mobile calls are much more expensive than OTT. Sure has explained above that the MTR forms a significant portion of the costs to be covered in the retail call prices, despite the MTR element not being transparent to the end customer.

Considering competitive conditions between different products

42. The GCRA does not address in any detail the different levels of barriers to entry, and therefore prospect for competition, when considering the wholesale product market definition.
43. Sure submitted clear evidence that any OLO in Guernsey can choose to offer a commercial service to operators outside Guernsey that incorporates the final termination of both fixed and mobile calls. The individual MNO does not control a bottleneck in the manner that led the European Commission to conclude that there are separate call termination markets for each mobile and fixed network. By definition, any commercial service offered to a non-local operator would need to incorporate the cost to the provider of the service any payments to other OLOs to complete any call termination required, so all calls for which an MTR is chargeable will automatically be subject to non-discriminatory terms and condition at the point of termination in Guernsey. How each operator chooses to price and specify the commercial service offered to non-local operator, is however an entirely different matter, and one which is determined by commercial negotiation. The product offered to non-local operators (which may or may not include a call termination element) should therefore not part of the relevant market.
44. **4.79:** With regard to ported mobile numbers, the GCRA states that *'the recipient operator will charge an MTR irrespective of whether the call originated from an operator licensed in either of the Bailiwicks or outside the Bailiwicks'*.
45. In the case of the ultimate mobile operator this may be the GCRA's intention, but as highlighted in our response to paragraph 4.48 this does not negate the need for a fixed transit service to be provided (for free, as currently required by the GCRA). Of a more

⁹ Para 4.38 – 4.40 of the DD.

pressing concern is the GCRA's lack of consideration for a mobile transit service, as discussed below.

46. In instances where a mobile number has been ported to another locally licensed operator we note the GCRA's position that *'a conveyance charge could be appropriate for the conveyance of the call from the donor operator but that is not part of this review'*. Sure would like to understand how the GCRA would intend to regulate the required transit service, which may be beyond the point of mobile termination for traffic that has originated outside the Channel Islands. Depending on the particular Guernsey operator (whether it has a separate fixed and mobile network) there is a likelihood that one operator may be able to route the incoming call without using its mobile switch (e.g. provide a fixed transit service), whilst another operator may have to provide a transit service after the call has reached its mobile switch (e.g. a mobile transit service).
47. Noting that the GCRA does not intend to cover off the conveyance requirements between operators within this review, but that it intends to move on to a review of fixed interconnection rates, Sure would see an obvious omission in the GCRA's process (of a requirement for a mobile transit service) – something that Sure had brought to the GCRA's attention within its response to the GCRA's MTR consultation. Sure also highlighted very clearly (within its 'Ported Out' comments) that it will not provide a free on-island mobile transit service. Sure must be allowed to recover its efficiently incurred costs in the provision of such a service. It is clear that the means by which a call is routed, before arriving on the ultimate mobile operators' network, is entirely relevant in an MNP scenario and without further consideration by the GCRA is likely to very quickly lead to a formal dispute between CI operators.

Geographic market [wholesale]

48. **4.83:** The GCRA states that *'the competitive conditions for the service of wholesale termination of the call did not appear to differ irrespective of the various handover points on route'*.
49. Sure believes that it provided clear evidence, as part of its confidential response to the GCRA's MTR consultation¹⁰, of a relevant scenario in relation to this consideration, however it appears that the GCRA has chosen to ignore it. Just because a discussion point may be confidential should not preclude the GCRA from considering it within its review process. Sure requests that the GCRA reconsiders the matter brought to its attention, which Sure would be happy to further discuss, in confidence, with the GCRA.
50. **4.85:** The GCRA states that it considers the relevant geographic wholesale market to be Guernsey – that is termination of calls on mobile devices in Guernsey. Sure agrees with the definition.
51. In the event that CICRA disagrees with Sure's product market definition and decides to proceed with its decision that there is a separate product market for MT services (separate from calls terminated as data services via Wi-Fi or data packages), then Sure considers that the relevant geographic market should be *"calls terminated on mobile devices in Guernsey for which an MTR is payable"*.

¹⁰ CICRA 16/49

52. It is Sure's firm view that the MT service can only be purchased in Guernsey (as explained above) and therefore can only be purchased by OLOs.
53. The GCRA further presents in the DD a number of arguments by which it attempts to prove that the MT service is an access service, not an interconnection service. Sure strongly disagrees with those arguments and they are addressed later within this document.
54. **4.98:** The GCRA states that MT is not an interconnection service, suggesting that the term 'interconnection' covers only the physical interconnection link and not the services offered across the interconnection. This is an extremely novel and unusual definition of interconnection. Sure has consulted a number of authoritative sources to ascertain what is encompassed by the term 'interconnection' and they all confirm that the term includes both the physical interconnection link and the services offered across that link¹¹. Interconnection services therefore include call termination, call transit and (in some countries) call origination.
55. In paragraphs 4.97 through 4.102, the GCRA presents arguments to support its position that a call termination service is not covered by the definition of interconnection, Sure addresses each of those arguments below:
56. Paragraphs 4.97 – 4.99 focus on the MT being a service, rather than a physical link, the GCRA arguing that only the physical link is covered by the definition of interconnection. In particular, in paragraph 4.99, the GCRA refers to a statement by Ofcom in its Final MCT statement (paragraph 2.33):
57. *"One of the services that network operators offering voice services provide to each other is call termination – that is, the completion of a call from a customer of another network. MCT is the service provided by an MCP necessary for an originating CP to connect a caller with the intended mobile call recipient on that MCP's network. **Under current interconnection practices used by CPs in Europe and many other countries around the world, as shown in Figure 1, the originating CP pays an amount (known as the mobile termination rate or MTR) to the MCP providing the voice call termination service.**"¹² [emphasis added].*
58. The GCRA, however included only the first 4 lines of this paragraph in the DD, with the text underlined above not included. It is unfortunate that those final lines were omitted as they clearly refer to the MT service as an interconnection service, referring to 'current interconnection practices' when explaining how the charging for the MT is structured. Sure therefore considers that the paragraph references by the GCRA in fact confirm that the MT service is an interconnection service, rather than the opposite.

¹¹ List of sources: The ITU Regulatory Toolkit - : <http://www.ictregulationtoolkit.org/toolkit/7.2.4> para 7.2.4.2; The World Bank Telecommunications Regulatory Handbook – paras 3.3.5.1 and 3.3.5.2. discuss the usage-based interconnection charges associated with handing calls across points of interconnection – clearly categorising those services as interconnection; BT Wholesale's interconnection offer includes call termination and call transit; Vodafone (UK) Ltd provides Sure with rates for interconnect mobile services, relating to calls to UK mobile operators (i.e. MTRs). Many other examples exist, but Sure hopes that these prominent sources are sufficient to demonstrate to the GCRA that its limited definition of interconnection is flawed and entirely inconsistent with world-wide practices, where the actual definition of interconnection (i.e. the wording of the definition) is either identical or near-identical to that used in the Guernsey Telecommunications Law 2001.

¹² Page 12 of www.ofcom.org.uk/__data/assets/pdf_file/0029/76385/mct_final_statement.pdf

59. Indeed, the GRCA's position seems to be further weakened by the definition of 'Interconnection' within Sure's mobile licence (which appears to take precedence over the more generic wording used within the Telecoms Law):

"Interconnection": means the physical and logical linking of the telecommunication systems of two persons who, for the time being, have the benefit of a Class or Individual Licence granted under Part I of the Telecommunications Law and one of whom may be the Licensee; and this for the purpose of allowing the Users of one organisation to communicate with the Users of the same or another organisation or to access services provided by another organisation; and services may be provided by the parties involved or other parties who have Access to the network

60. In relation to Sure's arguments the key aspects of the above definition are that:

1. The interconnection service is required to be provided between Sure and OLOs (as per Conditions 21.1 and 24.1 of Sure's mobile licence). Noticeably, there is no licence requirement for Sure to interconnect with off-island operators and the agreements that Sure has in place with such providers are applied on a purely commercial basis.
2. Interconnection allows for non-Sure customers to 'communicate with' Sure mobile customers (for which an MTR is applied)

61. Should further evidence be required that mobile termination (and therefore MTRs) should be classed as interconnect (rather than access):

- In 2007, the GCRA (OUR) found it 'appropriate to adopt the approach used by Ofcom as a basis for setting MTRs for the Bailiwick'. Ofcom's approach to the regulation of UK mobile termination rates was based on an average MTR, which was referred to as the 'AIC' or 'Average *Interconnection* Charge'¹³.
- In 2009, when comparing fixed and mobile termination rates, the GCRA stated that 'the starting point for MTRs was less reflective of actual costs than other *interconnect* charges'¹⁴.
- In 2012, the JCRA referred to its review of the charges applied by JT for all *interconnection* services and that 'this Initial Notice sets out the JCRA's proposals with regard to MTRs only. The JCRA will separately consult on its proposals for the level of charges for fixed interconnection services provided by JT'¹⁵

Elsewhere in that MTR specific document (paragraph 3.1) the JCRA stated that 'a Class III licence also includes conditions relating to the requirement to provide *interconnection* services and the production of a reference offer for *interconnection* services ("RIO")'.

62. In paragraph 4.101, the GCRA further argues that the MT service being a service makes it clearly distinct from the physical interconnection of networks. However, as demonstrated by the authoritative sources quoted above, it is clear that the concept of interconnection

¹³ Page 11 of www.cicra.gg/_files/OUR%200703.pdf

¹⁴ Page 18 of www.cicra.gg/_files/OUR0919.pdf

¹⁵ Page 2 of

www.cicra.gg/_files/CICRA%201201%20%20Mobile%20Termination%20Rates%20in%20Jersey%20Initial%20Notice%20of%20Proposed%20directions%20to%20mobile%20network%20operators.pdf

(despite being commonly defined as the physical interconnection of networks) incorporates the service offered across the physical interconnection. Sure considers that the GCRA (and its Jersey equivalent, the JCRA) could be the only regulators in the world not including call termination as part of the scope of interconnection. It seems that going to that length simply to be able to impose regulation on Sure's services sold to operators outside Guernsey is extreme.

63. In paragraph 4.102, the GCRA states that:
- (a) It only seeks to regulate operators licensed in Guernsey;
 - (b) It is not necessary for an operator to be licensed in Guernsey to purchase the MT service from an operator licensed in Guernsey
 - (c) The point of physical interconnection is irrelevant, as the MT service is always provided in Guernsey. Therefore, the origin of the call is irrelevant.
64. Sure agrees with point (a) above, but point (b) is clearly wrong, as explained below. As for point (c), it is related to point (b) and Sure disagrees with the GCRA's position for the same reason.
65. The GCRA has mistakenly assumed that locally licensed operators in Guernsey (OLOs) purchase the same MT service as operators not interconnecting in Guernsey (see paragraph 4.47), but that is not the case. The termination service offered by Sure Mobile is provided in Guernsey and only to OLOs.
66. Whilst Sure Fixed (which is separately licensed) interconnects with operators not based in Guernsey, and some of the calls sent to Sure across that interconnect are for termination to Sure's mobile customers, the service offered to those operators is a different (commercial) service which incorporates transport from the point of interconnection with the operator to Guernsey, local transit and then termination to whichever number dialled by the calling party. That commercial service offered to those operators is not separated into different parts, which can be purchased separately; it is a single end-to-end service, provided solely by Sure Fixed. Indeed, the GCRA [OUR] mandated¹⁶ in 2005 that Sure must not provide an incoming off-island transit service, even though Sure had highlighted that it believed that such a service would be required for the provision of a fixed transit facility for calls originated outside the Bailiwick that were destined to a Guernsey OLO (and Sure Mobile, that being separately licensed by the GCRA). Therefore, there exists no regulated service that Sure could combine with the MT service to offer to non-Guernsey operators; instead it offers an end-to-end commercial service to those operators, which is not based on two separate services (MT + a fixed network transmission service). It is a separate specific end-to-end service which cannot be disaggregated.
67. For the avoidance of doubt, Sure Mobile has no intention of offering any interconnection services outside of Guernsey, particularly as it has a licence requirement¹⁷ for interconnection to be 'made directly from the Licensed Mobile Telecommunications Network', which must 'occur within the island of Guernsey'. Presently, the only compliant licensee, with direct interconnection, is Sure Fixed¹⁸. As has previously been discussed, Sure

¹⁶ Page 12 of OUR 05/09

¹⁷ Condition 21.2 of www.cicra.gg/_files/sure%20licence%2027.3.15%20non-confidential%20version.pdf

¹⁸ Any service offered by Sure Fixed to other providers is not an MT service, but an amalgamation of a number of services.

is planning to introduce a mobile interconnection service for other licensees, which will require them to interconnect directly with Sure Mobile¹⁹. The current MT service offered by Sure Fixed will then be withdrawn. If a demand exists, from Guernsey OLOs, then Sure may consider introducing a new service, enabling those operators to retain their interconnection to Sure Fixed only, but that service will not be an MT service.

68. In its previous submission to the GCRA (and CICRA), Sure has presented arguments based on distinguishing between calls originated in Guernsey and calls originated outside Guernsey. That distinction was a useful proxy for where the call is handed to Sure Mobile, but may have unintentionally suggested that Sure discriminates between different calls handed to it locally on Guernsey, which is not the case. Any call handed over to Sure Mobile at a point of interconnection in Guernsey will be treated by that business in the same way, regardless of where the call was originated, however the means by which the call reaches the handover point is still currently relevant, through the GCRA's making, as discussed in our response to paragraphs 4.47 & 4.79
69. Sure therefore agrees with the GCRA that the geographic market for MT services is Guernsey. The point of disagreement appears to be that the GCRA currently considers that the service provided by Sure outside Guernsey, to telecoms operators not licensed in Guernsey, is an MT service; it is not.
70. **4.105:** The GRCA considers that Sure's argument is based on an incorrect interpretation of s.10, as it may require compliance 'with any one or more' of the requirements set out in s.10(2). It then states, in 4.106, that the GRCA '*clearly has the jurisdiction to give a direction under s.10(2)(c) whether or not a reference offer has been made under s.10(2)(b)*'. Sure believes that this to be one of the key points within this current review process and has therefore undertaken further research in this area, as set out below:
- In 2003, the OUR (now GCRA) set out, in document OUR 03/38²⁰, that having been found to have '*a dominant position both in the fixed telecommunications network and services market and in the mobile telecommunications network and services market*' all of the provisions of Section 10(2) of the Telecoms Law would apply to it, including the requirement to 'offer a standard interconnection and access agreement (referred to as the "Reference Offer")'. Sure had already developed a Reference Offer for Sure Fixed, but has never created a Reference Offer for Sure Mobile (which appears to be an unintended breach of those regulatory requirements). Sure now intends to create a Sure Mobile Reference Offer, with the inclusion of interconnection services, which will include mobile call termination and mobile call transit.
 - In 2010, within document OUR 10/09, the OUR reiterated the position it had set out in 2003, in a further review of Reference Offer and Interconnection Rates (note the exclusion of the word 'access' from this more recent document – see 4.107, below). The OUR reiterated that all of the clauses within 10(2) have been applied to Sure Fixed and Sure Mobile.

¹⁹ The GCRA refers to Sure making the point that the GCRA cannot regulate Sure Mobile's MT service as that business does not presently offer such a service. This reference was only intended to highlight that Sure Mobile is aware of its licence obligation to offer direct interconnection and will work to become compliant with this requirement. Sure Mobile does not dispute its obligation to provide MT services in Guernsey, nor the GCRA's power to regulate that service if Sure Mobile holds a position of SMP.

²⁰ Reference Offer for Interconnection and Access: Rates – Direction to Cable & Wireless Guernsey (now Sure)

71. As discussed earlier in this document, the regulatory framework for interconnection, as set out within each Guernsey mobile operators' licenses relates solely to interconnection between the licensee and Other Licensed Operators. There is no requirement to interconnect with operators which do not hold a local mobile licence (e.g. BT, Vodafone or other UK based operators).
72. **4.107:** The GCRA argues that, as it considers the MT service to be an 'access' service (and not an interconnection service), its powers are not limited to those given it in relation to interconnection and in particular to the obligation to offer a standard interconnection and access agreement. The purpose of the interconnection and access agreement is that it should be the vehicle for SMP operators to offer transparent and non-discriminatory terms and conditions for its interconnection and access services. To state that the GCRA should issue regulations that should not be included in such an agreement seems counter-intuitive, at the least.
73. As a matter of fact, the limitation of the entitlement of access to regulated interconnection and access services in Guernsey to only operators licensed in Guernsey was established with the express intention that non-Guernsey operators should not have this right. Otherwise, it would open the possibility that an operator not investing in a physical presence in Guernsey but offering services in competition to local Guernsey operators would be able to do so with no commitment to the development of fit-for-purpose telecoms infrastructure to serve citizens and businesses in Guernsey. The possibility for arbitrage to drive prices down and then subsequently exit the market was a recognised risk, for which the limitation in the entitlement to use of regulated services in the reference offer was designed to mitigate against that risk.
74. Further, it seems clear that Section 10 of the Telecoms Law is intended to provide transparency and predictability for interconnection and access services offered by an SMP operator to other licensed operators in Guernsey. In particular, Section 10(5) and 10(6) address the situation where a dispute arises between licensees over the provision of the access and interconnection services offered by the SMP operator. The dispute resolution covered here relates only to disputes between licensees. It would be incongruous if the dispute resolution pertaining to the provision of the services in Section.10 were to apply to only a subset of those operators to whom the services should be offered. Sure considers this a clear indication that the scope of Section 10 is interconnection and access between licensees.

Section 5 – Draft Decision

75. It is evident from the GCRA's DD on MTRs and the relevant earlier consultation that it has proposed numerous definitions for the market for mobile termination. Sure is concerned that even within this 'Draft Decision' section of its document the GRCA has, as currently worded, created two distinct and (somewhat conflicting) definitions of a market. This is not only unhelpful to respondents, it is also unlikely to stand up to robust scrutiny, should that be required at any time in the future. Sure does not consider that due regard has been given to this important wording and has therefore considered it helpful to propose two amendments.

Current wording:

76. *'The GCRA proposes to find that:*

- *A relevant market exists for termination services that are provided by [named mobile communications provider] (MNO) to another communications provider, for the termination of voice calls to Guernsey mobile numbers in this area served by that MNO and for which that MNO is able to set the termination rate.*
- *Each MNO is dominant on the market for the provision of MCT on its own network. Each has 100% market share of wholesale call termination on its own network and each is acting as a monopoly in the provision of that service.'*

77. The market referred to in the second bullet point is materially different to that defined in the first bullet point and as such, Sure believes that these items need to be conflated (or at least directly associated) to create a meaningful and robust definition. Should the GCRA wish to keep the bullet points separate then Sure believes that the first needs to be amended to identify it as *'MCT on its own network'*.

78. In addition, based on Sure's arguments, particularly in the latter part of this response, we believe that a further amendment to the first bullet point is required, to recognise that the only operators that can directly access the Guernsey interconnection service for mobile termination are those that are licensed by the GCRA within that jurisdiction. Whilst other operators (such as BT and Vodafone in the UK) can make use of a Guernsey MNO's MT service they can do so only via a local operator and not directly. As the GCRA is adamant that any transit/conveyance facilities (including those provided to off-island operators) must sit outside the scope of an MT service the definition of *'another communications provider'* should also be replaced.

Sure proposed wording:

79. *'The GCRA proposes to find that:*

- ***The relevant market ~~exists~~ for mobile termination services is that ~~are~~ provided by [named mobile communications provider] (MNO) to any Other Licensed Operator, for the termination of voice calls to Guernsey mobile numbers in this area served by that MNO and for which that MNO is able to set the termination rate (referred to, in summary as 'MCT on its own network').***
- *Each MNO is dominant on the market for the provision of MCT on its own network. Each has 100% market share of wholesale call termination on its own network and each is acting as a monopoly in the provision of that service.'*

Sure (Guernsey) Limited

18th May 2017