



# **BUSINESS CONNECTIVITY MARKET REVIEW**

**T1480GJ**

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**Final decision:**

**Market definition & Competitive assessment**

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**19 August 2022**

**GUERNSEY COMPETITION & REGULATORY AUTHORITY**

Suite 4, 1<sup>st</sup> Floor,

La Plaiderie Chambers, La Plaiderie, St Peter Port,

Guernsey, GY1 1WG

T : +44 (0) 1481 711120

E : [info@gcra.gg](mailto:info@gcra.gg)

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# 1. Executive summary

## Introduction

- 1.1 The Guernsey Competition and Regulatory Authority (**GCRA**) is consulting on its review of the market for business connectivity services in Guernsey – the Business Connectivity Market Review (**BCMR**). The review, which comprises a market definition and competitive assessment followed by consideration of remedies for areas in which competition is found to be deficient, broadly follows the methodology that is well established across the European Union, adapted to take account of the particular circumstances of Guernsey.
- 1.2 The focus of the review is on the provision of leased lines. These are the essential building blocks used to put in place secure, dedicated data transmission connectivity between fixed locations. Retail leased lines are bought by businesses and public sector organisations, while wholesale leased lines are bought by telecoms operators, both to provide their retail offerings and to extend their own networks.
- 1.3 The leased lines market in Guernsey is served by two network operators, Sure (Guernsey) Limited (**Sure**) and JT (Guernsey) Limited, and two service-based operators, Business Telecom Limited (**Business Telecom**) and Logicalis (Guernsey) Limited (**Logicalis**).
- 1.4 The purpose of the review is to examine the competitive conditions that prevail regarding the delivery of business connectivity services in on-island retail and wholesale markets and apply appropriate remedies where competition is found to be deficient.
- 1.5 This document is the GCRA’s final decision on market definition and competitive assessment (the **Final Decision**). It considers stakeholder responses to the GCRA’s market definition and competitive assessment proposed decision (the **Proposed Decision**) published in April 2022, and sets out the GCRA’s final decision on the market definition of the on-island leased lines markets, retail and wholesale, and findings on the level of competition in the defined markets.

## Demand and pricing

- 1.6 In the Proposed Decision, the GCRA found that growth in demand for leased lines bandwidth is expected to continue, despite an expected decline in the number of subscriptions, as higher bandwidth products are substituted for lower bandwidth leased lines.
- 1.7 In relation to pricing, the GCRA found that very-high bandwidth (**VHB**) (1 Gbps and above) retail leased line prices in Guernsey are materially higher than comparable jurisdictions. ‘Different exchange’ prices for a < 1Gbps products are also significantly higher than comparable jurisdictions. The GCRA also found that benchmarking of Sure’s wholesale prices showed a similar story.
- 1.8 Stakeholders generally agreed with the GCRA’s findings. However, JT disagreed with the view that the 5G rollout will drive bandwidth demand over the market review timeframe. The GCRA assessed this claim and based on recent policy commitments from the States of Guernsey, maintains its view that the 5G rollout will take place during the market review timeframe. As such, the GCRA confirms its proposed expectations regarding demand growth.

## Market review approach

1.9 In the Proposed Decision, the GCRA adopted the European Commission approach to market analysis. This entails a three-step process:

- First, identify and define the relevant retail and wholesale markets using the Small but Significant Non-transitory Increase in Price (**SSNIP**) test, also known as the Hypothetical Monopolist Test (**HMT**), and consideration of a range of other relevant factors.
- Second, apply the three-criteria test (see paragraph 1.22) to assess whether the defined markets are susceptible to ex-ante regulation.
- Third, assess whether the markets are effectively competitive, which involves assessing whether any operator has significant market power (**SMP**) or joint SMP in any of the relevant markets.

1.10 Sure and Airtel supported the proposed approach and no concerns were raised by any respondents.

1.11 There is a fourth and final step, where SMP is found, which is assess the appropriate remedies, based on the nature of the competition problem, or market failure, identified in the relevant markets. The GCRA will, in a separate remedies consultation process that follows this market definition and competitive assessment Final Decision, put forward proposals for regulatory action in the on-island wholesale leased lines market.

## Retail market definition

1.12 In the Proposed Decision, the GCRA concluded that the retail leased lines market should include on-island circuits, leased lines of all bandwidths and all delivery technologies. The GCRA assessed that value-added downstream retail products, such as IP connectivity, are not subject to the same demand and supply characteristics as leased lines, and so do not form part of the same market.

1.13 In relation to geographic scope, the GCRA concluded that the retail leased lines market should be island-wide on the basis that the existence of alternative infrastructure is not enough in itself to demonstrate separate geographic markets, and operators offer uniform pricing across the island, market their services in a uniform manner, and there is no product differentiation according to geographic area. The GCRA also concluded that separate geographic areas in retail markets are not warranted because, where there is no competing network presence, competitors can still compete at the retail level because there is regulated access to the incumbent's network and services.

1.14 Airtel disagreed with the GCRA's proposal that the market should exclude off-island leased lines, submitting that the prohibitive prices of off-island leased lines between the Channel Islands impacts Airtel's costs of doing business. The GCRA assessed Airtel's proposal, but rejected it for the following reasons.

1.15 The 2014 BCMR assessed the market for off-island lines and found it to be effectively competitive with multiple carriers on each route. In the Call for Information that preceded the March 2021 Draft Decision, the GCRA asked if there had been any change in circumstances that would change this finding. All stakeholders who answered this question said they were not aware of any change. More recent analysis also shows the same ownership of off-island cables as in 2015, showing both diversity in ownership and routing. The GCRA's final decision is that it would be disproportionate

to regulate off-island lines when they were not regulated before and when there has been no change in market structure.

1.16 Sure draw a distinction between the approach taken to defining the relevant market and the conclusions drawn by the GCRA. Sure don't agree with the GCRA's approach to defining geographic markets, which is the same at both the retail and wholesale level. Sure is concerned that a top-down approach is sub-optimal as it misses geographic areas in which wholesale competition is more intense (e.g., in GY1), and possibly effective. Consequently, Sure is of the view that the approach to market definition taken by the GCRA results in a wholesale geographic market conclusion that is not correct. Regarding the retail market, Sure do not agree that the top-down approach is the correct approach.

1.17 The GCRA's final decision is to maintain its proposed decision that the defined retail leased lines market is island-wide.

### **Wholesale market definition**

1.18 In the Proposed Decision, the GCRA assessed that the wholesale market matches the retail market in that it includes leased lines of all bandwidths, all delivery technologies and is island-wide. In addition, the GCRA concluded that it also includes self-supplied leased lines, dark fibre and duct access.

1.19 Sure sought guidance from the GCRA as to whether there is a market boundary between 100 Mbps and 1 Gbps wholesale leased lines. The GCRA considered this point and maintained its view that all bandwidths are in the same market, supported by [X] fractional speed leased lines over the course of the market review period.

1.20 Airtel argued for a separate backhaul market on the basis that fibre backhaul is critical for the successful rollout of 5G mobile technology. On review, the GCRA decided to maintain its proposal on the basis that wholesale access to fibre backhaul connectivity can be ensured and regulated, where necessary, to prevent potential competition problems without the need to define a separate mobile backhaul market.

1.21 Sure disagreed with the GCRA's decision to include dark fibre and duct access in the relevant market. The GCRA assessed this point and decided to maintain its proposed decision to include dark fibre on the basis of its substitutability for active leased lines, but change its proposed decision to extend the market to include duct access in favour of future consideration of a separate physical infrastructure market.

1.22 Sure disagreed with the basis for the GCRA's proposed national market, claiming that regulatory barriers prevent it from offering lower prices for leased lines in areas where it faces network competition, and suggested that instead the GCRA should conduct a network reach analysis to investigate the possibility of sub-national geographic markets. The GCRA assessed this point, finding no basis for Sure's claim that it does not price differentiate because this would trigger a breach of its non-discrimination obligations, and also rejected the need to conduct a network reach analysis.

## Competition assessment

1.23 In its competition assessment in the Proposed Decision, the GCRA first applied the European Commission cumulative three-criteria test to determine whether the relevant retail and wholesale markets merits *ex ante* regulation, before assessing the level of competition. The three-criteria test assesses the following market conditions:

- the presence of high and non-transitory structural, legal regulatory barriers to entry;
- a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based and other competition behind the barriers to entry; and
- the insufficiency of competition law alone to adequately address the market failure(s) concerned.

### Retail competition

1.24 In the Proposed Decision the GCRA found that the retail market did not meet the three-criteria test and so is not susceptible to *ex ante* regulation. This was on the basis that no operator can behave independently of competitors and customers when setting the relevant retail charges and that therefore no operator enjoys SMP in the retail provision of leased lines services in Guernsey. As such, the retail market was not subject to a formal competition assessment.

1.25 Sure supported the proposed decision and no concerns were raised by any stakeholders.

### Wholesale competition

1.26 In the Proposed Decision, the GCRA assessed that the wholesale on-island leased lines market on Guernsey fulfils the three criteria test and is, therefore, susceptible to *ex ante* regulation.

1.27 Following a forward-looking analysis of market characteristics, taking into account market shares, trends in market share and other criteria that may constitute barriers to entry and/or expansion, the GCRA concluded that Sure's:

- stable market share in excess of the European Commission 50 per cent threshold for dominance means it remains the major player in the provision of on-island wholesale leased lines in Guernsey.
- access network confers competitive advantage in the market, along with its ability to take better advantage of economies of scale and scope, and its vertical integration.
- position in the wholesale market for on-island leased lines would confer the ability and incentive to leverage market power into the retail market.

1.28 Taking these factors into consideration, in the absence of wholesale regulation, the GCRA found that Sure can act independently of customers and other network operators in its wholesale pricing structure for the wholesale services under investigation and concluded that Sure should be designated with SMP in the wholesale market.

1.29 JT agreed with the GCRA’s proposed decision and Airtel agreed with several points made in the GCRA’s consideration of additional factors that may impact on the level of competition over the period of the market review.

1.30 Sure requested that should the GCRA identify any sub-national geographic markets in the market definition it should reapply the three-criteria test. Having considered and dismissed Sure’s claims with respect to geographic market definition, the GCRA’s final decision confirms its proposed decision that the wholesale on-island leased lines market is national.

**Summary of Final Decision**

1.31 A summary of the Final Decision regarding market definition and SMP is shown in Table ES-1 below. The formal Final Decision is set out in Section 9.

Table ES-1: Summary of Final Decision

On-island leased lines markets	Product and geographic market definition	Three-criteria test	SMP designation
<b>Retail</b>	<ul style="list-style-type: none"> <li>• The retail leased lines market comprises all bandwidths used for delivering leased lines.</li> <li>• The retail leased lines market <u>is not</u>:               <ul style="list-style-type: none"> <li>○ narrowed to reflect the delivery technology i.e. comprises both AI and TI lines.</li> <li>○ broadened to include business or residential fixed broadband.</li> <li>○ broadened to reflect the purchase by business customers of business connectivity solutions other than retail leased lines.</li> <li>○ broadened to include off-island leased lines.</li> </ul> </li> <li>• The retail leased lines market is island-wide.</li> </ul>	<ul style="list-style-type: none"> <li>• Failed</li> </ul>	N/A
<b>Wholesale</b>	<ul style="list-style-type: none"> <li>• The GCRA’s conclusions in the retail market are mirrored in the wholesale market viz. all bandwidths are included, the market is not narrowed to reflect delivery technology or broadened to include fixed broadband, business connectivity solutions other than leased lines or off-island leased lines.</li> </ul> <p>In addition:</p> <ul style="list-style-type: none"> <li>• the market is not narrowed to reflect customer use of leased lines e.g. mobile backhaul.</li> <li>• self-supply is included.</li> <li>• the market is broadened to include access to dark fibre.</li> <li>• the wholesale leased lines market is island-wide.</li> </ul>	<ul style="list-style-type: none"> <li>• Passed</li> </ul>	<ul style="list-style-type: none"> <li>• Sure</li> </ul>

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## 2. Introduction

### Background to the review

- 2.1 In October 2019, the GCRA issued a Call for Information at the start of its BCMR in Guernsey.<sup>1</sup> In March 2021, the GCRA consulted on a BCMR Draft Decision (the **2021 Draft Decision**).<sup>2</sup> In that consultation, the GCRA set out its views on the definition of the retail and wholesale markets for business connectivity, assessed the level of competition in the defined markets and came to proposed SMP findings.
- 2.2 In June 2021, the GCRA issued a Direction to Sure and JT requiring the provision of additional information to inform the BCMR market definition and market power assessments.
- 2.3 In response to concerns from other licensed operators (**OLOs**) about the high cost of VHB services of 1 Gbps and above, and a price benchmarking exercise conducted by the GCRA, in January 2022 the GCRA consulted on a potential amendment to Sure's 2015 wholesale price control.<sup>3</sup> In response to the consultation, Sure announced a voluntary reduction in the monthly rental charges of the majority its VHB wholesale products and removal of 'Same' and 'Different' exchange pricing, with effect from 28 March 2022. Following an assessment of Sure's price reductions, the GCRA concluded its consultation in March 2022.<sup>4</sup>
- 2.4 In April 2022, the GCRA published its BCMR market definition and competitive assessment proposed decision (the **Proposed Decision**).<sup>5</sup>
- 2.5 The main purpose of a market review is to identify the competitive conditions prevailing in a market by assessing systematically the competitive constraints that are faced by licensees in the market. The purpose of this review is to examine the competitive conditions that prevail regarding the delivery of business connectivity services in on-island retail and wholesale markets. In those areas where competition is found to be deficient, appropriate regulatory remedies are then applied.

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<sup>1</sup> GCRA (2019). *Business Connectivity Market Review: Call for Information (Non Statutory)*, T1480GJ, October 2019: <https://www.gcra.gg/media/598126/business-connectivity-market-review-call-for-information.pdf>

<sup>2</sup> GCRA (2021). *Business Connectivity Market Review, Draft Decision*, T1480GJ, March 2021: <https://www.gcra.gg/cases/2019/t1480gj-business-connectivity-market-review/t1480gj-business-connectivity-market-review-market-definition-smp-assessment-draft-decision/>

<sup>3</sup> GCRA (2022a). *Price control for wholesale on-island leased lines: Consultation*, T1620G, 14 January 2022: <https://www.gcra.gg/cases/2021/t1602g-price-control-for-wholesale-on-island-leased-lines/t1602g-price-control-for-wholesale-on-island-leased-lines-consultation-paper/>

<sup>4</sup> GCRA (2022b) *Price control wholesale on-island leased lines - Information Paper & Conclusion*, 17 March 2022: <https://www.gcra.gg/media/598447/t1602g-price-control-for-wholesale-on-island-leased-lines-information-paper-conclusion.pdf>

<sup>5</sup> GCRA (2022c). *Business Connectivity Market Review, Market Definition & Competitive Assessment – Proposed Decision*, T1480GJ, April 2022: <https://www.gcra.gg/cases/2019/t1480gj-business-connectivity-market-review/t1480gj-business-connectivity-market-review-market-definition-smp-assessment-proposed-decision/>

- 2.6 In the Proposed Decision, the GCRA set out its findings on:
- the product and geographic market definition for the retail and wholesale markets for business connectivity services;
  - whether it would be appropriate to apply *ex ante* regulation to the defined retail and wholesale markets; and
  - the level of competition and dominance findings in the defined wholesale market.
- 2.7 The GCRA received three written responses to the Proposed Decision, from Sure, JT and Airtel. Non-confidential versions of these responses are available on the GCRA's website.
- 2.8 This document (the **Final Decision**) considers the responses to the Proposed Decision and sets out the GCRA's final decision on the market definition of the on-island leased lines markets, retail and wholesale, and level of competition in the defined markets.
- 2.9 The GCRA will, in a separate remedies consultation process that will follow this market definition and competitive analysis final decision, consult on proposals for regulatory action in those areas where competition has been found to be deficient.

### **Structure of this document**

- 2.10 The remainder of this final decision document is structured as follows:
- Section 3 sets out the GCRA's consideration of leased line demand and pricing.
  - Section 4 sets out the GCRA's market review approach.
  - Section 5 presents the GCRA's retail market definition.
  - Section 6 sets out the GCRA's wholesale market definition.
  - Section 7 presents the GCRA's application of the three-criteria test to the retail and wholesale markets.
  - Section 8 presents the GCRA's competitive assessment of the defined leased lines markets and conclusions on SMP.
  - Section 9 sets out the GCRA's final decision on market definition and SMP for the Guernsey leased lines markets.
  - [Annex 1](#) outlines the GCRA's legal requirements and licensing framework underpinning the market review.

### 3. Leased line demand and pricing

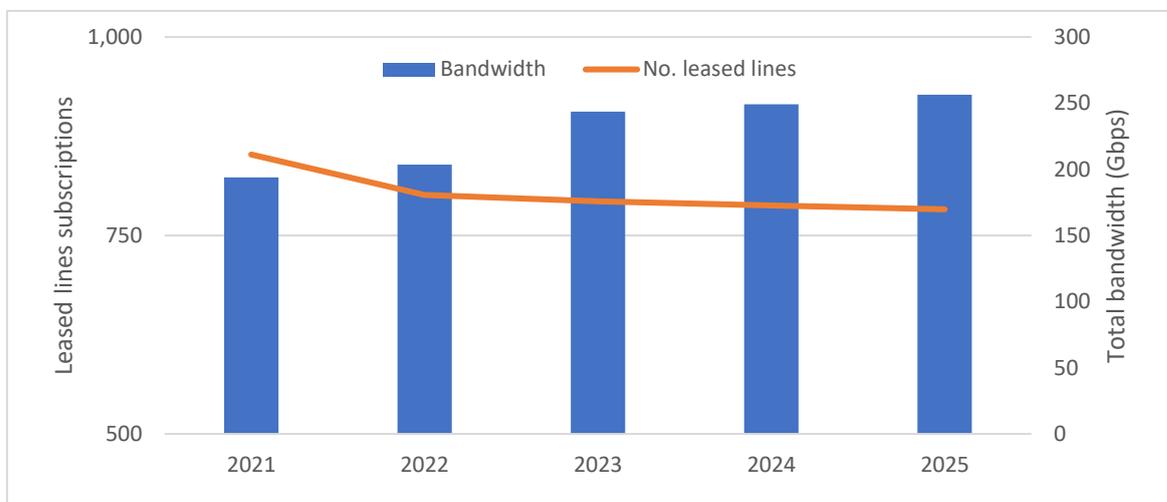
#### Introduction

3.1 This section refers to Section 6 and 7 of the Proposed Decision in which the GCRA set out its expectations for growth in demand of leased lines over the forward period and the conclusions from the price benchmarking exercise.

#### Proposed Decision

3.2 In the Proposed Decision, the GCRA found that growth in demand for leased lines bandwidth is expected to continue, despite an expected decline in the number of subscriptions, as higher bandwidth products are substituted for lower bandwidth leased lines.

Figure 3.1: Forecast retail and wholesale leased lines, subscriptions



Source: GCRA, 2022c: p14.

3.3 In relation to pricing, based on retail and wholesale benchmarking, the GCRA concluded:

- VHB (1 Gbps and above) retail leased line prices in Guernsey are materially higher than comparable jurisdictions and 'Different exchange' prices for a < 1Gbps products are also significantly higher than comparable jurisdictions.
- Sure's wholesale prices show a similar story to the retail benchmarking.

3.4 The GCRA also referenced Sure's voluntary reduction in the monthly rental charges for the majority of its VHB wholesale products and removal of 'Same' and 'Different' exchange pricing for VHB products in response to the GCRA's wholesale price control consultation. In concluding its price control amendment consultation, the GCRA noted that there is room for further price reductions towards cost-reflective prices.

#### Stakeholder responses

3.5 Sure agreed with the GCRA's future demand expectations:

We also agree with the Authority's conclusion that future demand for leased line circuits is likely to decrease (driven by leased line consolidation and fibre broadband cannibalisation), while

corresponding demand for bandwidth is likely to increase exponentially (primarily driven by the rollout of 5G and increased uptake of cloud services).<sup>6</sup>

### 3.6 Airtel also supported the GCRA's demand expectations:

[Airtel] firmly believes that demand of leased lines mentioned in 6.2 in T1480GJ would certainly increase if barrier of high prices is removed. GAL has a strong desire to shift 100% its connectivity on to Fibre leased lines but current price model of leased line does not make a viable business case for it.<sup>7</sup>

### 3.7 JT disagreed with the view that the 5G rollout will drive bandwidth demand over the market review timeframe:

In addition, the roll out of 5G is likely to be slower in Guernsey than in other neighbouring markets due to government policy and therefore the high speed connectivity requirements that come with the roll out of 5G networks may not materialise in the timeframe of this market review.<sup>8</sup>

### 3.8 Airtel stated that it agreed 'that leased line prices are materially higher in 'VHB >=1Gbps' and significantly higher in '<1Gbps' category than the comparable jurisdictions'.<sup>9</sup> Airtel further stated:

GAL agrees with GCRA in 1.15 in T1480GJ that though Sure has voluntarily reduced the prices for VHB category but there is room for further price reduction towards cost-reflective prices. The price difference is still very high when compared to JT-Jersey and the UK ....<sup>10</sup>

## GCRA consideration

3.9 With reference to JT's views on backhaul demand, the GCRA notes that in March 2022 the Jersey Competition Regulatory Authority (JCRA) restarted the 5G spectrum award process for Jersey, following a request from the Jersey Government.<sup>11</sup> The JCRA's indicative timetable is for a 5G spectrum tender in the third-quarter of 2022, with licences issued in the first half of 2023.

3.10 In its September 2021 policy letter: *Delivering Next Generation Digital Infrastructure*, the States of Guernsey signalled that deploying high speed 'next generation' mobile infrastructure remains a key medium term policy objective, targeting deployment from 2023 onwards. That policy letter committed to a further 5G policy letter to be submitted to the Assembly in 2022:

Further work will be undertaken during 2022, with a licensing framework to be debated by the States Assembly prior to any licensing of 5G (or its successor) in 2023.<sup>12</sup>

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<sup>6</sup> Sure (2022). *Response to BCMR April 2022 Proposed Decision*, May 2022: p2.

<sup>7</sup> Airtel (2022). *Response to BCMR April 2022 Proposed Decision*, May 2022: p4.

<sup>8</sup> JT (2022). *Response to BCMR April 2022 Proposed Decision*, May 2022: p3.

<sup>9</sup> Airtel, 2022: p2.

<sup>10</sup> Airtel, 2022: p2.

<sup>11</sup> JCRA (2022a). *5G spectrum award process – Consultation to reassess interest and demand*, 2 March 2022: <https://www.jcra.je/media/598480/5g-spectrum-award-process-2022-consultation.pdf>

<sup>12</sup> States of Guernsey (2021). *Delivering Next Generation Digital Infrastructure*, Committee for Economic Development, September 2021: <https://www.gov.gg/article/185510/Delivering-Next-Generation-Digital-Infrastructure>: p6.

3.11 The GCRA acknowledges that the rollout of 5G in Guernsey is likely to be slower than in neighbouring jurisdictions such as Jersey, but, based on the recent policy commitment from the States of Guernsey, is confident that the rollout will take place during the market review timeframe.

### **GCRA conclusion**

3.12 The GCRA maintains its proposed finding that that growth in demand for leased lines bandwidth is expected to continue, despite an expected decline in the number of subscriptions, as higher bandwidth products are substituted for lower bandwidth leased lines.

3.13 The GCRA also maintains its concerns about the high-level of Guernsey leased lines prices, retail and wholesale, and conclusion that ‘there is much room for further price reductions towards cost-reflective prices’.<sup>13</sup>

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<sup>13</sup> GCRA, 2022b: p9.

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## 4. Market review approach

### Introduction

4.1 This section refers to Section 8 of the Proposed Decision in which the GCRA summarised its proposed approach to market definition and assessing the level of competition in both retail and wholesale markets, and Annex 3, which provided comprehensive detail.

### Proposed Decision

4.2 In the Proposed Decision, the GCRA applied the approach set out in the European Commission guidelines (the **European Commission SMP guidelines**) on market analysis and assessment of SMP in electronic markets,<sup>14</sup> a three-step process.

4.3 First, identify and define the relevant retail and wholesale markets using the Small but Significant Non-transitory Increase in Price (**SSNIP**) test, also known as the Hypothetical Monopolist Test (**HMT**), and consideration of a range of other relevant factors. Markets are defined in two dimensions:

- product basis – products can be regarded as belonging to the same product market if they have similar characteristics and/or are used for the same purpose by consumers, even if their physical characteristics are very different.
- geographic boundary – an area in which the undertakings concerned are involved in the supply and demand of the relevant products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are significantly different.

4.4 Second, apply the three-criteria test to assess whether the defined markets are susceptible to ex-ante regulation. The cumulative test assesses the following market conditions:

- the presence of high and non-transitory structural, legal regulatory barriers to entry;
- a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based and other types of competition behind the barriers to entry; and
- the insufficiency of competition law alone to adequately address the market failure(s) concerned.

4.5 Third, assess whether the markets are effectively competitive, which involves assessing whether any operator has SMP or joint SMP in any of the relevant markets. This step involves consideration of market shares as the starting point followed by an examination of other factors that may

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<sup>14</sup> European Commission (2018). *Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services*, Official Journal of the European Union C 159/1: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0507\(01\)&rid=7](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0507(01)&rid=7)

preclude the firm from acting independently of competitors, customers and consumers, such as barriers to entry.

### **Stakeholder responses**

4.6 Sure supported the GCRA's proposed approach to market definition and competitive assessment:

We are broadly supportive of the Authority's approach to assessing the market and agree with many of its proposals and/or analysis. For example, we fully support the Authority's decision to more clearly apply the European Union approach to defining markets and assessing competition.<sup>15</sup>

4.7 Airtel welcomed the GCRA basing its proposed approach to market analysis on the European Commission regulatory framework for electronic communications networks and services, and requested that the GCRA consider the Body of European Regulators for Electronic Communications (BEREC) 2021–2025 strategy<sup>16</sup> references to the critical role of fibre backhaul and its regulation in rolling out new wireless connectivity technologies, including 5G.<sup>17</sup>

### **GCRA consideration**

4.8 The GCRA notes Sure and Airtel's support for the proposed market review approach and that no concerns were raised by any stakeholder about the approach. BEREC's strategic views on mobile backhaul are considered in Section 6.

### **GCRA conclusion**

4.9 In light of stakeholder responses and the analysis in the Proposed Decision, the GCRA has decided to adopt the European Commission principles and approach to market definition and competition assessment as summarised above and set out in full in Section 8 and Annex 3 of the Proposed Decision.<sup>18</sup>

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<sup>15</sup> Sure (2022). *Response to BCMR April 2022 Proposed Decision*, May 2022: p2.

<sup>16</sup> BEREC (2020). *BEREC strategy 2021 – 2025*, BoR (20) 108, 11 June 2020: [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/annual\\_work\\_programmes/9281-berec-strategy-2021-2025](https://berec.europa.eu/eng/document_register/subject_matter/berec/annual_work_programmes/9281-berec-strategy-2021-2025).

<sup>17</sup> Airtel (2022). *Response to BCMR April 2022 Proposed Decision*, May 2022: p1.

<sup>18</sup> GCRA, 2022.

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## 5. Retail market definition

### Introduction

5.1 This section refers to Section 9 of the Proposed Decision in which the GCRA set out its proposed retail market definition findings.

5.2 The retail market refers to the provision of business connectivity services to end-customers, such as businesses and government entities. The starting point for the identification of wholesale markets susceptible for *ex ante* regulation is the analysis of corresponding retail markets.<sup>19</sup> The retail market analysis takes into account demand-side and supply-side substitutability from the end-user's perspective over the next review period based on existing market conditions and their likely development.

5.3 The retail market analysis enables the subsequent definition of relevant upstream wholesale markets, which is covered in Section 6.

### Retail product market

#### Proposed Decision

5.4 The GCRA's proposed findings on the definition of the retail product market were that:

- The retail leased lines market should comprise all bandwidths used for delivering leased lines.
- The retail leased lines market should not be:
  - narrowed to reflect the delivery technology i.e. comprises both AI and TI lines;
  - broadened to include business or residential fixed broadband;
  - broadened to reflect the purchase by business customers of business connectivity solutions other than retail leased lines;
  - broadened to include off-island leased lines.

#### Stakeholder responses

5.5 JT agreed with the GCRA's proposed product market definition:

All bandwidths are in the same product market and the market should not be narrowed to reflect the delivery technology or to include fixed broadband. We also agree that it should not be narrowed to reflect the use of leased lines ....<sup>20</sup>

5.6 Sure agreed with the GCRA's 'conclusion that there exists a single retail leased line market (both product and geographic) that does not pass the Three Criteria Test.'<sup>21</sup>

5.7 Airtel disagreed with the GCRA's proposal that the market should not be extended to include off-island leased lines, and submitted that a distinction should be made between leased line connectivity

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<sup>19</sup> European Commission, 2018: paragraph 15.

<sup>20</sup> JT, 2022: p2.

<sup>21</sup> Sure 2022, p2.

between the islands of Jersey and Guernsey (inter-island) and leased lines terminating in the UK or France (off-island).

[Airtel] understands that off-island leased lines are not an effective demand or supply side substitute for on-island leased lines, but prohibitive prices of off-island leased lines between Channel Islands impacts the GAL's cost of doing business.

The cost of inter-island leased lines between Jersey & Guernsey, Guernsey & Sark and Guernsey & Alderney are highly prohibitive, therefore, GAL requests the GCRA to regulate the prices of 'inter channel island leased lines' only.<sup>22</sup>

## GCRA consideration

### *Off-island leased lines*

- 5.8 For the purposes of this BCMR, off-island is defined to include lines with one end in Guernsey and the other in Jersey (inter-island) and those with one end in Guernsey and the other end outside of the Channel Islands (off-island). For completeness, on-island lines are those where both ends are in the Bailiwick of Guernsey. In response to Airtel's reference to Guernsey–Sark, Guernsey–Herm and Guernsey–Alderney leased lines, these lines are included in the on-island market (and their wholesale equivalents are currently price regulated under Sure's 2015 wholesale on-island leased lines price control).
- 5.9 In the Proposed Decision, the GCRA concluded that it was not appropriate to include off-island leased lines in the market definition, for two reasons.
- 5.10 First, the GCRA found no change in its previous market review finding that off-island market was competitive. The 2014 BCMR defined a separate market for off-island leased lines and found that the market was effectively competitive. The reasons for finding no SMP given by the GCRA at that time included:
- the volatility of market shares;
  - the ownership of off-island circuits by five undertakings indicated that no operator had control over infrastructure not easily duplicated; and
  - the presence of five operators in the market indicated that no single undertaking benefits from economies of scale.<sup>23</sup>
- 5.11 In the Call for Information that preceded the March 2021 consultation the GCRA asked if there had been any change in circumstances that would change this finding. All stakeholders who answered this question said they were not aware of any change.

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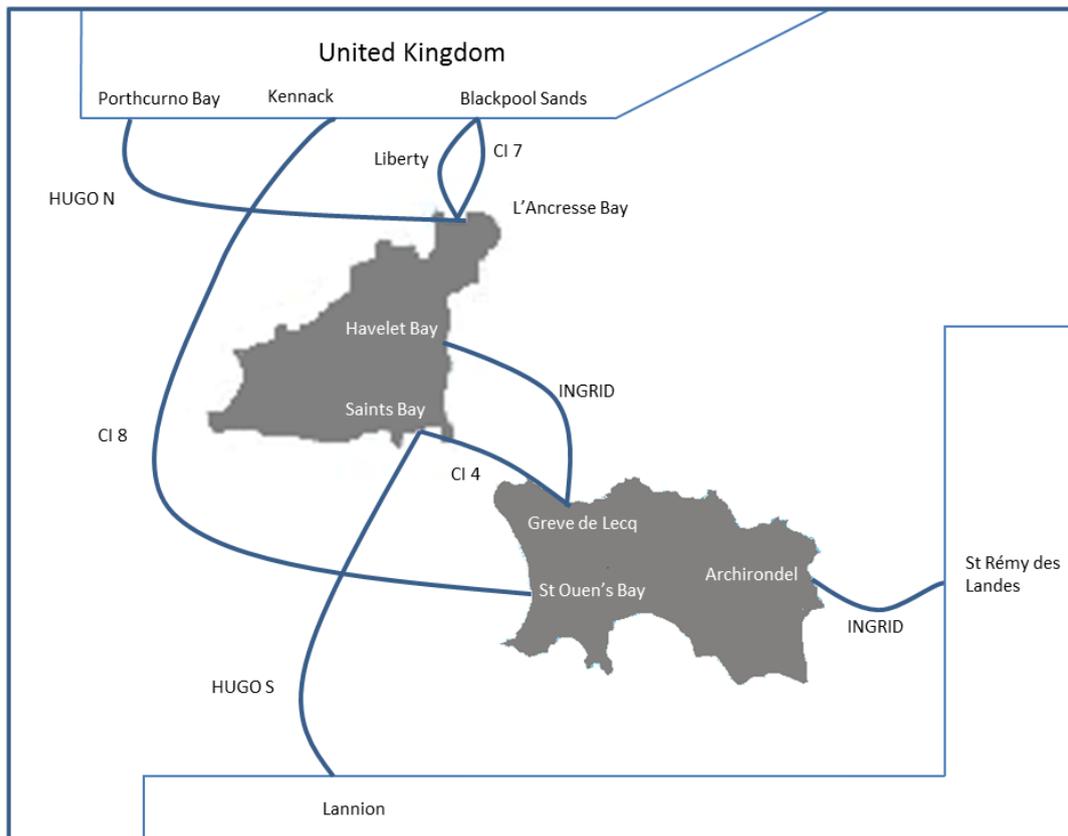
<sup>22</sup> Airtel, 2022: p3.

<sup>23</sup> GCRA (2014a). Business Connectivity Market Review: Guernsey – Consultation, CICRA 14/16, 8 April 2014: <https://www.gcra.gg/media/3644/t994gj-review-to-improve-business-connectivity-in-guernsey-call-for-information.pdf>: p29.

5.12 Second, the GCRA again considered whether an off-island leased line is an effective substitute for an on-island leased line, and concluded they were not an effective demand or supply side substitute.

5.13 Figure 5.1 shows cable links between Jersey and Guernsey, the UK and France. A comparison of this map with that shown in the 2014 BCMR consultation document<sup>24</sup> shows no material change in the market structure.

Figure 5.1: Schematic representation of cable links (excluding UK to France)



Source: Statistics Jersey, 2021: p39.<sup>25</sup>

5.14 Guernsey and Jersey have multiple submarine cables carrying voice, data and internet traffic between the Islands and to the UK and France. There are three links between Guernsey and Jersey and one direct route between Jersey and each of the UK and France. Purchasers of wholesale lines in Guernsey therefore have multiple options to connect to Jersey, the UK and France, either directly or via Jersey.

5.15 The off-island cables also have different ownership. The INGRID circuits from Jersey to France and Jersey to Guernsey are owned by Jersey Electricity; the CI 4, 7 and 8 circuits are owned by JT, Sure and BT; Hugo N and Hugo S are owned by Vodafone and Sure; and Liberty is owned by JT. As such there is diversity of ownership as well as diversity of routing.

<sup>24</sup> GCRA, 2014a: Figure 5.

<sup>25</sup> Statistics Jersey (2021). *Telecommunications Statistics and Market Report 2020*, July 2021: <https://www.gcra.gg/media/598349/telecommunications-statistics-2020.pdf>

5.16 The GCRA concludes that it would be disproportionate to regulate off-island lines when they were not regulated before and when there has been no change in market structure. As such, the GCRA has decided to maintain its proposed decision to exclude off-island leased lines in the market definition.

#### GCRA conclusion

5.17 In light of the analysis in the Proposed Decision and analysis of stakeholder responses, the GCRA concludes that the retail product market definition remains valid. The retail product market is therefore defined as follows:

- The retail leased lines market comprises all bandwidths used for delivering leased lines.
- The retail leased lines market is not:
  - narrowed to reflect the delivery technology i.e. it comprises both AI and TI lines;
  - broadened to include business or residential fixed broadband;
  - broadened to reflect the purchase by business customers of business connectivity solutions other than retail leased lines;
  - broadened to include off-island leased lines.

#### **Retail geographic market**

##### Proposed Decision

5.18 In the Proposed Decision, the GCRA found that, while there are expected to be variations in demand and supply conditions associated with, for instance groups of customers who are geographically concentrated, these variations do not result in clear and persistent boundaries which would indicate a separate geographic retail market within Guernsey. In coming to this proposed conclusion, the GCRA cited a number of reasons, including:

- The existence of alternative infrastructure is not enough in itself to demonstrate separate geographic markets.
- Operators offer uniform pricing across the island, market their services in a uniform manner, and there is no product differentiation according to geographic area.
- Separate geographic markets in retail markets are not warranted because, where there is no competing network presence, competitors can still compete at the retail level because there is regulated access to the incumbent's network and services.

### Stakeholder responses

5.19 Sure (as set out in paragraphs 1.16 to 1.17) agreed with the GCRA's approach in defining the relevant market and the conclusions:

For example ..... we agree with [the GCRA's] conclusion that there exists a single retail leased line market (both product and geographic) that does not pass the Three Criteria Test.<sup>26</sup>

5.20 However, Sure disagreed with the GCRA's approach to defining geographic markets as it was concerned that a top-down approach misses geographic areas in which wholesale competition present:

We are unable to agree with the Authority's approach to defining geographic markets at either the retail or wholesale level, nor with its conclusions.<sup>27</sup>

### GCRA consideration

5.21 Sure's arguments in support of its views on the approach to and conclusions on the geographic market in the retail and wholesale markets are not accepted and the reasoning in support of the GCRA's conclusions is articulated in this section and Section 6 (below).

### GCRA conclusion

5.22 Therefore, GCRA has decided, to maintain its proposed decision that there are no clear and persistent boundaries which would indicate a separate geographic retail market within Guernsey.

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<sup>26</sup> Sure, 2022: p2.

<sup>27</sup> Sure, 2022: p3.

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## 6. Wholesale market definition

### Introduction

- 6.1 This section refers to Section 10 of the Proposed Decision in which the GCRA set out its proposed wholesale market definition.
- 6.2 The wholesale market refers to the provision of leased lines by the incumbent operator to OLOs and the provision of self-supplied leased lines by vertically-integrated operators.<sup>28</sup>
- 6.3 According to the European Commission SMP guidelines, National Regulatory Authorities (**NRAs**) should identify and analyse the wholesale market that is most upstream of the retail market in which competition problems would exist in the absence of regulation upstream.<sup>29</sup>

### Wholesale product market

#### Proposed Decision

- 6.4 In line with the European Commission SMP guidelines, the proposed wholesale market definition for leased lines drew on the proposed retail market definition, supplemented by several other factors which are specific to the wholesale market. The GCRA proposed that:
- The GCRA's proposals in the retail market are mirrored in the wholesale market viz. all bandwidths are included, the market should not be narrowed to reflect delivery technology or broadened to include fixed broadband, business connectivity solutions other than leased lines or off-island leased lines.
  - The market should not be narrowed to reflect customer use of leased lines e.g. mobile backhaul and microwave solutions are not a substitute for fibre backhaul.
  - Self-supply should be included.
  - The market should be broadened to include duct and dark fibre access.

#### Stakeholder responses

- 6.5 Sure asked for more clarity around the GCRA's bandwidth chain of substitution conclusion, noting that the GCRA 'currently redacts nearly all of its assessment'. Sure also sought guidance from the GCRA as to whether there is a bandwidth break between 100 Mbps and 1 Gbps leased lines:

We increasingly believe that a bandwidth break between 100Mbps and 1Gbps might exist in the wholesale leased line market but need the Authority's guidance as to whether this might be the case.<sup>30</sup>

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<sup>28</sup> Self-supply is defined as the provision of a leased line by a vertically integrated operator's upstream (wholesale) division to its (retail) downstream division, irrespective of how the operator is organised.

<sup>29</sup> European Commission, 2018: paragraph 26.

<sup>30</sup> Sure, p.14.

6.6 Airtel agreed with the GCRA’s proposal not to segment the wholesale market by bandwidth:

[Airtel] agrees with GCRA’s view in 10.12 in T1480GJ that the existence of significantly higher price differences between bandwidths is more likely to be due to the existence of market power and less likely to be because different leased line bandwidths are in different product markets.<sup>31</sup>

6.7 JT agreed with that all bandwidths are in the same market, the market should not be narrowed to reflect the delivery technology or to include fixed broadband, that it should not be narrowed to reflect the use of leased lines and that self-supply should be included in the wholesale market.

6.8 JT agreed with the GCRA’s position that there is not a separately defined market for mobile backhaul, but did not agree with the GCRA’s view that microwave solutions are not adequate substitutes for leased lines in a forward-looking assessment of the leased lines market:

We believe that some operators will still utilise microwave for mobile backhaul as well as for other connectivity requirements, especially in remote locations where the cost to dig to extend network is commercially unviable. We also anticipate market developments in microwave technology to support higher bandwidth requirements and we therefore believe the GCRA should revise its decision to include microwave solutions in the same market.<sup>32</sup>

6.9 JT also submitted that it anticipates the rollout of 5G to be slower in Guernsey than other jurisdictions and that ‘the high speed connectivity requirements that come with the roll out of 5G networks may not materialise in the timeframe of this market review.’

6.10 Airtel submitted that a specific leased line backhaul product should be included in the market:

GAL would like to draw GCRA’s attention to the objective 3.14 listed in the GCRA’s document “5G Spectrum– Statement of Intent” released in November 2019 which states that GCRA will work to make ‘exclusive and reasonably priced backhaul products available for mobile operators to support government’s policy’. Therefore, GAL would welcome inclusion of exclusive wired backhaul product for mobile operators in the final decision.<sup>33</sup>

6.11 Airtel supported the GCRA’s decision to exclude microwave solutions:

[redacted].<sup>34</sup>

6.12 JT agreed that dark fibre and duct access are in the same market:

JT agrees that analytically, duct (and other physical infrastructure deployed for the purposes of supporting fixed telecom networks) and dark fibre are upstream inputs into the provision of leased lines and therefore sit in the same market, however, the practicality of implementation and the demand for those products has not been assessed and is uncertain. We therefore expect that the GCRA will consider these other factors in its consultation on BCMR remedies.<sup>35</sup>

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<sup>31</sup> Airtel, 2022: p3.

<sup>32</sup> JT, 2022: p3.

<sup>33</sup> Airtel, 2022: p4.

<sup>34</sup> Airtel, 2022: p4.

<sup>35</sup> JT, 2022: p2.

### 6.13 Airtel also agreed with the GCRA's proposals on passive infrastructure access:

GAL agrees with GCRA in 10.46, 10.50, 10.51 and 10.52 in T1480GJ that access to dark fibre would be an effective supply- and demand-side substitute for active leased lines. GAL appreciates that GCRA is proposing to include access to dark [fibre] and duct sharing in the wholesale leased line market. Therefore, GAL would request the GCRA to share the next steps and roadmap in this regard.<sup>36</sup>

### 6.14 Sure disagreed with the GCRA's dark fibre and duct access proposals:

Based on the evidence available to us and the arguments presented by the Authority, we cannot currently agree that dark fibre ("DF") and duct and pole access ("DPA") should be included in the relevant product market. Our assessment of demand- and supply-side constraints suggest that neither DF nor DPA should be included.<sup>37</sup>

### 6.15 Sure also raised concerns about the commercial impact of a dark fibre remedy on its Guernsey Fibre Project:

Additionally, the provision of DF would generate non-trivial risks and uncertainty for Sure's ongoing fibre-to-the-premises ("FTTP") project.<sup>38</sup>

## GCRA consideration

### *Bandwidth segmentation*

6.16 In the retail product market definition in Section 9 of the Proposed Decision, the GCRA provided a detailed explanation of the SSNIP analysis it conducted to establish the boundaries of the retail product market, demonstrating its proposed finding that different leased line products offered at varying bandwidths are part of a chain of substitution dynamic.

6.17 The GCRA noted that given that leased line providers were unable to provide comprehensive revenue, cost, and profitability data by bandwidth, customer segment and technology, the quantitative analysis was supported by qualitative judgements.<sup>39</sup> The GCRA also acknowledged that the conclusions of the SSNIP test may need to be treated with caution due to the 'cellophane fallacy'.<sup>40</sup> The Proposed Decision stepped through a demand-side SSNIP analysis that started with inspection of the retail price differentials between the range of capacities of leased lines, then considered critical loss, before assessing the potential impact on SSNIP profitability of customers with bandwidth demand greater than their connected circuit moving to a higher bandwidth circuit. The GCRA concluded that all bandwidths are in the market.

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<sup>36</sup> Airtel, 2022: p4.

<sup>37</sup> Sure, 2022: p2.

<sup>38</sup> Sure, 2022: p8.

<sup>39</sup> GCRA, 2022c: p30.

<sup>40</sup> This refers to the situation in which the hypothetical monopolist could not profitably increase its prices by 5 or 10 per cent because it is already charging the monopoly price i.e. the price subject to the SSNIP is not competitive.

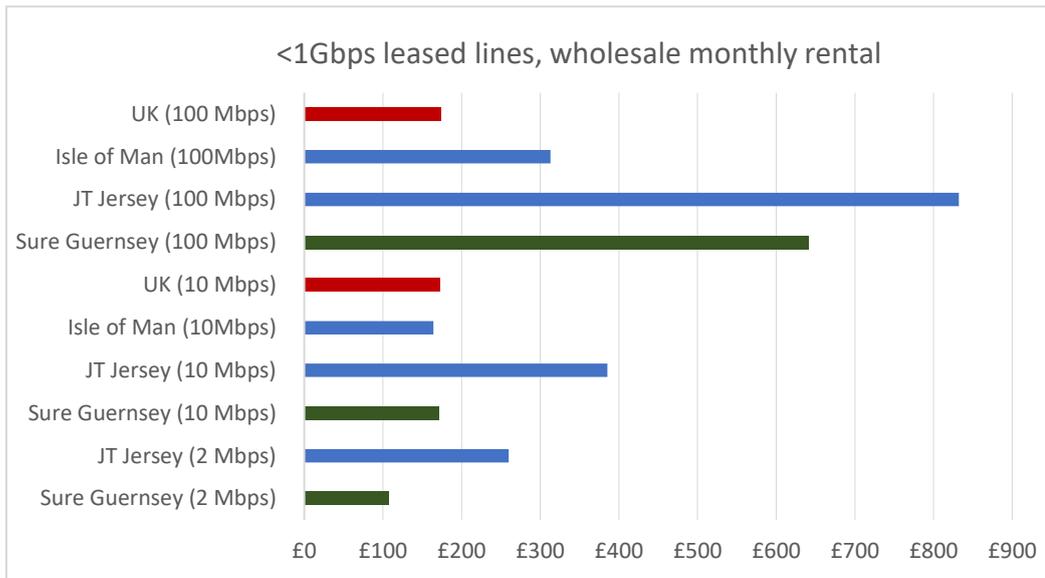
- 6.18 In the wholesale product market definition in Section 10 of the Proposed Decision, the GCRA found that the chain of substitution that exists between wholesale leased lines of different bandwidths would indicate that all bandwidths lie in the same wholesale market, for similar reasons to those set out in the retail case. Moreover, from a supply-side perspective, the GCRA indicated it shared Ofcom's view that the existence of significantly higher price differences between bandwidths is more likely to be due to the existence of market power and less likely to be because different leased line bandwidths are in different product markets.
- 6.19 The GCRA notes Sure's request for guidance as to whether there is a bandwidth break between 100 Mbps and 1 Gbps wholesale leased lines. Sure argues that the 'keen pricing' of its lower bandwidth wholesale leased lines implies lower margins than for its higher bandwidth products (i.e. 500 Mbps and greater), which indicates that these products have a higher critical loss than the higher bandwidth wholesale leased lines. Sure suggests that in turn this would 'require a much greater number of customers to switch [from lower bandwidth leased lines] in response to a SSNIP in order for a SSNIP to be unprofitable.'<sup>41</sup>
- 6.20 Sure's argument that it has lower margins for its lower than higher bandwidth services rests on a claim that its lower bandwidth pricing is 'keen', but has not provided any financial information to support its margin claims.
- 6.21 The wholesale benchmarking exercise conducted by the GCRA for the purposes of the BCMR showed that Sure's 'Same Exchange' prices for lower speed lines (less than 1 Gbps) may be lower than Jersey prices but are generally higher than Isle of Man and UK prices. Moreover, the differential with the Isle of Man and UK is particularly marked for the 100 Mbps product. The GCRA also notes that JT Jersey's prices are expected to be reduced significantly following the JCRA's BCMR final decision on remedies.<sup>42</sup>

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<sup>41</sup> Sure, 2022: p13.

<sup>42</sup> JCRA (2022b). Business Connectivity Market Review: Remedies – Non-statutory Final Decision Case T-012, 30 May 2022: <https://www.jcra.je/media/598528/business-connectivity-market-review-final-decision-remedies.pdf>

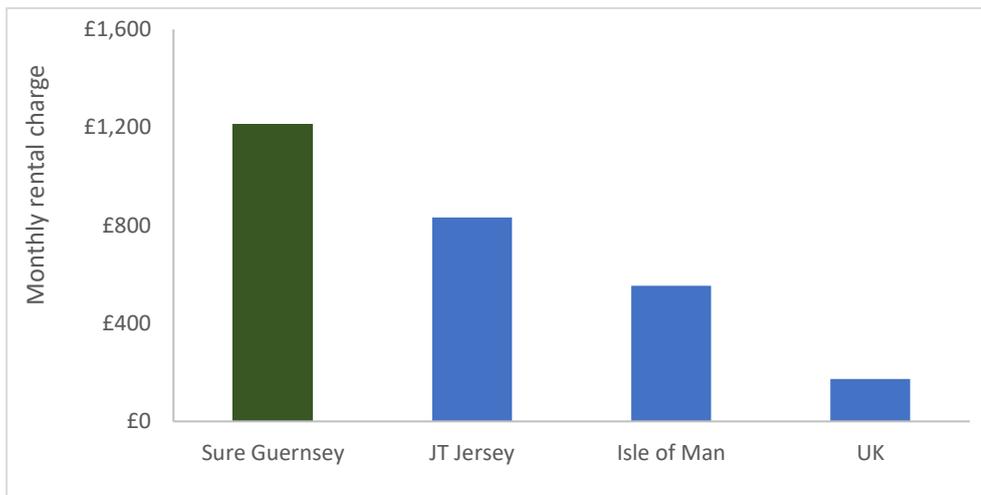
Figure 6.1: Wholesale price comparison, <1Gbps



Source: GCRA, 2022c: page 18.

6.22 Moreover, Sure’s 100 Mbps Different Exchange wholesale product price is substantially higher than all comparator countries.

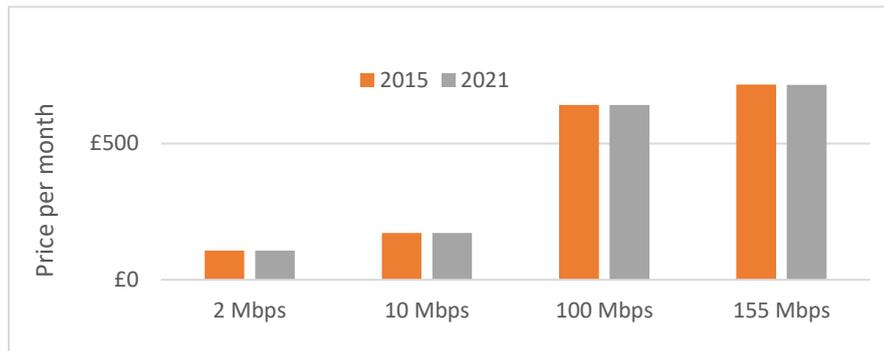
Figure 6.2: Wholesale price comparison, ‘Different Exchange’ 100 Mbps



Source: GCRA, 2022c: page 18.

6.23 The GCRA also notes that Sure’s lower bandwidth wholesale prices are not obviously cost reflective given that pricing structures have remained unchanged since the previous review in 2014 compared to the decline in technology costs, as supported by the views of OLOs.

Figure 6.3: Sure lower bandwidth wholesale prices, 2015 and 2021



6.24 The comparative pricing evidence suggests that Sure’s gross margins on lower bandwidth products are likely to be high, regardless of whether they are lower than margins on their high bandwidth products as Sure contends. This in turn implies that the amount of switching in response to a SSNIP that would exceed the critical loss that would render a SSNIP unprofitable is still likely to be relatively small.

6.25 In addition, the key forward-looking factor on which the GCRA relied in its Proposed Decision to support its view that the chain of substitution can be reliably used to inform the boundaries of the product market, and that no segmentation by capacity is necessary in practice, concerns ‘fractional speed’ leased lines. Fractional speeds refers to a wider range of speeds than the standard leased lines product portfolio, providing customers with additional and smaller bandwidth upgrade opportunities than are currently available.

6.26 A number of OLOs have expressed interest in fractional speed products. For example, in its March 2021 response to the Draft Decision, Airtel requested the provision of fractional speed products by all suppliers to assist it to optimally dimension on-island connectivity:

In <1Gbps product segment, step sizes of 100 Mbps bandwidth should be offered to suit sites with varying capacities.<sup>43</sup>

6.27 In its April 2021 confidential response to the Draft Decision, Sure [redacted]:

[redacted]<sup>44</sup>

6.28 In May 2021, the GCRA received a complaint from Newtel (Guernsey) Limited (**Newtel**) that Sure was offering fractional speed services to retail customers without making available a corresponding wholesale product, as required under the terms of its 2015 wholesale price control. The GCRA launched a Stage 1 exploratory investigation in response to the complaint, during which Sure advised that it had been conducting a limited ‘trial’ with retail customers since 2019, for the purposes of testing the various technical elements associated with [redacted] fractional speed service.

6.29 In November 2021, having considered the evidence and applying its Prioritisation Principles,<sup>45</sup> the GCRA terminated its investigation at Stage 1, on the basis that Sure ceased its trial by 31 December

<sup>43</sup> Airtel (2021). *Response to March 2021 consultation*, 25 March 2021: page 1.

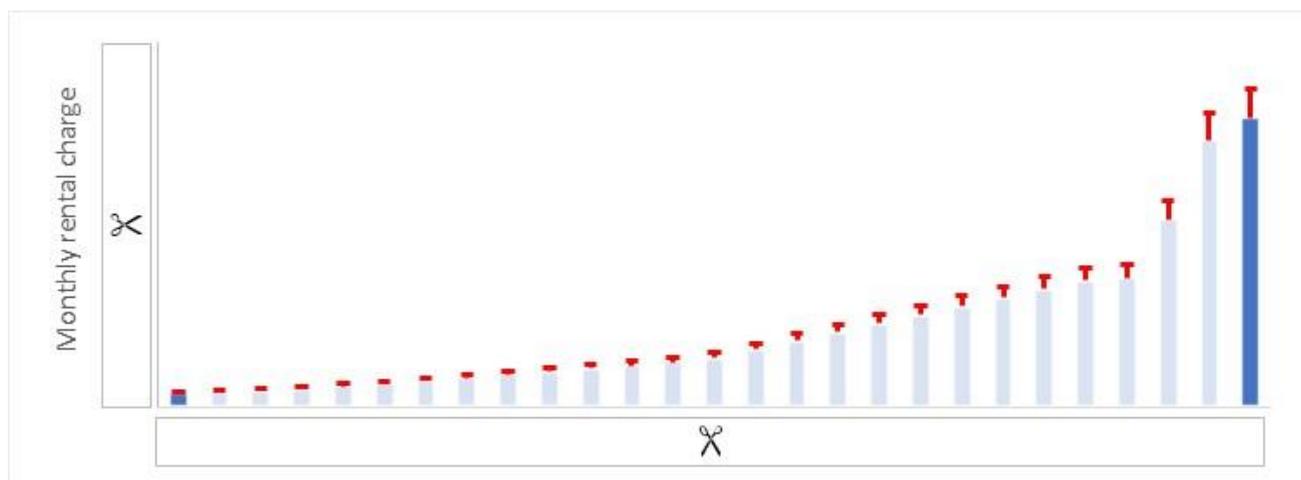
<sup>44</sup> Sure (2021). *Response to March 2021 consultation*, 1 April 2021: page 15.

<sup>45</sup> <https://www.gcra.gg/strategic-plans/prioritisation-principles/prioritisation-principles/>

2021 and returned the affected customers to Sure’s standard leased line portfolio. Sure duly undertook this commitment, [redacted]. The GCRA subsequently advised Newtel of this outcome.

6.30 [redacted] leased line products will allow customers to upgrade capacity through smaller speed (and price) increments than current portfolio of products on offer. Therefore, in the case of the 100 Mbps customer that is subject to a SSNIP, rather than having to switch to a 500 Mbps or 1 Gbps product, that customer will be able to switch to a 200 Mbps product. Similarly, a 200 Mbps customer will be able to switch to a 300 Mbps line and so on to reach a 1 Gbps product.

Figure 6.4: Chain of substitution, wholesale market, indicative prices



Source: GCRA analysis and Sure information.

6.31 On a forward-looking analysis [redacted] smaller (and more affordable) links, such ‘infill’ products strengthen the case that the chain of substitution can be reliably used to inform the boundaries of the product market, and that no bandwidth segmentation by capacity is necessary in practice.

6.32 As regards the GCRA’s supply-side conclusions, provided in addition to its demand-side analysis, Sure took exception to the lack of a supply-side SSNIP analysis.<sup>46</sup> As noted above and in the Proposed Decision, in response to comments on the March 2021 Draft Decision, operators failed to provide more extensive information to inform more detailed SSNIP analysis when requested to do so by the GCRA. No such further information has been furnished in response to the Proposed Decision. Without evidence being provided by stakeholders to enable such analysis and disprove the GCRA’s supply-side conclusions, that conclusion presented in the Proposed Decision stands.

6.33 Therefore, in light of the case made by the GCRA in the Proposed Decision, the consideration of stakeholder responses and supporting analysis above, the GCRA has decided to maintain its proposed decision that all bandwidths are in the same wholesale market.

#### *Mobile backhaul and microwave solutions*

6.34 The GCRA notes JT’s agreement that there is not a separately defined market for mobile backhaul and Airtel’s contention that there should be a specific backhaul product.

<sup>46</sup> Sure, 2022: p18.

6.35 The argument put forward against narrowing the wholesale market to reflect customer use of leased lines, such as mobile backhaul, is fully explained in Section 10 of the Proposed Decision. The GCRA concluded that, on a supply-side assessment wholesale leased lines used for mobile backhaul and other connectivity services are essentially the same product: a lit fibre connection between two locations along a dedicated path. This suggests that, in the event of a SSNIP by a hypothetical monopolist of a separately defined backhaul market or leased line market, a supplier of the other product could enter the market using existing assets making the SSNIP unprofitable. The GCRA also noted the prices charged for wholesale leased lines are the same regardless of the customer's use of the leased line.

6.36 The GCRA agrees with Airtel, and consistent with BEREC that the rollout of next generation 5G mobile technology in Guernsey will be critically dependent on fibre backhaul:

Fixed network coverage and access options will influence 5G, as high-capacity quality fibre backhaul availability is necessary for the deployment of the new standard.<sup>47</sup>

6.37 The GCRA also agrees that 'wholesale access to fibre backhaul connectivity of cell sites needs to be ensured (and regulated, where necessary)<sup>48</sup> to prevent potential competition problems. Nonetheless, the GCRA's view is that this aim can be achieved without the need to define a separate mobile backhaul market.

6.38 With regard to JT's comments on microwave backhaul solutions, in the Proposed Decision, taking account of Airtel's views and Ofcom's findings in its Wholesale Fixed Telecoms Market Review 2021-26, the GCRA stated that it was unconvinced that microwave links are an adequate substitute for fibre backhaul. This was on the basis of their:

- ability to support only lower capacity links compared to fibre-based backhaul, means access seekers are likely to rely on fixed connections in higher traffic areas;
- requirement for line of sight connectivity;
- significantly lower transmission range than fibre-based backhaul links; and
- higher risk of failure because microwave antennas are exposed.<sup>49</sup>

6.39 The GCRA agrees that some operators will continue to use microwave for mobile backhaul, [X], but due to wholesale leased line cost concerns rather than as a preferred transport medium. The GCRA agrees with JT's contention that the performance capability of microwave technology is advancing rapidly. For example Huawei provides microwave solutions providing bandwidths from 1 Gbps to 10 Gbps, advertising its benefits in mobile backhaul scenarios where fibre resources are unavailable.

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<sup>47</sup> BEREC, 2020: p8.

<sup>48</sup> BEREC, 2020: p8.

<sup>49</sup> GCRA, 2022: p44.

6.40 Notwithstanding capacity improvements, in the absence of the other three substantive constraints listed above being addressed, the GCRA remains unconvinced that microwave solutions are an adequate substitute for fibre backhaul.

6.41 The GCRA therefore maintains its proposed decision that the wholesale market for leased lines should include the provision of wholesale leased lines no matter their ultimate use, and that this would include provision for backhaul as well as an input to a range of retail applications. In addition, the GCRA maintains its view that that microwave solutions are not adequate substitutes for leased lines in a forward-looking assessment of wholesale leased lines market.

#### *Dark fibre access*

6.42 Sure based its argument that the GCRA should remove dark fibre access from the wholesale leased lines market definition on two things: availability and substitutability. These are considered below.

6.43 In the Proposed Decision, the GCRA took the view, in line with Ofcom and the JCRA's findings, that access to dark fibre would be an effective substitute for active leased lines.

6.44 In its 2019 BCMR, Ofcom found dark fibre to be part of the relevant market for wholesale leased lines on the basis of demand- and supply-side analysis. On the demand side, Ofcom concluded that 'dark fibre is not a close demand substitute for low bandwidth CI Access services (1 Gbit/s and below) but could be one for VHB services'.<sup>50</sup> On the supply side, Ofcom found that where telecoms providers are already connected to a customer site, there will be supply-side substitution between CI Access services provided either over the same or different equipment and where suppliers do not have an existing connection, competitive conditions do not differ by bandwidth.

6.45 In its 2021 Wholesale Fixed Telecoms Market Review 2021–26 (**WFTMR**), Ofcom reaffirmed its view that dark fibre used to supply or self-supply leased line services is in the same market as wholesale leased line access services, on a supply-side analysis:

- a) When networks are already fibre connected, they would be able to switch between supplying dark fibre and LL Access services sufficiently quickly and at minimal cost in the event of a SSNIP.
- b) Where suppliers are not already connected, dark fibre providers are equally able to supply LL Access services as any other supplier of LL Access services as the incentives to extend their networks will be broadly similar for both services.<sup>51</sup>

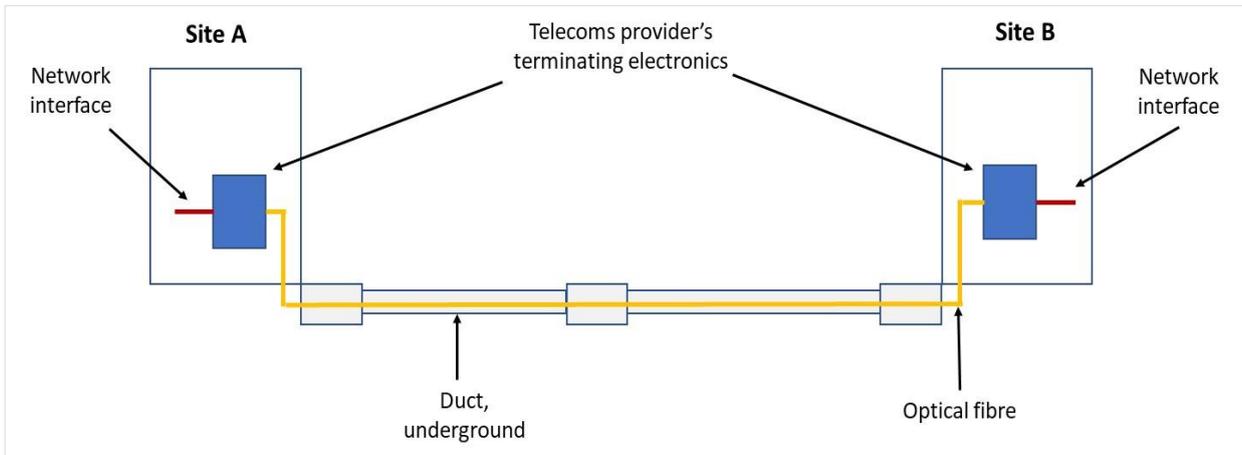
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<sup>50</sup> Ofcom (2019). *Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets - Volume 2: market analysis, SMP findings, and remedies for the Business Connectivity Market Review (BCMR), Draft Statement*, 24 May 2019: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/149339/volume-2-bcmr-draft-statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/149339/volume-2-bcmr-draft-statement.pdf): p.44

<sup>51</sup> Ofcom (2021). *Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26: Volume 2: Market analysis – Statement*, 18 March 2021: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/216086/wftmr-statement-volume-2-market-analysis.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/216086/wftmr-statement-volume-2-market-analysis.pdf): p106.

6.46 The GCRA also noted that the purchaser would always be a licensed telecoms operator, which would have the required technical skills to use dark fibre.<sup>52</sup>

Figure 6.5: Structure of a typical point-to-point leased line



Source: Ofcom, 2019: Figure 3.7, p23.

6.47 Figure 6.5 shows the structure of a typical point-to-point leased line, which can be provided with or without active electronics at either end of the fibre connection. In the case of an active leased line, the wholesale telecoms operator provides the terminating electronic equipment. In the case of a circuit without active electronics, a dark fibre circuit, the wholesale customer only leases the optical fibre connection and supplies its own electronic equipment to provide service such as Ethernet or WDM. The incremental activities and costs for an OLO to utilise dark fibre rather than an active leased line are therefore unlikely to be significant.<sup>53</sup> In its response to the March 2021 Draft Decision, Newtel made a similar point:<sup>54</sup>

For on island circuits higher than 1Gbps, the prices are more than 10 times those of mainland UK. The main cost is the dark fibre element between the A end and B end. All on-island circuits provided by Sure to Newtel are of type dark fibre. The equipment's that are put on each end which are used to set the speed are in fact introduced to limit the capacity of the fibre and set/fix the prices. In other words there is no[t] much difference in cost between a 10Mbps and a 10Gbps, however a 10Gbps is 10 times higher in prices than a 10Mbps.<sup>55</sup>

6.48 Since the electronic equipment is provided by the customer, rather than the fibre provider, it allows greater choice in how services are provided over the fibre than being limited to just Ethernet or

<sup>52</sup> GCRA, 2022c: p48.

<sup>53</sup> Sure (Jersey) Limited makes this same point in its submission to the JCRA's BCMR Draft Decision (Sure (Jersey) Limited, 2021: p8).

<sup>54</sup> The GCRA also notes that it is possible that the reason that Sure does not supply dark fibre is because that would cannibalise its sales of active wholesale leased lines. Ofcom noted this point in relation to Openreach in its 2021 WFTMR 'Our objective in this review is to evaluate whether Openreach has market power, and Openreach does not currently supply dark fibre. Moreover, the reason Openreach does not supply is likely because, if it did so, it would cannibalise its active sales, which reinforces our view that this is a single market.'(Ofcom, 2021: p105).

<sup>55</sup> Newtel (2021). *Response to March 2021 consultation*, 26 March 2021: page 1.

WDM services. In addition, dark fibre, when applied as remedy, is consistent with the ‘ladder of investment’<sup>56</sup> approach espoused by BEREC.<sup>57</sup>

6.49 Sure argues that since there are no operators currently offering dark fibre in Guernsey, it is not possible for dark fibre to place a competitive constraint on wholesale active leased lines. The GCRA is aware that dark fibre is not currently offered by any operator, which implies that at this point in time dark fibre would not have a material effect on the hypothetical monopolist.

6.50 Nonetheless, in line with best regulatory practice, and consistent with the European Commission SMP Guidelines, the market review is forward-looking, taking account of likely developments over the period of the review, which is usually five years. The GCRA notes that Sure and JT already self-supply dark fibre to their active leased lines, and is of the view that the supply of dark fibre will become significant over the period of the review, particularly should the GCRA propose and implement a dark fibre remedy in the remedies consultation process.

6.51 With regard to substitutability between dark fibre and active leased lines, the GCRA notes the European Commission’s 2020 recommendations on relevant markets:

The substitutability depends on the ability of the access seeker to self-provide the knowledge and active equipment needed as well as the difference in price to active products. If dark fibre is found to exert sufficient competitive constraint over the pricing of leased lines, it could be included in same relevant market for dedicated capacity.<sup>58</sup>

6.52 The GCRA also notes BEREC’s 2021 – 2025 strategy reference to the fact that ‘duct and pole access and dark fibre may also become increasingly relevant’ in the context of the increasing demand for fibre backhaul to support the deployment of 5G.<sup>59</sup> This point was noted by Airtel in its response to the Proposed Decision.

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<sup>56</sup> The ‘ladder of investment’ regulatory approach ensures that service-based entry and facility-based entry are complements in promoting competition, and provides a means to reduce the sunk or setup cost required for market entry, which for full network competition can be substantial. The ladder of investment provides a series of access product ‘rungs’ in the incumbent operator’s network which new entrants can climb. At each higher rung, OLO’s are less reliant on the incumbent’s downstream network, until finally they have built out their own networks.

<sup>57</sup> BEREC (2012). *Revised BEREC Common Position on best practices in remedies as a consequence of a SMP position in the relevant markets for wholesale leased lines*, BoR (12) 126, 26 November 2012: [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/regulatory\\_best\\_practices/common\\_approaches\\_positions/1096-revised-berec-common-position-on-best-practices-in-remedies-as-a-consequence-of-a-smp-position-in-the-relevant-markets-for-wholesale-leased-lines](https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/common_approaches_positions/1096-revised-berec-common-position-on-best-practices-in-remedies-as-a-consequence-of-a-smp-position-in-the-relevant-markets-for-wholesale-leased-lines)

<sup>58</sup> European Commission (2020b). *Explanatory Note Accompanying the document COMMISSION RECOMMENDATION on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code*, 18 December 2020: [https://www.nkom.no/ekom-markedet/markeder/markeder-som-reguleres/\\_/attachment/download/e804f701-e342-448d-95f9-0b81f4b5d144:b3bff2ccf56262242fdd0f242205cf2ab0335fb0/Kommisjonens%20Explanatory%20Note%20til%20anbefalingen%20av%2018.%20desember%202020.pdf](https://www.nkom.no/ekom-markedet/markeder/markeder-som-reguleres/_/attachment/download/e804f701-e342-448d-95f9-0b81f4b5d144:b3bff2ccf56262242fdd0f242205cf2ab0335fb0/Kommisjonens%20Explanatory%20Note%20til%20anbefalingen%20av%2018.%20desember%202020.pdf)

<sup>59</sup> BEREC, 2020: p8.

6.53 The GCRA has considered the possibility of undertaking a SSNIP test to determine whether dark fibre could be a substitute in the event of a SSNIP by a hypothetical monopolist of active wholesale leased lines. In the absence of dark fibre offered on the merchant market, the GCRA's view is that there is insufficient information to undertake such a test. Nevertheless, were the information available to conduct the test, then the GCRA considers that a SSNIP imposed by a hypothetical monopolist of wholesale active leased lines is unlikely to be profitable as purchasers of such products could switch demand to dark fibre. The GCRA also maintains its proposed view that dark fibre is an effective supply-side substitute for active leased lines.

6.54 In other words, if customers view active leased lines as good substitutes for dark fibre, or suppliers can easily switch from supplying active leased lines to supplying dark fibre, then an attempt to set excessive prices for dark fibre would be defeated.

6.55 Therefore, in light of the analysis in the Proposed Decision, JT and Airtel's responses in support of the inclusion of dark fibre and consideration of Sure's contrary views above, the GCRA remains persuaded that dark fibre would be an effective demand- and supply-side substitute for active wholesale leased lines and that the relevant market should be broadened to include access to dark fibre.

6.56 The GCRA notes that in its response to the Jersey Competition Regulatory Authority's (JCRA) BCMR, a market in which it is a competitor, Sure (Jersey) Limited<sup>60</sup> took a similar view to that of the GCRA in this decision:

It is Sure's opinion that dark fibre should be part of the wholesale leased lines market because dark fibre should be considered to be a substitute to leased lines. We do not consider the need for OLOs to add their own electronic equipment to be a sufficiently significant difference or barrier to substitutability between what is effectively active and passive leased lines.<sup>61</sup>

6.57 The GCRA notes Sure's concerns about the commercial impact of the introduction of a dark fibre remedy on its Guernsey Fibre Project. As noted by JT in its response, these matters would be considered in the GCRA's consultation on BCMR remedies.

6.58 The GCRA also notes, for avoidance of doubt, that the decision to include dark fibre in the relevant market in this decision is a separate matter from any consideration of a dark fibre remedy as part of the subsequent remedies consultation process. The former is a factual decision based on demand- and supply-side substitutability, whereas the latter is a regulatory judgement about the extent to which regulated access to dark fibre is necessary to solve competition problems identified in the market analysis.

6.59 Moreover, a dark fibre remedy is not contingent on a decision to include dark fibre in the relevant market.

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<sup>60</sup> Sure (Jersey) Limited and Sure (Guernsey) Limited are subsidiaries of the Sure Group, headquartered in Guernsey. Prior to the separation of the Channel Islands Competition and Regulatory Authority (CICRA) into the GCRA and JCRA, Sure's usual practice was to provide a single response to market reviews concerning Guernsey and Jersey.

<sup>61</sup> Sure (Jersey) Limited (2021). *Response to JCRA Business Connectivity Market Review Draft Decision*, 15 January 2021: p

### *Duct access*

6.60 In the Proposed Decision, the GCRA referenced the European Commission’s 2020 recommendation on relevant product and service markets and Ofcom’s WFTMR in coming to its view that duct access would be an effective alternative to taking active wholesale leased lines.

6.61 In relation to Ofcom’s duct access decision in the WFTMR, Sure suggested that ‘rather than considering it to be a demand- or supply-side substitute for active leased lines, Ofcom considers [duct access] to be a remedy that sits upstream of the wholesale business connectivity market.’<sup>62</sup>

6.62 The GCRA agrees that in its WFTMR Ofcom conducted a separate market review for access to physical infrastructure, which Ofcom terms the physical infrastructure market<sup>63</sup> that sits upstream of the UK’s three wholesale fixed telecoms markets: wholesale local access (broadband), leased line access and inter-exchange connectivity. The basis for this separation is that wholesale access to physical infrastructure is common to all three downstream markets i.e. access to physical infrastructure is needed in order to install fibre.

6.63 The GCRA sees the merit in applying a similar approach in Guernsey to regulating access to physical infrastructure supporting the wholesale fixed broadband access and business connectivity markets. The GCRA, therefore, has decided to change its proposed decision and its final decision excludes duct access from the wholesale leased lines market definition. Instead, the GCRA will consider undertaking a physical infrastructure market review at a future time.

### GCRA conclusion

6.64 In light of the analysis in the Proposed Decision and consideration and analysis of stakeholder responses above, the GCRA concludes the wholesale product market definition as follows:

- The GCRA’s final decisions in the retail market are mirrored in the wholesale market viz. all bandwidths are included, the market should not be narrowed to reflect delivery technology or broadened to include fixed broadband, business connectivity solutions other than leased lines or off-island leased lines.
- The market should not be narrowed to reflect customer use of leased lines e.g. mobile backhaul. Additionally, microwave solutions are not considered a substitute for fibre backhaul.
- Self-supply should be included.
- The market should be broadened to include access to dark fibre but not duct access.

## **Wholesale geographic market**

### Proposed Decision

6.65 In the Proposed Decision the GCRA found that the wholesale market for on-island leased lines is island-wide on the basis that there are no particular areas within Guernsey where conditions of

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<sup>62</sup> Sure, 2022: p.4.

<sup>63</sup> Ofcom defines physical infrastructure as all parts of a network which can be used to host elements of a telecoms network. It can include pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles.

competition are appreciably different to the extent that they constitute separate geographic markets. The GCRA's conclusions drew from its analysis of the retail market, including that operators in Guernsey offer uniform pricing, market their services in a uniform manner, and there is no product differentiation according to geographic area.

6.66 The GCRA also indicated that a finding of a smaller geographic market within Guernsey would need to be evidenced by data which showed a clear boundary between different areas in terms of demand and supply.

#### Stakeholder responses

6.67 JT agreed with the GCRA's proposed geographic market definition:

The geographic market is the whole of Guernsey as the conditions of wholesale competition are the same across the whole of Guernsey.<sup>64</sup>

6.68 Sure disagreed with the GCRA's proposed national market, arguing that the GCRA should instead conduct a network reach analysis:

The Authority's proposed 'top-down' approach appears to overlook regulatory barriers to geographic pricing and does not consider the extent to which rival operators compete through managed services to offer cheaper and differentiated solutions. In our view, a bottom-up approach, such as using a 'network reach analysis' similar to that adopted in the UK or Ireland, would be better placed to investigate the possibility of sub-national geographic markets.<sup>65</sup>

6.69 Sure claimed that the GCRA's 2015 wholesale price control has meant it is unable to compete geographically, in the wholesale and retail market, therefore explaining why the GCRA has observed uniform pricing in Guernsey:

This is because Sure is not afforded the flexibility to reduce prices in response to network expansion in a certain area; it must reduce wholesale prices island-wide (along with the significant revenue implications this will have) or not reduce prices at all. For Sure to reduce prices in a specific geography in response to rival network expansion would be to breach its non-discrimination obligation.<sup>66</sup>

6.70 In relation to network reach analysis, Sure made the following points:

As set out above, NRAs in other jurisdictions often look for the existence of two or more competitive networks in addition to that of the incumbent before concluding that competition is more effective or effective (e.g., the High Network Reach and Central London areas in the UK). However, in a jurisdiction the size and scale of Guernsey, we do not believe it will ever be economically feasible to have three competing fixed line networks in a given geographic area due to operators' need to achieve minimum viable scale (which is particularly large in telecommunications networks). This is evidenced by the fact that there are only two at-scale on-island network providers in Guernsey today, with this being the case since 2007.

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<sup>64</sup> JT, 2022: p2.

<sup>65</sup> Sure, 2022: p3.

<sup>66</sup> Sure, 2022: p19.

The small size and scale of Guernsey therefore suggests that the presence of two fixed network operators (that is, Sure plus another operator) will likely be the appropriate benchmark for effective competition in the wholesale leased line market, provided the coverage from the other operator (including dig distances) is sufficient to cover the geographic area in question.<sup>67</sup>

## GCRA consideration

### *Regulatory barriers*

6.71 The GCRA has examined Sure's claim that regulatory barriers prevent it from offering lower prices for leased lines in areas where it faces network competition.

6.72 In the 2014 BCMR,<sup>68</sup> the GCRA defined one retail and one wholesale on-island leased lines market, each with one product (leased lines of all bandwidth speeds) and one geographic area (whole of Guernsey). Sure was designated as having SMP in the wholesale market. The GCRA's final decision put the following SMP obligations on Sure, the majority taking effect through existing licence conditions:<sup>69</sup>

- Access – obligation to make access to wholesale on-island leased lines available to OLOs in response to a reasonable request for access (LC 26).
- Non-discrimination – obligation not to discriminate between OLOs, and between OLOs and Sure's own retail operation (LC 29).
- Transparency – obligation to publish and maintain a Reference Offer and Service Level Agreement that governs Sure's relationship with the OLO, including Key Performance Indicators (KPIs) and publish prices and non-price terms and conditions.
- Accounting separation – obligation to prepare and maintain separated accounting information (LC 27).
- Cost accounting – obligation to maintain its current cost accounting obligations (LC 28.2).
- Price controls – the GCRA determined the need to continue with a price control in the wholesale market for on-island leased lines using LC 31, which provides for the GCRA to impose a price control on any licensed services within a relevant market in which Sure has been found to be dominant.

6.73 Following the 2014 market review, the GCRA put in place a retail minus price control on Sure's wholesale on-island leased lines from 1 July 2015, as follows:<sup>70</sup>

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<sup>67</sup> Sure, 2022: p25.

<sup>68</sup> GCRA (2014c). *Business connectivity market review: Guernsey Final Decision*, Document No: CICRA 14/49, 1 October 2014: <https://www.gcra.gg/media/3746/t994gj-business-connectivity-market-review-final-decision.pdf>

<sup>69</sup> Sure (Guernsey) Limited Fixed Licence: <https://www.gcra.gg/media/597684/sure-fixed-final.pdf>

<sup>70</sup> GCRA (2015). *Review of the price control for wholesale on island leased lines: Guernsey, Final Decision and Response to Consultation and Draft Decision*, CICRA 15/16, 19 May 2015: <https://www.gcra.gg/media/2088/t1097gj-price-control-for-wholesale-on-island-leased-lines-guernsey-final-decision.pdf>

- the control is set on an ex ante basis, applies to all wholesale on-island leased lines and is applied on a product-by-product (rather than portfolio) basis;
- for each retail leased line product offering, a wholesale equivalent product must be offered at a price that complies with the proposed control;
- the control is set at retail minus 20 per cent;
- the term of the price control will be aligned with the market review cycle;
- Sure is required to submit a regular statement to the GCRA formally confirming its compliance with the wholesale price control.

6.74 Sure's claim rests on its assertion that its non-discrimination obligations prevent it from offering a lower price in one area of the island. The first such obligation is LC 29:

"The Licensee shall not show undue preference to, or exercise unfair discrimination against, any User or Other Licensed Operator regarding the provision of any Licensed Telecommunications Services or Access. The Licensee will be deemed to be in breach of this Condition if it favours any business carried on by the Licensee or an Associated Company or Other Licensed Operator so as to place Other Licensed Operators competing with that business at an unfair disadvantage in relation to any licensed activity."

6.75 Sure also has a non-discrimination pricing obligation in LC 33.3:

All published prices, discount schemes and special offers of or introduced by the Licensee for Licensed Telecommunications Services shall be transparent and non-discriminatory; all discount schemes shall be cost-justified and all special offers shall be objectively justifiable.

6.76 The first point to note is that the unfair discrimination obligation in LC 29 and the non-discrimination obligation in LC 33.3 concern discrimination between wholesale customers or between Sure's retail arm and other wholesale customers, not discrimination between geographic areas. The second point to note is that price differentiation is not necessarily equivalent to price discrimination. That is because discrimination requires improper differentiation, through treating similarly situated operators differently and therefore inappropriately, having due regard to underlying competitive and regulatory objectives and effects. For example, such discrimination could consist of a dominant operator charging OLOs present in the same area differential prices thereby distorting competition between those OLOs or by applying a margin squeeze, thereby favouring its retail arm and deterring efficient entry.

6.77 Therefore, as an example, should Sure reduce prices in a particular area in response to competitive pressures and Sure makes those prices available to its retail arm and all OLOs (irrespective of whether an OLO happens to be operating in that area at that time), this will not be prevented by the non-discrimination obligations. Contrariwise, Sure's interpretation of the non-discrimination obligation as prohibiting all price differentiation, which then requires uniform national pricing and inhibits price responsiveness to competition, would encourage higher prices and inefficient entry. Such an interpretation would run counter to underlying regulatory objectives (viz. to make prices cheaper, encourage efficiency and efficient entry) and could not have been intended.

6.78 Moreover, the GCRA notes that Sure’s wholesale product price list contains a number of products for which it price differentiates. For example, a number of leased line products are offered at different prices for same exchange and different exchange.<sup>71</sup>

6.79 The GCRA, therefore finds no basis for Sure’s claim that it does not price differentiate because this would trigger a breach of its non-discrimination obligations. The GCRA also notes that in its response to the JCRA’s BCMR, Sure (Jersey) Limited considered uniform pricing as a key determinant of national markets:

Sure also agrees that the fact that JT has uniform retail prices for leased lines across Jersey is a strong indication that there are no separate geographic markets in which JT faces significantly different competition conditions.<sup>72</sup>

### *Network reach analysis*

6.80 In the Proposed Decision, the GCRA noted that Ofcom applies a network reach analysis, delineating separate sub-national geographic areas for the wholesale leased lines market, using postcode sectors as the unit of analysis, where the presence of leased line networks means that BT faces wholesale competition from two or more competing networks.<sup>73</sup> The GCRA also noted that this contrasted with Guernsey where the incumbent Sure only faces one competing leased lines network provider.

6.81 The GCRA has considered Sure’s case for the GCRA reassessing its wholesale geographic market definition using network reach analysis. Sure references Ofcom’s approach as an example to be followed, but argues that the GCRA should not adopt Ofcom’s BT+2 (the incumbent plus 2 or more network competitors) as the appropriate benchmark for effective competition, but rather Sure+1 (the incumbent plus one other network competitor) should be the benchmark in Guernsey. Sure argues that the latter benchmark is appropriate on the basis that it will never be economically feasible to have three competing fixed line networks in a market of the small size and scale of Guernsey.

6.82 In the GCRA’s view, Sure’s inference – that Sure plus one network operator is the appropriate benchmark for effective competition – does not follow from the premise – that that there will only ever be a maximum of two network operators in Guernsey. The reason is that the proper test for determining a network reach analysis benchmark is whether it provides a reasonable basis for distinguishing between areas where there is some potential for effective competition (in the absence of *ex ante* regulation) and those where the minimum conditions for effective competition are unlikely to be met. Therefore, should the GCRA at some point contemplate introducing a

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<sup>71</sup> In the 2014 BCMR, Sure contested the GCRA’s view that operators offer uniform pricing across the island because of its same exchange/ different exchange pricing. The GCRA took the view that Sure’s pricing differential between same exchange and different exchange is a legacy pricing decision taken by the company and is not associated with different competitive conditions (GCRA (2014b). *Business connectivity market review: Guernsey Draft Decision and Response to Consultation*, Document No: CICRA 14/41, 5 August 2014: <https://www.gcra.gg/media/3794/t994gj-business-connectivity-market-review-guernsey-draft-decision.pdf>: p14.)

<sup>72</sup> Sure (Jersey) Limited, 2021: p5.

<sup>73</sup> GCRA, 2022: p37.

network reach analysis, the key question is whether Sure+1 provides a reasonable basis for effective competition – that is competition that ultimately delivers value, quality and choice to Guernsey consumers, without the need for sector-specific regulation.

- 6.83 The retail and wholesale price benchmarking assessment detailed in the Proposed Decision suggests that the leased lines market falls some way short of delivering value to customers, irrespective of whether they are in Sure+1 areas or those locations where only Sure has a network. Although there has been market entry and expansion in Guernsey, the benchmarking analysis and continuing concerns expressed by customers about high comparative prices suggest that the benefits of competition are not being fully passed on to customers in the form of lower prices, even with sector-specific regulation.
- 6.84 The GCRA notes that Ofcom applies a similar network reach approach in its wholesale broadband access markets review, where three or more competing operators are used to inform the geographic boundary of those markets. As in the case of Guernsey leased lines market, where Sure has the only island-wide network, Sure and JT are network competitors in certain areas in the fixed broadband access market. Similarly, Sure is dominant in the wholesale market and subject to a price control remedy.
- 6.85 International benchmarking evidence from the fixed broadband access market shows that Guernsey is in 25<sup>th</sup> place out of 29 in Western Europe, with an average monthly broadband charge of about USD\$65.<sup>74</sup> This is significantly higher the average charge of about \$50 across the region and substantially higher than the United Kingdom average of about US\$39.<sup>75</sup> This finding is echoed in the telecoms retail price benchmarking study published in April 2022 by the JCRA, which placed Guernsey as the second most expensive jurisdiction out of 37 OECD countries and 4 additional comparator countries (Jersey, Isle of Man, Malta and Singapore) for the 120 GB per month OECD fixed broadband basket.<sup>76</sup>

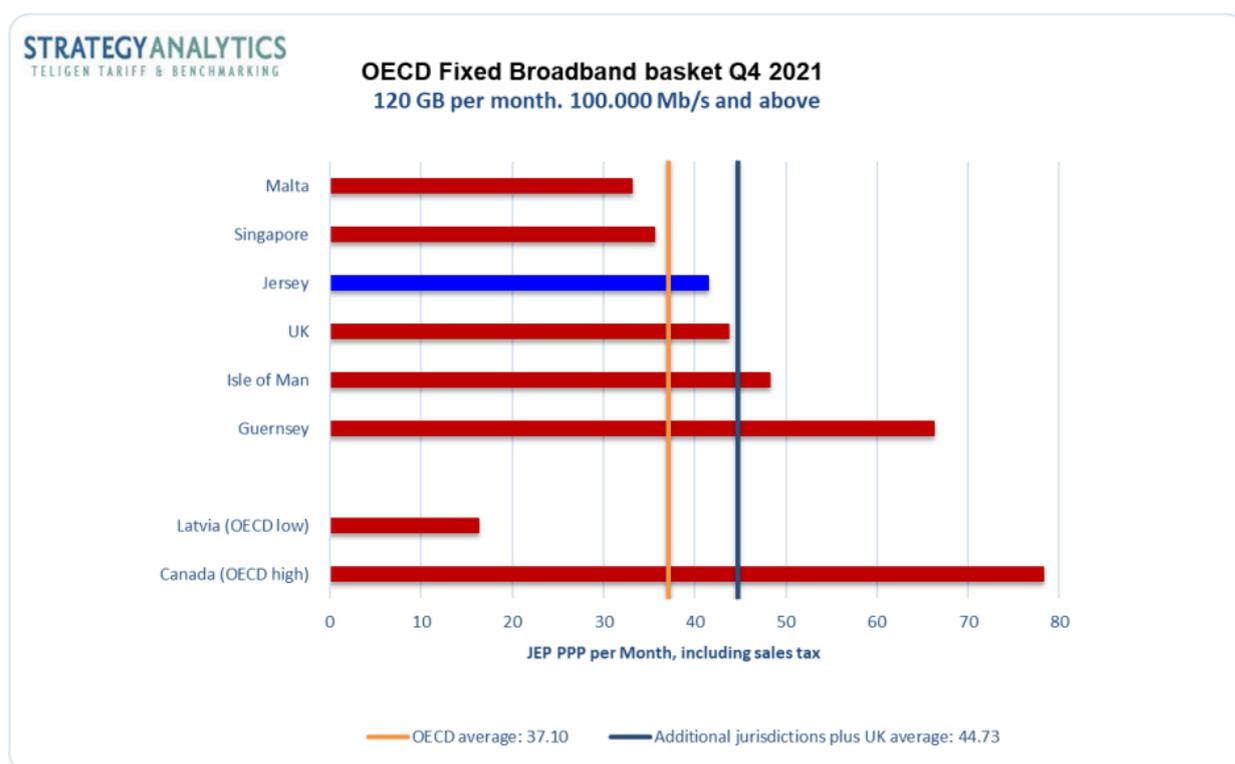
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<sup>74</sup> Cable.co.uk Global broadband pricing league table 2022:  
<https://www.cable.co.uk/broadband/pricing/worldwide-comparison/>

<sup>75</sup> This contrasts with the Guernsey mobile market, which is characterised by competition between three mobile network operators. In the 2021 mobile broadband price league table published by Cable.co.uk, which assesses the cost of 1 GB of mobile data, Guernsey is in 14<sup>th</sup> place out of 30 countries in Western Europe, with an average cost of US\$1.46 per GB, well below the regional average of US\$2.66 per GB. (Cable.co.uk Worldwide mobile data pricing 2021: <https://www.cable.co.uk/mobiles/worldwide-data-pricing/>).

<sup>76</sup> Strategy Analytics (2022). *Telecoms Retail Pricing Market Study for the Jersey Competition Regulatory Authority*, April 2022: <https://www.jcra.je/media/598505/telecoms-retail-pricing-market-study-teligen-final-report.pdf>.

Figure 6.6: OECD fixed broadband basket, 2021



Source: Strategy Analytics, 2022: p36.

6.86 Therefore, similar to the leased lines market, the evidence suggest that the fixed broadband access market also falls some way short of delivering value to customers, and once again irrespective of whether they are in Sure+1 areas or those locations where only Sure has a network.

6.87 Sure has made plain its preference for Sure+1 as the appropriate competition benchmark and expressed its view on the buffer distance:

When undertaking network reach analysis, the Authority will need establish an appropriate buffer distance - the distance over which rival networks are sufficiently close to a business site to find it economic to dig to that site. In the UK, Ofcom found that an appropriate buffer distance was 50 metres, as this was consistent with Ofcom’s modelling of the economic dig distance for the vast majority of CI Access services.

We believe that the buffer distance for Guernsey ought to be significantly larger.<sup>77</sup>

6.88 Given the above, Sure’s argument that Sure+1 is an appropriate benchmark for effective competition is unpersuasive. Should the GCRA at some point contemplate introducing a network reach analysis, it would be likely to apply the Ofcom criterion of incumbent plus 2 network rivals as the appropriate benchmark for efficient competition. The GCRA therefore does not intend to reassess its wholesale geographic market definition using network reach analysis since this is likely to be moot.

<sup>77</sup> Sure, 2022: p24.

GCRA conclusion

6.89 In light of the analysis presented in the Proposed Decision and the analysis of stakeholder responses above, the GCRA has decided to maintain its proposed decision that there are no clear and persistent boundaries which would indicate a separate geographic wholesale market within Guernsey.

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## 7. Three-criteria test

7.1 This section refers to Section 11 of the Proposed Decision in which the GCRA presented its proposed findings on the application of the European Commission three-criteria test for susceptibility to *ex ante* regulation to the defined retail and wholesale on-island leased lines markets.

7.2 The cumulative three-criteria test assesses the following market conditions:

- the presence of high and non-transitory structural, legal regulatory barriers to entry;
- a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based and other types of competition behind the barriers to entry; and
- the insufficiency of competition law alone to adequately address the market failure(s) concerned.

### Retail market

#### Proposed Decision

7.3 In the Proposed Decision the GCRA assessed that the retail market does not meet the three-criteria test and so is not susceptible to *ex ante* regulation.

7.4 This assessment was on the basis that OLOs operating in the leased lines retail market are able to access wholesale leased lines on regulated terms from Sure. Sure is obliged to set the price of wholesale leased lines at the retail price minus 20 per cent and offer an equivalent wholesale product to OLOs for any retail product it offers. As such, the economic barriers to entry at retail level are low as any OLO can expand its business by acquiring more wholesale leased lines if needed.

#### Stakeholder responses

7.5 Sure agreed with the GCRA's 'conclusion that there exists a single retail leased line market (both product and geographic) that does not pass the [three-criteria test]'.<sup>78</sup>

#### GCRA consideration

7.6 The GCRA notes Sure's support for the proposed decision and that no concerns were raised by any stakeholder.

#### GCRA conclusion

7.7 In light of the analysis in the Proposed Decision, the GCRA, therefore, has decided to maintain its proposed decision that, given the availability of wholesale services at regulated prices, the retail market fails the three-criteria test for *ex-ante* assessment. The retail market is not, therefore, subject to a formal competition assessment.

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<sup>78</sup> Sure,2022: p2.

## Wholesale market

### Proposed Decision

7.8 In the Proposed Decision, the GCRA assessed that the wholesale on-island leased lines market on Guernsey fulfils the three criteria test and is, therefore, susceptible to *ex ante* regulation. This was on the basis that:

- the market is subject to high and non-transitory barriers to entry and expansion in the form of substantial sunk cost required to fully replicate Sure's network infrastructure for the provision of wholesale services over national leased lines in Guernsey;
- the market is not trending towards effective competition as Sure's wholesale market power is significant and entrenched; and
- competition law alone is unlikely to be able to resolve any issues in the market.

### Stakeholder responses

7.9 Sure requested that should the GCRA identify any sub-national geographic markets in the market definition it should reapply the three-criteria test:

Where it identifies sub-national wholesale geographic markets (which, for the avoidance of doubt, we believe exist), the Authority should reapply the [three-criteria test] to these smaller putative markets and reassess the extent to which Sure holds significant market power in each of them.<sup>79</sup>

### GCRA consideration

7.10 As discussed in Section 6, having considered and not agreed with Sure's views with respect to geographic market definition, the GCRA's final decision confirms its proposed decision that the wholesale on-island leased lines market is national.

### GCRA conclusion

7.11 In light of the analysis in the Proposed Decision, the GCRA has decided to maintain its proposed decision that the wholesale on-island leased lines market on Guernsey fulfils the three criteria test and is, therefore, susceptible to *ex ante* regulation.

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<sup>79</sup> Sure, 2022: p3.

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## 8. Competition assessment

### Introduction

8.1 This section refers to Section 12 of the Proposed Decision in which the GCRA presented its proposed SMP findings for the defined retail and wholesale on-island leased lines markets. The competition assessment included:

- estimation of market shares and market concentration; and
- consideration of a range of other factors that may impact on the level of competition over the period of the market review.

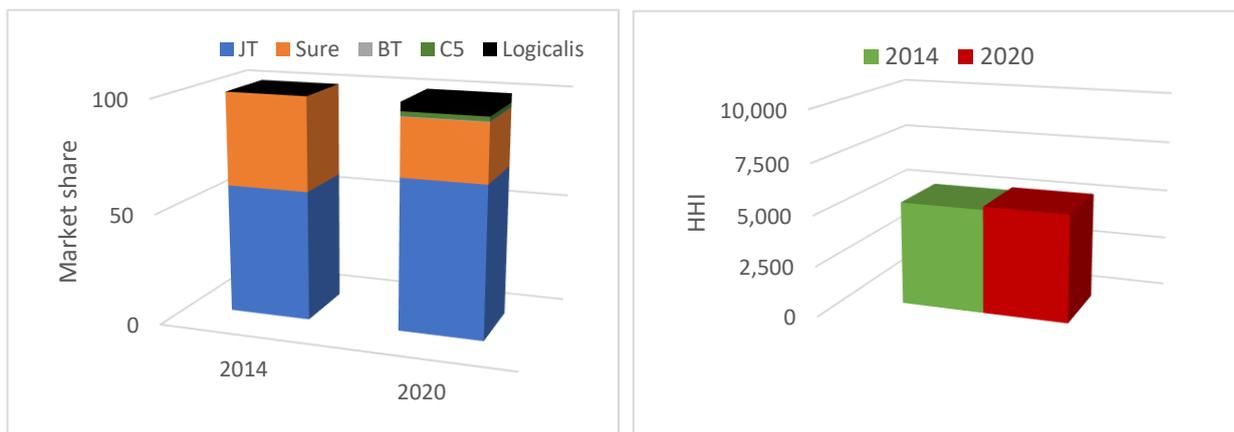
8.2 SMP is considered to be a position of economic strength allowing a firm with SMP to behave independently of competitors, customers and consumers.<sup>80</sup> Absent appropriate *ex ante* regulation, a dominant firm can cause harm in the market by exploiting its customers (for example by setting prices above the competitive level or decreasing quality) or excluding or deterring its competitors from the market (for example by using anticompetitive practices such as engaging in a margin squeeze).

### Retail market

#### Proposed Decision

8.3 As the retail market failed to pass European Commission three-criteria test for susceptibility to *ex ante* regulation, the GCRA did not subject the retail market to a formal competition assessment in the Proposed Decision. Nevertheless, for completeness, the GCRA presented the estimated market shares and Herfindahl-Hirschman Index (HHI), which showed that the retail market is highly concentrated.

Figure 8.1: Market shares and HHI – On-island retail market, 2014 and 2020



Source: Telecommunications Statistics Market Reports, operator returns and GCRA calculations.

8.4 The GCRA noted that actual and potential competition problems may remain in the retail market for leased lines in Guernsey, reflecting concerns from stakeholders about the high relative cost of

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<sup>80</sup> European Commission, 2018: paragraph 52.

connectivity, but concluded that competition problems associated with barriers to entry and expansion in the market for retail leased lines could more effectively be remedied in the wholesale market.

#### Stakeholder responses

8.5 The GCRA received no comments from stakeholders.

#### GCRA consideration

8.6 The GCRA notes there were no comments on the proposed decision.

#### GCRA conclusion

8.7 For the reasons set out the Proposed Decision, the GCRA has decided to maintain its proposed decision not to subject the retail market to a formal competition assessment.

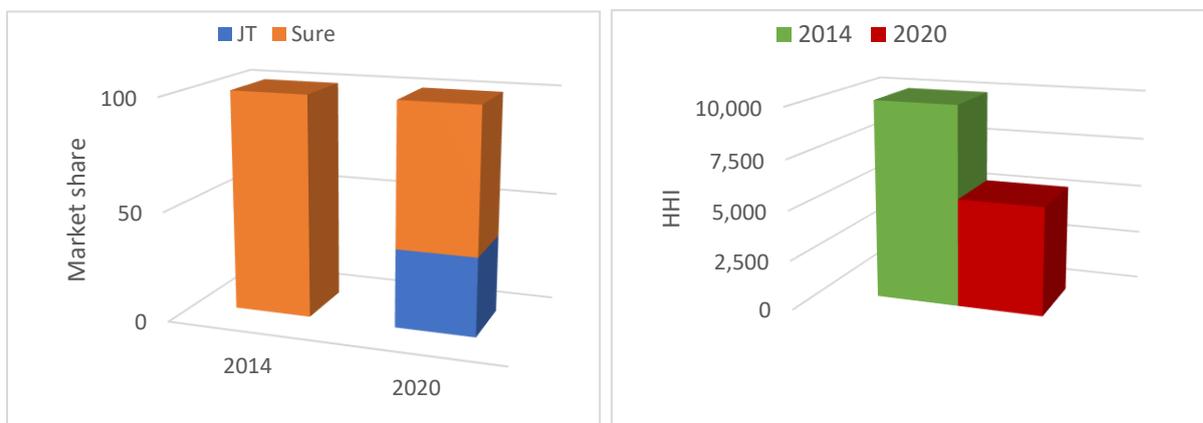
### **Wholesale market**

#### Proposed Decision

8.8 In the Proposed Decision, following a forward-looking analysis of market characteristics, taking into account market shares, trends in market share and other criteria that may constitute barriers to entry and/or expansion, the GCRA concluded that Sure's:

- stable market share in excess of the European Commission 50 per cent threshold for dominance means it remains the major player in the provision of on-island wholesale leased lines in Guernsey.
- access network confers competitive advantage in the market, along with its ability to take better advantage of economies of scale and scope, and its vertical integration.
- position in the wholesale market for on-island leased lines would confer the ability and incentive to leverage market power into the retail market.

Figure 8.2: Market shares and HHI – On-island wholesale market, 2015 and 2020



Source: Telecommunications Statistics Market Reports, operator returns and GCRA calculations.

8.9 Taking these factors into consideration, in the absence of wholesale regulation, the GCRA found that Sure can act independently of customers and other network operators in its wholesale pricing structure for the wholesale services under investigation. The GCRA's proposed conclusion, therefore, was that Sure should be designated with SMP in the wholesale market.

#### Stakeholder responses

8.10 JT agreed with the GCRA's proposed decision:

JT agrees with the GCRA's conclusion that all OLOs will remain dependent on wholesale inputs from Sure, for both their retail offerings and to extending their own networks during the timeframe of this market review period and therefore Sure remains the SMP provider in the on-island wholesale leased line market in Guernsey.<sup>81</sup>

8.11 Airtel agreed with several points made in the GCRA's consideration of additional factors that may impact on the level of competition over the period of the market review:

GAL agrees with GCRA in 12.36 in T1480GJ that Sure is likely to be making higher profits on leased lines than operators in comparable markets considered in section 7, therefore, GAL suggests GCRA to reduce the prices to much lower level as compared to what it is today.

GAL agrees with GCRA in 12.38 in T1480GJ that the impact of contract periods in the leased lines market means that change in competitive conditions can only come about relatively slowly.<sup>82</sup>

8.12 Sure requested that should the GCRA identify a bandwidth break in the wholesale market definition it should reassess the competitiveness of the wholesale market:

Should the Authority concur that demand- and supply-side constraints would not prevent the profitable SSNIP on 100Mbps leased lines and below, then we ask that the Authority reassess the competitiveness of the wholesale market based on there being two wholesale product markets – 100Mbps and below (" $\leq 100$ Mbps"), and greater than 100Mbps (" $> 100$ Mbps").<sup>83</sup>

#### GCRA consideration

8.13 The GCRA considered and did not agree with Sure's views on bandwidth segmentation in Section 6. The GCRA notes JT's support for the proposed decision and that no other concerns were raised by any stakeholder. As for Airtel's call for leased line price reductions, the GCRA's view is that is a matter for consideration in the separate remedies process that will follow this market definition and competitive analysis Final Decision.

#### GCRA conclusion

8.14 In light of stakeholder responses and the analysis in the Proposed Decision, the GCRA, therefore, has decided to maintain its proposed decision that Sure should be designated with SMP in the wholesale market.

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<sup>81</sup> Sure, 2022: p3.

<sup>82</sup> Airtel, 2022: p4.

<sup>83</sup> Sure, 2022: p19-20.

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## 9. Final decision on market definition and SMP

9.1 This section sets out the GCRA's final decision on the market definition and SMP analysis, for the retail and wholesale on-island leased line markets.

### Retail market

9.2 The retail market definition is:

*High capacity and quality dedicated leased lines (private circuits) based on fibre or copper cables and used by end customers for connection between two fixed locations within the whole Bailiwick of Guernsey. The retail leased lines market includes:*

- *both Traditional Interface (TI) and Advanced Interface (AI) protocols; and*
- *all speeds or bandwidths measured in megabits per second (Mbps) or gigabits per second (Gbps).*

9.3 The retail market does not fulfil the three criteria test and so is not susceptible to *ex ante* regulation.

### Wholesale market

9.4 The wholesale market definition is:

*High capacity and quality dedicated leased lines (private circuits) based on wireless technology, fibre or copper cables and used by Other Licensed Operators, including mobile network operators, for connection between two fixed locations within the whole Bailiwick of Guernsey. The wholesale leased lines market includes:*

- *both Traditional Interface (TI) and advanced Interface (AI) protocols;*
- *all speeds or bandwidths measured in megabits per second (Mbps) or gigabits per second (Gbps);*
- *leased lines used for mobile backhaul, i.e. where one end of the circuit is at a mobile base station;*
- *leased lines supplied by a licensed operator to itself for onward supply to the retail market; and*
- *dark fibre circuits, i.e. fibre optic circuits that are not lit to provide a specific access speed or bandwidth and which are then lit by the customer of that circuit for any purpose.*

9.5 The wholesale market fulfils the three criteria test and is susceptible to *ex ante* regulation.

9.6 Sure has been found to have SMP in this market as defined. Therefore, the GCRA will progress with the remedies stage of the BCMR to consider wholesale remedies to be imposed on Sure.

## Acronyms & glossary

Term	Description
<b>5G</b>	5G is next generation wireless network technology that will deliver faster and better mobile broadband, with lower latency and greater bandwidth capable of handling more connected devices, than 4G networks
<b>Alternative Interface (AI)</b>	Alternative Interface (AI) leased lines are digital leased lines geared mainly towards the transmission of IP data and are more suitable for the delivery of high bandwidth services than TI leased lines.
<b>Backhaul</b>	A fibre line that connects an access point, such as a mobile base station with the core network of the operator
<b>Bandwidth</b>	The physical characteristic of a telecoms system that indicates the speed at which information can be transferred, which in digital systems is measured in bits per second (bps).
<b>BEREC</b>	Body of European Regulators for Electronic Communications
<b>Business Connectivity Market Review (BCMR)</b>	Regulatory review of the business connectivity (leased line) market
<b>Dark fibre</b>	Unused or 'unlit' optical fibre, i.e. fibre which has been deployed within a communication network, but which is not connected to active electronic equipment used to facilitate data transmission.
<b>Duct access</b>	See <b>Physical infrastructure access</b>
<b>Ethernet</b>	A technology used for data transmission. Originally deployed for use in a LAN environment, the technology has also increasingly been used to support WAN (see below) connectivity, with Ethernet being used in this instance as a leased line technology.
<b>Ex ante</b>	The application of regulation before an abuse of power has necessarily occurred. The reasoning behind its application is that finding that an operator has SMP means that the operator is likely to have the incentive and motivation to behave in a way which exploits its market power to the detriment of competitors and ultimately to consumers. Ex ante regulation can be contrasted with ex post regulation, which investigates an incident which has already happened.
<b>Ex post</b>	The use of regulation following a complaint or abuse of market position by an operator. In contrast to ex ante regulation.
<b>Gbps</b>	Gigabits per second (1,000 Mbps) – speed of multiples of consumer information capacity.
<b>HMT</b>	Hypothetical Monopolist Test – see <b>SSNIP</b>
<b>Mbps</b>	Megabits per second (1 Megabit = 1 million bits) – measure of bandwidth in a digital system

<b>Term</b>	<b>Description</b>
<b>Leased line</b>	A permanently connected communications link between two premises dedicated to a customer's exclusive use (also known as a private circuit)
<b>MNO</b>	mobile network operator
<b>NRA</b>	National Regulatory Authority
<b>Other Licensed Operator (OLO)</b>	A licensed operator other than the incumbent operator
<b>Passive remedies</b>	Passive remedies refer to access remedies which are provided without electronics and may include obligations to provide duct or pole access, or dark fibre
<b>Physical infrastructure access</b>	The sharing of an incumbent network operator's physical infrastructure, including ducts and poles, with other licensed operators. This generally allows OLOs to install their own sub-duct and/or cable in the incumbent's ducts and attach and maintain their own equipment on the incumbent's poles.
<b>Private circuit</b>	An alternative term for a leased line
<b>Retail minus</b>	This is a form of price control whereby the SMP's wholesale price is set by reference to its retail price minus an appropriate margin to enable OLOs to cover their retail costs and compete with the SMP
<b>Significant Market Power (SMP)</b>	The ability to behave independently of competitors, suppliers, and ultimately businesses and consumers in the market
<b>Small but Significant Non-transitory Increase in Price (SSNIP)</b>	A theoretical price increase that forms part of the 'hypothetical monopolist' test used in market definition analysis. The price increase in question is usually considered to be in the range of 5 to 10 per cent.
<b>Traditional Interface (TI)</b>	Traditional Interface (TI) leased lines are provided using legacy analogue and digital interfaces
<b>UK</b>	United Kingdom
<b>VHB</b>	Very-high bandwidth
<b>VPN</b>	Virtual Private Network – a technology allowing users to make inter-site connections over a public telecommunications network that is software partitioned to emulate the service offered by a physically distinct private network.
<b>WFTMR</b>	Ofcom's Wholesale Fixed Telecoms Market Review 2021–26

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## Annex 1: Legal background and licensing framework

### Legal background

*The Regulation of Utilities (Bailiwick of Guernsey) Law 2001 (the Regulation Law)* sets out the general duties which the States and the GCRA must take into account in exercising their functions.<sup>84</sup> These include the requirement to protect consumers and other users in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services; to ensure that utility services are provided in a way which will best contribute to economic and social development; and to introduce, maintain and promote effective and sustainable competition.<sup>85</sup>

*The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012* sets out six principles of economic regulation, summarised below:<sup>86</sup>

- Accountability – regulate within the framework of duties and policies set by the States.
- Focus – focus on protecting consumer interests through competition where possible, or a system replicating competitive outcomes if not, with a focus on outcomes.
- Predictability – provide a stable and objective regulatory environment.
- Coherence – develop frameworks that are a logical part of States broader policy context and priorities.
- Adaptability – evolve as circumstances change.
- Efficiency – make proportionate, cost-effective, timely and robust interventions and decisions.

Section 5(1) of *The Telecommunications (Bailiwick of Guernsey) Law, 2001 (the Telecoms Law)* provides that the GCRA may include in licences such conditions as they consider appropriate, having regard to objectives set out in Section 2 of the Regulation Law, and the enforcement of the Regulation Law and the Telecoms Law.

The Telecoms Law<sup>87</sup> specifically provides that the GCRA may include in any licence conditions that are:

- intended to prevent and control anti-competitive behaviour,<sup>88</sup> and
- regulate the price premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market.<sup>89</sup>

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<sup>84</sup> Section 2 of the Regulation Law.

<sup>85</sup> These broad objectives were maintained in the transfer of functions and responsibilities to the GCRA, as set out in the *Guernsey Competition and Regulatory Authority Ordinance, 2012*.

<sup>86</sup> *The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012*:  
<https://www.guernseylegalresources.gg/CHttpHandler.ashx?id=75588&p=0>

<sup>87</sup> The definition of dominance and abuse of dominance is not explicit in the Telecoms Law. However, the *Competition (Guernsey) Ordinance, 2012* sets out the States' approach to defining abuse of dominance and anti-competitive practice.

<sup>88</sup> Section 5(1)(c) of the Telecoms Law.

<sup>89</sup> Section 5(1)(f) of the Telecoms Law.

The GCRA is obliged<sup>90</sup> to publish notice:

- of a proposed decision as to whether a person has a dominant position in a relevant market and of the conditions, if any, proposed to be included in the licence granted or to be granted to that person in relation to the control of that dominant position;
- of a proposed decision to regulate the prices, premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market; and
- of a proposed decision to include quality of service conditions in any licence.
- the [Authority] shall – (a) before making the decision, consider any representations or objections received from any interested party, and (b) having followed the procedure set out in slaw, make [its] decision and publish notice thereof.

### Licensing framework

Licences are issued to fixed telecommunications providers under Part I, Section 1 of the Telecoms Law. All fixed and mobile telecommunications licences include a Part which addresses conditions applicable to dominant operators.<sup>91</sup> If the GCRA has found that a licensee has a dominant position in a relevant market, the provisions of this Part of the licence may apply.

The provisions which are applicable to dominant operators include (but are not limited to) measures addressing the availability and associated terms of Other Licensed Operator (OLO) access to networks and services;<sup>92</sup> the requirement not to show undue preference or to exercise unfair discrimination;<sup>93</sup> the requirement not to unfairly cross subsidise,<sup>94</sup> supported by accounting processes to demonstrate compliance; regulation of prices, and transparency around pricing.<sup>95</sup>

In addition, the fixed telecommunications licences include conditions specific to the provision of leased circuits,<sup>96</sup> which apply where a licensee has been found to be in a dominant position. The conditions applicable to the supply of leased circuits refer to the retail and wholesale markets, and require that a dominant provider offers circuits on publicly advertised and non-discriminatory terms, and in compliance with quality standards and at prices determined by the GCRA.

The fixed telecommunications licences also include a Part which directly obliges the licensee not to engage in any practice which has the object or likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of telecommunications networks and services.<sup>97</sup>

The form and implementation of the price control are addressed in Condition 31 of Sure's licence, as follows:

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<sup>90</sup> Section 5(2) of the Telecoms Law.

<sup>91</sup> Part IV, Fixed telecommunications licences.

<sup>92</sup> Condition 24, Fixed telecommunications licences.

<sup>93</sup> Condition 29, Fixed telecommunications licences.

<sup>94</sup> Condition 28, Fixed telecommunications licences.

<sup>95</sup> Condition 31, Fixed telecommunications licences.

<sup>96</sup> Condition 26, Fixed telecommunications licences.

<sup>97</sup> Part V, Fair competition, Fixed telecommunications licences.

- “ 31.1 Where the Licensee intends to introduce:
- (a) new prices for any Licensed Telecommunications Services, or prices for new Licensed Telecommunications Services to be introduced by the Licensee;*
  - (b) any discounts to published prices for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant or for any Subscribers to whom additional services or goods are provided by the Licensee or any of its Associated Companies; or*
  - (c) special offers to all or any of its customers for particular categories of Licensed Telecommunications Services where those Licensed Telecommunications Services have been found to be within a Relevant Market in which the Licensee has been found to be dominant, it shall publish the same at least twenty one (21) days prior to their coming into effect or otherwise as required by law, and provide full details of the same to the Director General.*
- 31.2 The Director General 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. A determination may;
- (a) provide for the overall limit to apply to such Licensed Telecommunications Services or categories of Licensed Telecommunications Services or any combination of Licensed Telecommunications Services;*
  - (b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
  - (c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.*
- 31.3 All published prices, discount schemes and special offers of or introduced by the Licensee for Licensed Telecommunications Services shall be transparent and non-discriminatory; all discount schemes shall be cost-justified and all special offers shall be objectively justifiable.
- 31.4 If the Director General, after consulting the Licensee and such other persons as she may determine, is satisfied that any published price, discount scheme or special offer is in breach the Regulation Law, Telecommunications Law or this Licence, the Director General may, by issuing a direction, require the Licensee to bring the relevant prices, discount schemes or special offers into conformity with the Laws and/or the requirements of this Licence.”