



Sure's response to CICRA's Final Decision on Backhaul Services for wireless service providers and associated Initial Notices and Information Notice

Sure (Guernsey) Limited and Sure (Jersey) Limited (collectively referred to as "Sure") are submitting this consolidated response to the following closely-associated CICRA documents:

- 19/36 Backhaul Services for Wireless Service Providers, T1407GJ, Final Decision ("the Final Decision");
- 19/37 Backhaul Services for Wireless Service Providers, T14067GJ, Initial Notice of a Proposed Direction to JT (Jersey) Limited ("the JT Initial Notice");
- 19/38 Backhaul Services for Wireless Service Providers, T14067GJ, Statutory Notice of a Proposed Direction to Sure (Guernsey) Limited ("the Sure Initial Notice"), and
- 19/39 Statement of Requirement, Information Notice ("Information Notice")

This is the non-confidential version of our submission, which we are happy for CICRA to publish on its website.

The Final Decision

Sure welcomes CICRA's conclusion that it does not have sufficient evidence to justify proceeding with a Direction as outlined in the Draft Decision issued by CICRA on 29th May 2019. We fully endorse this conclusion and continue to maintain that we have actively engaged with Airtel on all its requests for services and never received – let alone refused - an explicit request for mobile backhaul.

We do note that CICRA states it has fully considered all three responses to the Draft Decision but there is one aspect that is specific to any future reasonable requests for mobile backhaul where we are concerned that CICRA has not fully taken account of Sure's comments. Given that it appears from paragraph 4.14 that CICRA expects that further requests for mobile backhaul may be made at some point, then we must reiterate our concerns regarding the potential for unintended consequences arising from such request. Specifically, the extent to which any mobile backhaul service provided in good faith to instead be used by the requestor for the provision of other services. CICRA has not addressed our concerns as to how it would ensure that any mobile backhaul services that are provided are only used for that purpose.

Notwithstanding the above, we welcome CICRA's decision to propose a transparent process for the requests of new wholesale services in the Channel Islands - the Statement of Requirement (SoR) process. As set out in Sure's response to CICRA's last consultation in this regard, we believe that some of the issues raised by OLOs are due to lack of specificity in the requests submitted by OLOs when requesting new wholesale services. We provide further comments on the proposed SoR below.

The JT Initial Notice and Sure Initial Notice

Clause 3.5 of the Sure Initial Notice refers to the States of Guernsey telecoms strategy and the 'regulation of the interconnect cost of fibre backhaul to 5G sites'. We wish to point out that interconnection is a network service used to physically link two operators, whereas mobile backhaul leased lines would be used exclusively by one operator to link its mobile base stations to its mobile core equipment. As such, mobile backhaul connectivity should not be referred to as relating to interconnect. We note that this oversight has been made by the States of Guernsey, not by CICRA.

Clause 4 of both Initial Notices is titled 'Backhaul Services for Wireless Service Providers'. It is important to note that simply being a Wireless Service Provider would not, by default, entitle it to purchase backhaul related leased lines for general business purposes. We believe that CICRA needs to be clear in any Final Notice that Wireless Service Providers may only use backhaul leased lines for the explicit purpose we refer to above.

We believe that clarity should also be provided in the proposed Direction 1, as set out in Clause 5.5 of both Initial Notices. It makes no reference to the validity of any request being reliant on JT (in Jersey) and Sure (in Guernsey) having been designated as holding a position of Significant Market Power (SMP) in relation to the type of service being requested. We would request that CICRA updates its proposed Direction wording to take account of this. This is particularly important to note, as CICRA appears to have erroneously included the Network Access condition in part V of Sure's fixed network licence, outside of the SMP-specific section (part IV). Sure is willing to consider network access requests from any OLO, but only in relation to the provision of services for which Sure has been determined to hold SMP.

The Information Notice (Statement of Requirements)

In those relevant markets where Sure has been determined to hold SMP, Sure is committed to meeting the obligations that arise as a result. Sure also welcomes the introduction of the process to facilitate its own requests to JT for new services in Jersey where JT has been designated as holding a position of SMP in the relevant markets.¹ In that context, we would emphasise that we would only expect this new process to apply from the date that the relevant directions come into force. Specifically, it should not apply to any current requests for wholesale services that are already in progress, including, most notably, Sure's requests to JT for 50/100Mbps wholesale broadband and bitstream services.

Fundamentally, however, Sure is concerned that the SoR principle, process and pro forma have only been introduced by CICRA as an Information Notice associated with the Final Decision and Initial Notice documents. Whilst Sure welcomes the initiative, it is our understanding that CICRA's duties and powers requires that regulatory decisions are subject to transparent consultation and we therefore request that CICRA acknowledge this requirement by issuing the SoR and associated documentation for consultation in its own right.

Aside from what we see as this procedural omission, we are keen to help ensure that the resulting outcome serves the best long-term purpose and minimises any risks of ambiguity or inconsistency.

This response therefore sets out our initial thoughts in response to CICRA's proposed SoR process and pro forma, which we hope will be of assistance to CICRA when producing an SoR consultation document.

The technical description of the product/service requested

Sure believes that there should be some guidance as to what should be required, to ensure that the operator with SMP has sufficient information to process the request. It would be in the interest of all parties involved that the request would not be 'ping-ponged' between the parties several times in order for the SMP operator to have sufficient information to assess the request.

¹ Note that in the rest of this response we use the term "SMP operator" as shorthand for the operator that has been deemed to have SMP in a relevant market such that it should consider reasonable requests for network access. It is not meant to convey that either Sure or JT has SMP in all markets in Guernsey and Jersey respectively.

It is not our intention that the process should become unduly detailed or prescriptive, but we believe that the inclusion of guidelines would be of substantial assistance of both parties in the process. Sure suggests that the following guidelines should be issued:

“the technical description should include, where relevant:

- Diagram(s) of the product/service requested;
- References to any relevant technical standards;
- Specification of equipment and/or services the new product/service would need to interface with;
- Geographic locations where the service is likely to be required.”

It is likely that there may be other parameters that should be included; these could be identified through the SoR consultation process.

The non-commercial justification for the requirement

This term is described in the Information Notice as follows: *“This could, for example, describe a requirement that the OLO has from its customers and why existing wholesale products do not meet this requirement”*.

Sure would welcome a more specific clarification from CICRA as to what it means by ‘non-commercial’. If it is intended to mean qualitative, as opposed to quantitative justification, then that would be a useful clarification.

3-5 year forecast of demand and of cannibalisation of existing products

Sure very much welcomes this component of the SoR, as it is essential that the SMP operator has a good understanding of the likely level of demand for the new service. Our main concern with regards to this is how such forecasts can be validated. We discuss this in more detail below under the heading of ‘reasonable request’.

Sure proposes that the forecasting requirement should include supporting evidence/assumptions for the forecasts, as without that it is not possible for the SMP operator to make an objective assessment of whether the request is ‘reasonable’. Any examples of how an equivalent product/service is used in other jurisdictions would also be helpful.

Expected regulatory impacts

In this section, we believe it would be helpful if the requesting party would include any actions it considers necessary by CICRA.

Proposed timeframes for the SoR process

CICRA proposes the following timeframes for processing of SoRs once received by the SMP operator:

1. Acknowledgement of receipt by 5pm on first business day after the SoR has been sent by the OLO;
2. Indicative response to SoR no more than 10 business days after receipt of SoR;
3. Final response no more than 2 months from receipt of SoR.

Acknowledgement timeframe

Sure agrees it is important that there are timeframes that provides transparency and predictability of the SoR assessment process and overall we find CICRA's proposed timeframes reasonable. We do, however have concerns as to the first timeframe above as it is entirely possible that (even with a substitute nominated for when the primary point of contact is not available) it may not be possible to meet this timeframe. Sure suggests that a further 24 hours be added to this timeframe.

Further, Sure proposes that the wording be changed to a time after receipt of the SoR rather than after the SoR has been sent. The SMP operator cannot be responsible for acknowledging receipt of something it may not have received.

Indicative response timeframe

With regards to the second timeframe, Sure proposes that the SMP operator be afforded the opportunity to communicate to the requesting OLO if it needs a further 5 working days before it can provide the indicative response. Both Sure and JT are relatively small organisations and it is very possible that the relevant technical expert is not available during a period of 10 working days.

Final response timeframe

Sure believes that the third timeframe is reasonable and proportionate.

Consequences of non-compliance

Sure would welcome CICRA's thoughts of how it proposes to enforce compliance with the timeframes and what the proposed consequences of non-compliance would be.

Monitoring and process compliance

Based on the repeated obstructiveness shown by JT towards Sure (and others) in relation to requests for network access in Jersey (as covered by Condition 36 of JT's licence), along with JT's anti-competitive stance (e.g. in relation to its broadband services), we believe that CICRA should at least have the ability (if not the default intention) to monitor all submitted SoRs on a timely basis. We note that CICRA currently intends to oblige JT and Sure to provide annual reports on the number of SoRs received/accepted/rejected, but we do not see this as being anywhere near sufficient to ensure that the appropriate regulatory oversight is provided. SoRs, as a new regulatory tool, need to be managed and monitored live, not retrospectively – identified problems need to be highlighted and fixed at the time, not in hindsight.

We propose that as part of the standard process, the SMP operator should be required to inform CICRA of the receipt of an SoR and its indicative response to the requestor, in the same timescale as required for the initial response to the requestor – being 10 business days. As a minimum, that would provide CICRA with the knowledge that an SoR is in progress, such that if issues then arise, CICRA will have been aware from almost the outset of what service is being requested and from whom. Importantly, this should, as stipulated by CICRA, include requests made by the SMP operator's own retail arm, and aligned with CICRA's recent commitment to monitor all LC33 (Jersey)/LC31 (Guernsey) notifications, it would then be well placed to identify any instances where an SMP operator announces relevant retail changes without an SoR having previously being submitted and actioned by its wholesale arm. CICRA may, in fact, wish to place the onus on the retail arm of each SMP operator, such that they be required to reference any relevant SoR as part of its LC33/LC31 notification. This would help to ensure that the SMP operator had followed the due process, in line with that required of other operators, when making requests for the development of SMP related network access.

Confidentiality and internal processing requirements for SMP operators

Sure agrees that it is important that the SMP operator respects confidentiality requirements and limits the exposure of the SoR within their respective organisations. This has to be achieved in a pragmatic manner, given the size of the two SMP operators.

The Information Notice refers to specific departments within the SMP operator, but Sure considers this to be inappropriate as the two SMP operators have different organisational structures. We therefore suggest that this be modified to become more generic.

In order that products and services are developed to ensure maximum benefit to the market overall, it may also be worth considering whether the SoR should be disclosed to other OLOs and if so, in part or full and at what stage(s) during the process. Not doing so risks subsequent requests for variants of the product/service, which would be inefficient. Naturally any commercially sensitive aspects of the SoR, would need to be kept confidential. Disclosure of the SoR to other OLOs would also allow the aggregation of total demand for the assessment of whether the product/service is commercially viable.

In support of this consideration we have included, as Appendix A, an overview of the SoR process used for the development of Openreach products in the UK. As can be seen, steps 1-4 are primarily confidential between the CP (Communications Provider) and Openreach, with the sharing and opportunity for review by other stakeholders being provided during the latter stages of development.

Whilst there may be merit, from the initiator's perspective, for the request to be kept entirely confidential until the product/service has been fully developed by the SMP operator, this would run the risk that the outcome may not bring the benefits to the market to the same extent, were other relevant stakeholders not allowed to provide their feedback during the development journey.

The scope and influence of such feedback is something that we believe CICRA should seek views on as part of a consultation process.

Reasonable request

Sure again agrees with CICRA that for an SMP operator be obliged to develop a product/service requested, the request must be reasonable. Sure also agrees with CICRA's proposal that, to be considered reasonable, a requested product/service must be technically feasible and commercially viable.

As is very often the case, however, the devil is in the detail. In particular, Sure considers that the assessment of whether a product/service is commercially viable will rely on a number of factors over which the SMP operator has no control, including the volume of the product/service that will be consumed by OLOs.

Although the SoR includes the requirement for submission of forecasts, it is generally accepted that forecasts might not provide an accurate indication of what will subsequently transpire. Although we assume that no OLO would intentionally overstate its requirements, it would be in the requesting OLO's interests to produce an optimistic forecast for the product/service requested. It would be necessary for the SMP operator to have the opportunity to request supporting evidence for the forecast submitted. In fact, Sure recommends that such evidence/assumptions should be included in the SoR as a matter of standard process.

It would be very beneficial for CICRA to seek views from the market as to how a 'reasonable request' should best be defined. There may need to be some flexibility in this, based on, for example, the type

of service being requested (e.g. high volume/low price services compared to low volume/high price) and whether an existing or new technology or network component is being sought for use to achieve the desired outcome.

Demand validation

In addition to the supporting evidence and assumptions for the volume forecasts, Sure believes it is important that there is a feed-back loop before the SMP operator is mandated to develop the product/service requested.

In particular, the demand forecast will have been based on some expectation as to the level of cost/price of the new product/service. However, it maybe that the cost/price at which the SMP operator can develop and supply the product/service is higher than the requesting OLO has expected and this could have a significant impact on demand. Most services are characterised by price elasticity of demand and CICRA should therefore consider whether it would be prudent to address the question of price before the SMP operator is put under an obligation to fund the development of the new product/service.

Summary

Sure supports the use of a standardised Statement of Requirements framework, but believes that for it to be successfully applied to the development of future SMP related wholesale products/services across the Channel Islands the concepts that underpin it require further consideration, via a consultation process.

We would be happy to discuss any of the above aspects with CICRA - and other operators, if considered by CICRA to be helpful.

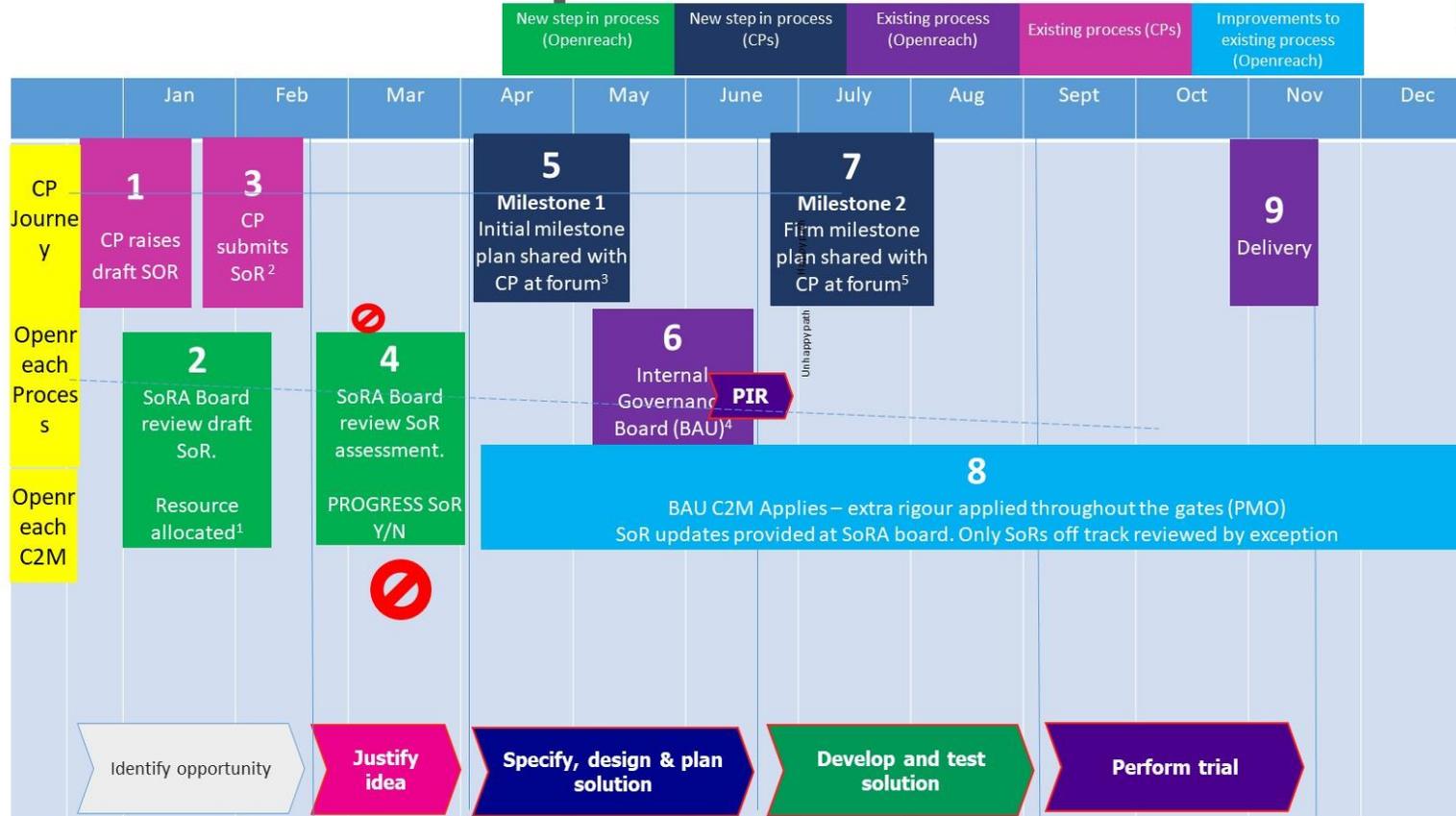
Sure (Guernsey) Limited and Sure (Jersey) Limited

22nd October 2019

Appendix A

SOR Process for Openreach Products

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¹ Openreach will allocate resource if there is enough information to begin assessment, if there is not enough information this will be requested at the next industry forum
² SoR will only be submitted if agreed at industry forum (BAU)
³ Milestone 1: CP provided with date to get to a business case (or equivalent), if possible an indicative delivery timescale post-business case and shared with industry
⁴ Only SoRs that have been rejected at the internal Openreach governance boards will be reviewed by the SoRA board
⁵ Milestone 2: CP provided with delivery date, and shared with industry

SORs that are requesting trials/proof of concepts/pilots only follow a slightly different process.

- Steps 1-3 are the same
- Step 4 the product lead would present the trial/proof of concept for agreement at the SoRA Board
- Step 5 (Milestone 1) would be the date the trial/proof of concept/pilot would start – this is the date we would be committing to industry
- Steps 6, 7 & 8 would not be required
- Step 9 would be completion and outcome of the trial