



# WHOLESALE BROADBAND MARKET

## T1652G

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# Proposed Decision - Wholesale Broadband Access Pricing

23 May 2023

GUERNSEY COMPETITION & REGULATORY AUTHORITY

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# 1. Introduction

- 1.1 The last regulatory price control decision for wholesale broadband was published in 2006<sup>1</sup>. Based on a finding that Sure (previously Cable & Wireless) was dominant in the wholesale fixed-line telecommunications market, the control was a revenue-based determination<sup>2</sup>, reducing wholesale broadband revenue by 15 per cent. This control has not been revised since that date.
- 1.2 In 2019 the GCRA published a Final Decision in the Broadband market<sup>3</sup>, in which it defined a wholesale market for broadband access and concluded that Sure still held Significant Market Power on the relevant market.
- 1.3 The States of Guernsey's 2021 policy letter, '**Delivering Next Generation Digital Infrastructure**'<sup>4</sup> then set out several priorities in the telecommunications sector which the GCRA has a role in delivering, including the provision of broadband.

*- Ensuring that competition is maintained at the retail level (the point at which customers buy network services), ensuring that consumer choice is maintained with healthy competition encouraged amongst telcos.*

*- wholesale products and prices should be similar to those available in similar sized jurisdictions in which Sure operates, to ensure Guernsey remains competitive.*

*- Ensuring consumers' expectations of the cost and quality of services are met. This will include Ensuring that telcos are able to compete fairly and procure fibre broadband services at a wholesale level based on a level playing field.*

*- all licensed operators to have non-discriminatory access to the wholesale network at regulated rates approved, Ensuring competition at the retail level.*

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<sup>1</sup> **OUR (2006)** Investigation into Wholesale Broadband Pricing Final Decision, Document No: OUR 06/13, May 2006: <https://www.gcra.gg/media/3703/t06g-investigation-into-wholesale-broadband-pricing-final-decision.pdf>

<sup>2</sup> **OUR (2005)** Price Control for Cable & Wireless Guernsey – Decision Notice.

<https://www.gcra.gg/media/3606/t05g-price-control-for-cable-wireless-guernsey-decision.pdf>

<sup>3</sup> "Wholesale access to the Internet at a fixed location using an access network based on local loops that are either exclusively or partially based on the copper or fibre access network or using the 4G and ultimately 5G wireless access network via a fixed device in the whole Bailiwick of Guernsey."

<sup>4</sup> **States of Guernsey (2021)**. *Delivering Next Generation Digital Infrastructure*, Committee for Economic Development, September 2021

*- encouraging best practice in the telecoms sector, while giving new operators access to the existing network within realistic timescales and at realistic costs.*

*- over the course of the roll-out, regular sessions overseen by the Broadband Working Group assisted, and advised by the GCRA as appropriate to its role, will take place.*

1.4 The GCRA, has therefore prioritised the broadband market and in its document entitled '**Priorities for 2023**<sup>5</sup>, committed to reviewing broadband provision, in particular whether the wholesale charges levied on Other Licenced Operators (OLO) for broadband products by Sure as the incumbent infrastructure operator were reasonable.<sup>6</sup>

1.5 The GCRA's initial consultation and analysis of data obtained from Sure and the OLOs, suggested that Sure's wholesale broadband access prices might exceed the level expected of 'efficient' prices. Retail competition on its own would therefore not appear to have been sufficient to put pressure on wholesale broadband prices through a retail minus form of control. Benchmarking and cost-modelling analyses have been used to determine whether Sure's wholesale broadband prices were efficient.

1.6 The GCRA provisionally concludes that regulatory interventions at the wholesale level is required to better facilitate competition and ultimately contribute to fairer prices for consumers. Having conducted a review of the wholesale broadband market and the available regulatory options, the GCRA proposes to impose a cost-oriented price control remedy which would reduce the current price of Sure's wholesale broadband access by 11% on average commencing on 1<sup>st</sup> January, 2024.

### **Response to Proposed Decision**

1.7 The GCRA invites interested parties to submit written responses on this proposed decision by **1600, 14<sup>th</sup> July 2023** .

1.8 Responses can be submitted by email to [info@gcra.gg](mailto:info@gcra.gg) or alternatively in writing to:

GCRA  
Suite 4, 1st Floor,  
La Plaiderie Chambers,

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<sup>5</sup> <https://www.gcra.gg/media/598534/2023-gcra-final-work-programme.pdf>

<sup>6</sup> **2023 - 2023 Work Programme** - Guernsey Competition and Regulatory Authority.

La Plaiderie

St Peter Port, GY1 1WG

- 1.9 All written comments should be clearly marked '*Proposed Decision – Wholesale Broadband Access Pricing*'. The GCRA's normal practice is to publish responses on its website. If any part of a response is held to be commercially confidential, it should be clearly marked (by highlighting the confidential sections in colour) when the response is submitted.

## 2. Significant market power

2.1 In response to the States of Guernsey's strategy document<sup>7</sup>, and in collaboration with its Licenced Operators, the GCRA conducted a consultation, reviewing the broadband market to assess the extent, if any, of significant market power in this key telecoms market. The review led to a Final Decision in 2019<sup>8</sup> which found that Sure held SMP on the wholesale broadband market as defined in that decision. That designation has not been revisited since that date. There have however been some market developments subsequently and these are considered below.

2.2 In 2021, the States of Guernsey published its 'Delivering Next Generation Digital Infrastructure'<sup>9</sup> policy and its 'Digital Framework'. A Broadband Working Group<sup>10</sup> was established with responsibility for implementing policy and the framework objectives. This Group conducted a tender process for parties to put forward proposals for providing fibre to all premises in Guernsey (FTTP).

2.3 As part of the tender process, Sure proposed an island wide FTTP wholesale broadband network solution. The following features are highlighted:

- Capable of speeds up to 10 Gbps connecting 100 per cent of properties.
- 100 per cent of properties able to access services delivered over a single regulated wholesale network at the same cost.
- All licensed operators will have non-discriminatory access to the wholesale network at the regulated rates approved by the GCRA, ensuring competition at the retail level.
- A time period of 5 years from start to completion – target completion end 2027 (perhaps earlier depending on the start date).

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<sup>7</sup> In 2018, the States of Guernsey published the "The Future of Telecoms" strategy document which sought to achieve some key objectives, specifically:

- Provision of Fibre to business districts within 2-3 years;
- Provision of high quality super-fast broadband to all residential properties within 2-3 years; and
- Provision of next generation mobile technology in line, or earlier than the UK.

<sup>8</sup> **2019 –GCRA 19/01** Final Decision Broadband Market: Review and SMP Findings

<sup>9</sup> **2021** - The States of Deliberation of The Island of Guernsey Policy & Resources Committee and Committee for Economic Development: Delivering Next Generation Digital Infrastructure, 2021.

<sup>10</sup> The '*Broadband Working Group*' comprised of representatives from the Policy & Resources Committee, the Committee of Economic Development and the Committee for Education, Sport & Culture.

- Reinforcement of the critical network infrastructure role Sure provides for Guernsey leveraging and building on its existing sub-sea, fixed and mobile network assets.

2.4 One objective in the States Policy Letter ‘Delivering Next Generation Digital Infrastructure’<sup>11</sup> was the development of a ubiquitous fibre network which delivers resilient, fast, future-proofed, and ubiquitous digital connectivity to homes and business.

2.5 JT has made significant investments in its fibre network with the focus of connecting educational institutions, government departments and business districts to its network. JT has also rolled out its own FTTP network in some small areas of Guernsey, but has advised Frontier Economics that JT has no plans to extend its own fibre broadband network and will be utilising Sure’s wholesale broadband products to provide services to its customers in Guernsey.

2.6 Sure’s proposal was for a wholesale fibre network with 100% ubiquitous coverage to all premises and requested a capped £12.5million ‘Digital Accelerator Investment’ from the States of Guernsey both to assist accelerating the build time but also to cover the provision of fibre to uneconomic areas of the island.

2.7 The Broadband Working Group then recommended contracting with Sure and to providing the grant capped at £12.5 million for the roll-out of Fibre to the Premises (FTTP) in Guernsey which was confirmed in an agreement signed between the States of Guernsey and Sure.<sup>12</sup>

2.8 As set out in the agreement between Sure and the States of Guernsey, the FTTP roll-out in the wholesale broadband network will be undertaken solely by Sure, using only Sure’s infrastructure arguably reducing the likelihood of other OLOs investing in FTTP infrastructure.

2.9 Another relevant development was that Starlink<sup>13</sup> received a fixed telecom licence in 2022 in Guernsey and made its satellite broadband service available. It uses a nascent satellite broadband technology with a target market of consumers in locations that are difficult to reach for traditional fixed and mobile broadband. Subscriber numbers are low and have not altered the market shares of current providers to any material extent.

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<sup>11</sup> **2021** - The States of Deliberation of The Island of Guernsey Policy & Resources Committee and Committee for Economic Development: Delivering Next Generation Digital Infrastructure, 2021.

<sup>12</sup> **2021** The States of Deliberation of the Island of Guernsey, Delivering Next Generation Digital Infrastructure, P.2021/106

<sup>13</sup> Frontier Numbers – Market Statistics

2.10 These market developments would not appear to alter the 2019 conclusion regarding Sure's position of significant market power in the provision of wholesale broadband access. There is little prospect that the States of Guernsey would consider providing an equivalent subsidy to a competing network provider. Since the size of that subsidy is significant relative to the total investment, any other fibre network provider would be at a significant financial disadvantage to Sure in the wholesale market for access to broadband. The only alternative fixed network provider present in Guernsey is JT which does not provide wholesale access to its network. Sure, therefore continues to hold the vast majority of the market share ( $\geq 93\%$ )<sup>14</sup> and this is not likely to change in the medium term.

2.11 Therefore, Sure's SMP designation would if anything appears to have strengthened since it entered the FTTH roll-out agreement with the State of Guernsey suggesting its current SMP designation is unlikely to change over the medium term.

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<sup>14</sup> **2019 -CIRCA**, Final Decision Broadband Market - Market Review and SMP Finding, Strategy and Policy Consultants (SPC Network) found that Sure has a market share of 93% of subscriber lines. This market share is well above the 50% at which a position of SMP is presumed.



### 3. Ensuring fair prices

- 3.1 As the economic regulator of the telecommunication sector, the GCRA is given powers, functions and duties. In particular, the GCRA has a role to protect the interests of consumers and other users in the Bailiwick in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services. As Sure has SMP, given the concerns that prices are higher than justified, the GCRA has considered whether to intervene to set price controls to mimic the characteristics of a competitive market.
- 3.2 The current price control for wholesale broadband access has been in effect since 2006<sup>15</sup>. The prices of wholesale broadband products have changed since the price control decision of 2006, however, these changes in prices were due to changes in the wholesale broadband product mix rather than a change in the regulatory price control. The price control has not been revised since 2006. Policy and technology changes were also likely to have had an impact on costs and therefore potentially on prices. At the macro level, economic change brought about by new policy and inflation can affect priorities and the cost of capital. At the micro level, the need to invest in new technology and the impact of innovation on efficiency are also relevant to an assessment of whether price levels are justified.
- 3.3 To support the States of Guernsey's Digital Framework (2021-2025) objective of "World Class Digital Connectivity", significant capital investments are required. The State of Guernsey granted Sure the £12.5 million accelerating payment but the bulk of the costs of installing the fibre network (estimated at £37.5 million) will be borne by Sure. Given that fibre networks rollout is disruptive and costly, Sure should be given an opportunity to earn a return on those significant capital outlays in a proportionate and timely manner. Efficient operational and capital costs are generally recovered through prices the operator charges for its products. It is therefore an appropriate time for the GCRA to conduct a price review of Sure's wholesale broadband access to ensure fair prices to retailers and end-users in a market where there is SMP.

#### **Consultation Process**

- 3.4 The GCRA is required to publish a Proposed Decision in advance of any Final Decision (see [Annex 1](#) for a summary of the GCRA's legal and regulatory obligations). The GCRA has therefore been engaged

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<sup>15</sup> 2006 OUR Investigation into Wholesale Broadband Prices, Final Decision.

in an extensive consultation process to ensure it obtains sufficient and accurate information on which to base the Proposed Decision (and any Final Decision).

3.5 [Annex 4](#) demonstrates the consultation and engagement undertaken by the GCRA in its current review of wholesale broadband prices. Throughout the consultation process the GCRA has held discussions with telecommunications providers to ensure the review was conducted transparently, and that the process allowed all interested parties to provide feedback on the review's objectives, information requests, and proposed timelines. Therefore, the GCRA is satisfied that those key stakeholders were given ample opportunity to provide all evidence they considered relevant to the review.

3.6 The consultation and engagement also gave Sure the opportunity to provide its costing, and pricing information and gave it the opportunity to engage in extensive rounds of discussions with the GCRA and Frontier Economics, the GCRA advisors for this analysis. Those discussions and information exchanges allowed Sure the opportunity to provide detailed submissions on its historical cost systems, cost allocations, internal systems and to contribute fully to the review of business connectivity. Given that process, the GCRA is confident that the costing model it has developed, which is central to its assessment of pricing in wholesale broadband market, is based on accurate and robust data.

## 4. Wholesale broadband pricing

- 4.1 Excessive pricing refers to a situation where the prices charged by a dominant undertaking are not closely related to the value to the consumer and/or the cost of producing or providing the relevant service.<sup>16</sup> Concerns about higher pricing can arise where, absent regulation, price levels are likely to be persistently high with no effective pressure (e.g. from new entry or innovation) to bring them down to competitive levels over the period of the review.
- 4.2 The GCRA has considered whether wholesale broadband prices are excessive by considering the alternative methodologies of benchmarking analysis, and cost modelling.

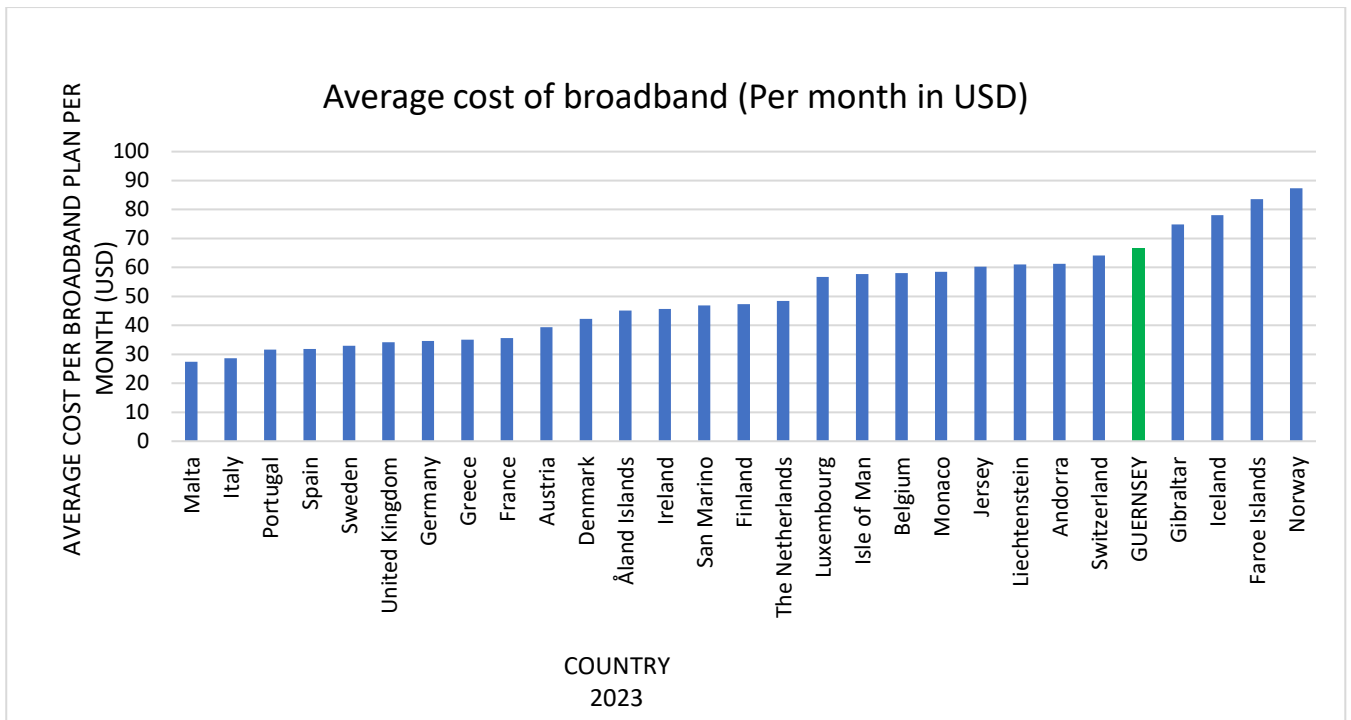
### **Benchmarking**

- 4.3 In 2023, a price comparison of various jurisdictions shows that Guernsey is the fifth most expensive jurisdiction<sup>17</sup> on the average prices of retail broadband service plans among 29 countries in Western Europe.
- 4.4 See the graph below.

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<sup>16</sup> **1978** Case C 27/76 United Brands v. Commission, [1978] ECR 207, [1978] 1 CMLR 429, paragraph 250. In United Brands the Court of Justice of the European Union held that: ‘...charging a price which is excessive because it has no reasonable relation to the economic value of the product supplied would be... an abuse’.

<sup>17</sup> **2023** Cable.co.uk Worldwide broadband prices 2023. [Worldwide Broadband Price Research 2023 | Cable.co.uk](#)



Source: Graph Generated from Cable.co.uk Worldwide broadband prices 2023.

- 4.5 The benchmarking output for retail broadband prices presented in the graph above can be regarded as an indicator that retail broadband prices in Guernsey are high relative to most of the other countries in Western Europe.
- 4.6 It is challenging to assess whether such comparatively higher pricing is based on efficient wholesale and retail costs. When using benchmarking as the analysis tool the challenges also include: identifying appropriate “peer group” countries; identifying product categories to compare; taking account of time (it is essentially a snapshot of pricing at a given point in time); and securing reliable data, as not all pricing data are publicly available and where figures are available, they may not be directly comparable. Even though the benchmarking analysis has identified Guernsey as having comparatively higher broadband prices, the GCRA considers that an analytical tool for conducting a price review such as a benchmarking analysis as a stand-alone analytical tool does not provide a sufficiently objective and evidence-based analysis on fair wholesale pricing levels as other analytical tools can. Benchmarking can be a useful tool for broader analysis where the quality of comparator evidence is adequate but given the features of the wholesale broadband market in Guernsey at this time, the GCRA is of the view that this would not seem to be the best tool to set the level of those prices for this wholesale control.

## Cost modelling

4.7 The GCRA has considered the cost-based modelling approach<sup>18</sup> to assess if wholesale broadband prices are too high. This does not have the limitations of the benchmarking approach and allows for a deeper analysis on fair pricing levels which are based on efficient costs.

4.8 The GCRA assessed the applicability of various options for costing models for wholesale broadband products. The costing models variants are: the top-down approach, the bottom-up approach and the discounting cashflow modelling approach.

- **Top-down Approach** -This models the actual network of the operator. Under this approach the cost-based price would reflect the actual costs incurred by the operator in building and maintaining that network, using regulatory accounting data. A top-down approach is usually used when a network is already built and thus when the actual costs of the network are already known.
- **Bottom-up Approach** - This models the network of a hypothetical operator. It involves forecasting the efficient level of demand and identifying the specific network assets that would need to be deployed by an operator to service that demand. The objective of this approach is to proxy the “competitive level” of prices, which would then send the appropriate “build-or-buy” signals to alternative operators choosing between buying wholesale access or building a network themselves. The bottom-up approach is also more appropriate when there is scope for network competition. Bottom-up models are powerful but very resource-intensive and can therefore be disproportionate for a small jurisdiction.
- **Discounting Cashflow Modelling Approach (DCF)**- This involves calculating the future cashflows generated by the regulated products, based on forecasts for the relevant costs and revenues from those products. Under this approach the cost-based wholesale price would be set in such a way that the return made on these future cashflows is consistent with a reasonable rate of return (i.e. cost of capital), or in other words, the “net present value” of the future cashflows when discounted using an appropriate rate of return is zero. This approach was used in assessing wholesale broadband prices in 2006. The calculation of cashflows can be based on a hypothetical operator or aim to reflect the actual network of the regulated operator.

4.9 Based on its assessments of the various costing models, the GCRA proposes that the DCF modelling using forecasts based on Sure’s actual cost data is the appropriate cost modelling approach. This is

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<sup>18</sup> Cost orientation is a key principle of the EU’s regulatory framework and has been imposed as a regulatory remedy following an SMP finding in many markets.

because Sure is still in the process of deploying its FTTH network and the DCF approach is applicable to markets that set cost-based prices where networks have not yet been fully deployed. Additionally, the DCF model is suited to smaller jurisdictions since it is less data intensive and less complex than other cost models such as the bottom-up approach. The DCF model uses the operator's current and forecasted demand data whilst also drawing on the operators' expertise and knowledge of the Guernsey market.

4.10 To populate the cost-based model, the GCRA requested and obtained a substantial data set from Sure, including Sure's historical costs, forward looking investment in its fibre and legacy network, and consumer demand for different broadband products. The GCRA has also supplemented the data received from Sure with data from other sources, such as the OLOs' demand forecasts.

## 5. Assumptions of the Price Control Model

### Overview of the modelling process

- 5.1 The model developed calculates the “operational cash flows” related to wholesale broadband access products over a period corresponding to the assets’ life, calculated as Sure’s expected wholesale revenues minus its expected efficiently incurred capital and operating costs. The model allows the GCRA to identify the level of wholesale broadband access products prices for each product that would need to be set over that period to allow Sure to recover its efficient-incurred costs, that is, make a return on its cashflows equal to a reasonable return, as defined by its weighted average cost of capital (**WACC**). In practice, these are the level of prices that mean that the sum of Sure’s discounted cashflows for wholesale broadband access products are equal to zero, when using its WACC as a discounting factor.
- 5.2 To provide a clear and transparent explanation on how the model has estimated the appropriate pricing level, the GCRA has set out its approach to each of the key assumptions deployed in the model and why the GCRA considers each assumption to be reasonable.

### Analysis and Key Assumptions

- 5.3 Key assumptions that inform the price control model, which is presented in an excel spreadsheet, are discussed below.
- 5.4 Assumption 1: Duration of the Modelling Period – The GRA proposes that the model is based on a 40-year cycle. The rationale for this 40-year timespan is that it takes into account the longest-lived assets in Sure’s network (poles and ducts). This approach is consistent with the approach in cost models in other jurisdictions.
- 5.5 Assumption 2: WACC - The GCRA invited Sure to produce its own WACC report, which Sure instructed Oxera to produce and was provided to GCRA on 9 January 2023.<sup>19</sup> The GCRA evaluated Sure’s submissions and considered that most of the parameters in capital asset pricing model were reasonably well evidenced. The report findings were summarised as follows:

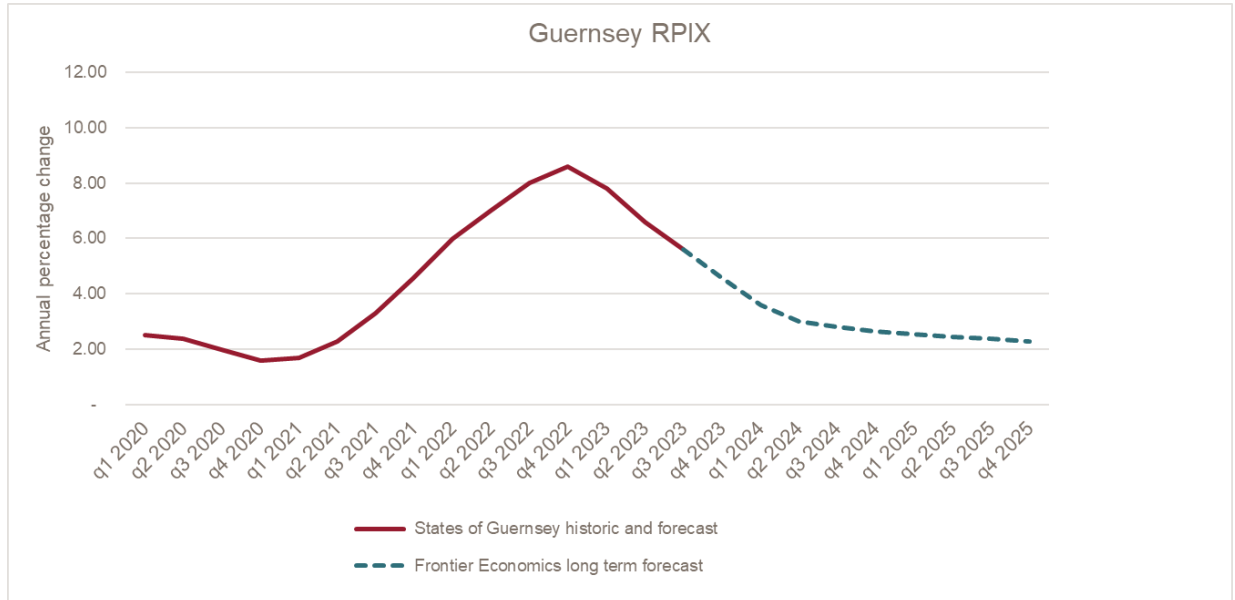
*“We present a summary of Oxera's estimates of CAPM input parameters and the estimated WACC range in pre-tax nominal terms, arriving at a midpoint estimate of 9.1%,”*

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<sup>19</sup> **2023 Oxera Report**, Estimating the WACC for Sure's Guernsey business, 9 January 2023.

- 5.6 The GCRA agreed with the overall project management approach used to determine the expected returns on capital investments, however, there are two areas of the approach (an uncertainty premium and a forward rate adjustment without any regulatory precedent existing or being referenced) that the GCRA did not agree with and therefore did not include these two adjustments to Sure’s calculation of the WACC.
- 5.7 The GCRA decided to use a WACC of 8.8%, which represents the mid-point of Oxera’s estimated range of 8.32% to 9.32% once these two adjustments have been removed.
- 5.8 Assumption 3: Inflation Rate - Sure’s future costs (except for staff related costs – wage growth was used) in the model are adjusted by the expected inflation rate. The GCRA proposes that the expected 2023 inflation rate of 6.2%<sup>20</sup> is applied. The GCRA assumes that the rate of inflation will decline over the long run (from 2025 and onwards) to 2.2%. The proposed long-run rate of 2.2% is based on the average of Guernsey RPIX<sup>21</sup> between 2016 and 2019 (i.e., the years immediately preceding the COVID pandemic and current high-inflationary period), which is consistent with Bank of England’s long-term target to “set monetary policy to achieve the Government's target of keeping inflation at 2%”<sup>22</sup>.

**Guernsey RPIX – Historic and Future Inflation Rate**



<sup>20</sup> 2022 State of Guernsey Strategy and Policy Unit, Guernsey Inflation Forecast bulletin, November 2022

<sup>21</sup> The RPIX Measures the overall level of inflation experienced by people living in Guernsey by considering inflation of a basket of goods and services, excluding mortgage interest payments.

<sup>22</sup> 2022 Bank of England (2022) <https://www.bankofengland.co.uk/monetary-policy> retrieved 14 Mach 2023.



- 5.9 The model estimates future costs based on the expected inflation profile but sets the evolution of wholesale prices at the long run rate throughout the 40-year modelling period in order to smooth the current inflation peak for end users.<sup>23</sup>
- 5.10 Assumption 4: Wage Growth – The expected wage growth is used to forecast Sure’s staff-related costs over the 40-year period. The GCRA’s assumption is based on data from Guernsey Annual Electronic Census Report. Overall remuneration growth was estimated at 3.1% in nominal terms during 2016 to 2019, when inflation was 2.2% which means that the real wage growth was 0.9% over the period. The GCRA accepts that the wage growth data does not identify whether the wage growth was due to employees earning higher salaries or an increase in the number of persons in the workforce. However, the GCRA assumes wage growth was driven by higher salaries and assumes that wage growth will continue at the same rate in real terms going forwards as it did over 2016 to 2019, i.e., wage growth at forecast inflation + 0.9% throughout the 40 year modelling period.
- 5.11 Assumption 5: Efficiency Gains – In the cost model, the assumed growth in costs due to inflation and wage growth is reduced to reflect expected cost savings over time due to expected efficiencies. This approach is consistent with that used by regulatory authorities in other jurisdictions when setting cost-orientated prices. The applied rate of cost savings due to efficiencies differs by type of cost, and over time. On average, across the whole cost base, proposed efficiency rates applied range between 2.3% in 2023 and 1.6% from 2028 onwards.
- 5.12 Firstly, there is an estimate of Multifactor Productivity (MFP) produced by the UK’s Office of National Statistics (ONS), which provide an estimate of the annual efficiency gain for the ICT sector, which is 2.4%. This rate is applied to Sure’s costs relating to IT, Billing and datacentres.
- 5.13 Secondly, Ofcom’s Fibre-to-the-Premises (FTTP) model developed as part of its WFTMR Decision. Ofcom explicitly assumes annual efficiency gains of 1.5% for OPEX including repair and maintenance, power, and general management costs. This rate is applied to general OPEX as well as core and leased line specific OPEX (reflecting the GCRA’s understanding that this OPEX relates to assets that are already fully fibre).

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<sup>23</sup> Note that this still ensures that the proposed prices are reflective of Sure’s costs. This is because as noted above, the prices over the 40-year modelling period (taking account of the assumed inflation) are set such that Sure’s wholesale revenues for leased line services will equal its actual expected efficient costs i.e. the return on its cashflows over the 40 year period will be equal to its WACC.

5.14 Thirdly, Ofcom’s estimate of efficiency gains for Openreach’s network costs used in its Regulatory Asset Base (RAB) model developed as part of its 2020 Wholesale Fixed Target Market Review (WFTMR) Decision was 4.5%, which relates to OpenReach’s legacy copper network. This rate was applied to network specific costs, with an assumption of 3.5% in 2023 reflecting that Sure’s network will still be largely copper-based in this year, reducing to 1.5% by 2027, once Sure’s Fibre to the Premises (FTTP) project is completed at the targeted time of 2026 (i.e. consistent with the efficiency gain rate assumed by Ofcom for Openreach’s FTTP network).

5.15 Assumption 6: Management fee costs – The GCRA does not propose to allow management fees to be included in the cost model, as it does not consider that these have been sufficiently evidenced or justified by Sure in its submissions. And the GCRA notes Condition 2.10 of Sure’s Fixed Telecommunications Licence that requires:

*“The Licensee shall ensure that:*

*The administration and management of the business associated with the establishment, maintenance and operation of the Licensed Telecommunications Network and provision of the Licensed Telecommunications Services shall be conducted from the Bailiwick; and*

*its business is conducted in a manner which the Guernsey Competition and Regulatory Authority is satisfied is on a normal commercial basis and at arm’s length from the business of any of its shareholders or Associated Companies.”*

5.16 Assumption 7: Cost Allocation to wholesale broadband access products – The model allocates forecasted “shared costs” to wholesale broadband products, which support both the provision of wholesale broadband access products and other Sure services (incl. other wholesale services such as wholesale leased line products and fixed voice, but also Sure’s fixed retail services, mobile services and other activities). Where data was available, the costs relating to certain cost categories have been allocated on the basis of specific data on the underlying activities driving those costs (e.g., staff timesheet data for staffing costs). Where “direct” data relating to the activities underlying costs was not readily available, the cost allocation keys reflect allocation keys from Sure’s previous regulatory accounting system, and other considerations such as the split of subscribers or revenues across services, which is a common approach used in cost models in other jurisdictions, such as Jersey and the UK. The model also considers the government’s FTTP funding of £12.5 million. This funding has

been fully allocated to wholesale broadband services, to reflect that the Funding Agreement<sup>24</sup> references the provision of high-speed broadband services as a key objective for the funding, with no explicit reference to leased lines.

5.17 Assumption 8: Demand for Wholesale Broadband - The demand forecasts within the model are informed by forecasts provided by Sure, JT and Airtel. The demand in the model covers all fixed broadband and on-island leased line customers on SURE's network (i.e. wholesale customer of OLOs and the customers of Sure retail), as it is appropriate to recover the relevant costs of these services over all of these customers.

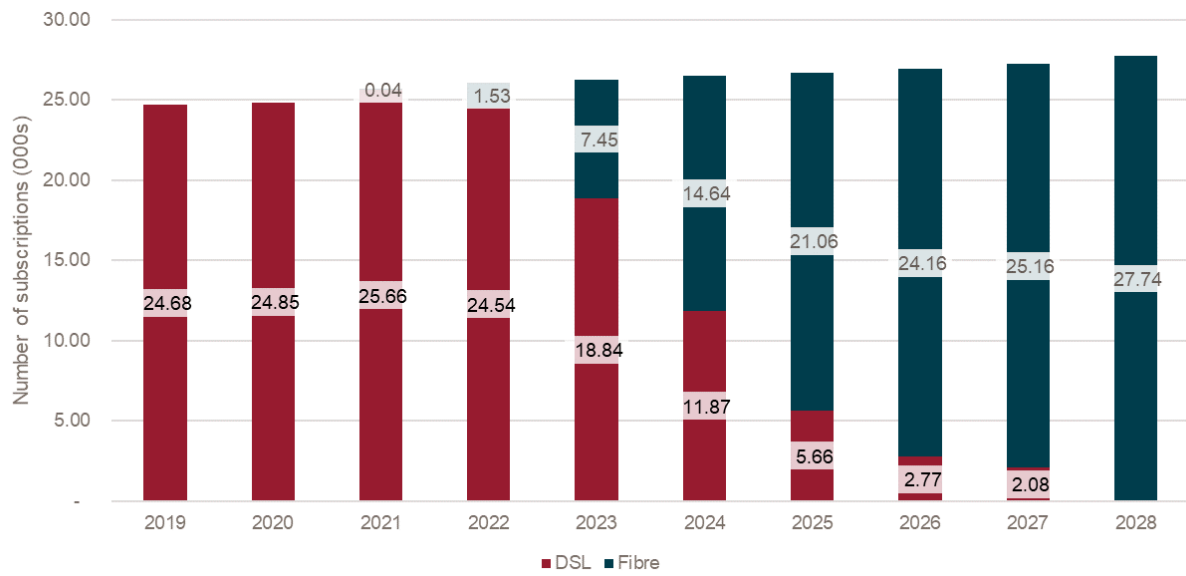
5.18 Fixed broadband demand on Sure's network is expected to increase from 26.1k in 2022 to 27.7k in 2028. This growth is in line with historical growth, and it is reasonable to expect demand for broadband to continue to grow given the changes in the Guernsey market over the price control period (higher quality services delivered by the FTTP network and lower prices).

5.19 Customers will also migrate from copper to FTTP services over time as Sure rolls out its FTTP network. Based on the information provided by Sure, JT and Airtel and consistently with what is observed in other markets where FTTP has been deployed (Ireland, UK), the majority of customers are expected to remain on lower speed products (~70% on speeds less than 100Mbps in 2028). However, we understand that Sure has plans to upgrade its speeds over time (which can be done at a minimal cost), which means that the speeds provided by the lowest speed products will increase over time.

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<sup>24</sup> States of Guernsey (2021). Funding Agreement Relating to Acceleration of Fibre Rollout to All Premises in Guernsey. 26 October 2021.

## Forecasted Fixed Broadband Subscriptions on SURE's Network - DSL and FTTP



Source: SURE, JT and Airtel

## 6. Remedies

### Overview

6.1 Sure has been identified as having SMP in the provision of wholesale broadband products, having the ability and incentive to set wholesale prices which might serve its own commercial interests at the expense of those of the wider market and in particular, consumers. In addition to the risk of excessive prices other types of competition problems may also arise, such as:

- Refusing to provide network access to other downstream service providers (or refusal to provide access on reasonable terms, conditions, and charges), which could restrict competition in the provision of retail services to the detriment of consumers.
- Discrimination in favour of its downstream retail businesses to the detriment of competition in retail leased line services (including by price and/or non-price discrimination), and ultimately to the detriment of end users.
- Engaging in a margin squeeze.

6.2 Therefore, the GCRA is considering imposing a price control remedy pursuant to Condition 31 of Sure's License in addition to the existing remedies to address potential competition problems associated with Sure's SMP designation already set out in Sure's Licence. These include amongst others, Condition 29 - Undue Preference and Unfair Discrimination and Condition 34 – Network Access (See Annex 2).

### Price Control – overall reduction in pricing levels

6.3 Given the key assumptions set out in Section 5 and the modelling analysis undertaken, the average level of Sure's wholesale broadband prices is found to be higher than the efficient level of its costs. In particular, the analysis finds that over the 2024-2028 price control period, the estimated level of Sure's prices (if these reflected the efficient level of costs) would on average **be 11%** lower than Sure's current price level, if these were to increase from current levels in-line with the estimated long-run rate of inflation (2.2%).

6.4 To address this, the GCRA proposes to reduce the current prices of wholesale broadband products to the efficient cost-based level, from 1 January 2024. The GCRA proposes annual price caps for the weighted average monthly rental charge, for the period 2024 – 2028.

6.5 The GCRA proposes a cap on the weighted average prices paid over the whole range of Sure's wholesale broadband products. A compliance-checking process can be implemented which is similar in nature to the current process for monitoring Sure's adherence to its retail minus approach on leased lines to ensure Sure's compliance with this cap over the price control period. This will involve Sure submitting for regular time periods the "weighted average" price over each period, which reflects: the set of prices paid for each wholesale broadband product variant that was paid over that period; and the average number of end-user subscribers on each product variant. The Figure below provides a worked example of how the control will operate.

See worked example below:

*If there are 5 broadband product variants. Each product variant has a corresponding price paid, a discount, and number of subscribers.:*

<b>PRODUCT</b>	<b>PRICE (£)</b>	<b>Discount (£)</b>	<b>NO. OF SUBSCRIBERS</b>
Product1	10		300
Product2	12		190
Product3	13		135
Product4	20	2	100
Product5	25		50

*The weighted average price cap is calculated by multiplying the price paid including any discount for each broadband product variant by the corresponding number of subscribers. The product of this multiplication is then divided by the total number of subscribers.*

*Using the example provided in the table above, the following formula for finding the average weighted price cap can be used:*

*Average weighted price cap = {Product1 Price \* Product1 No. of Subscribers + Product2 Price \* Product2 No. of Subscribers + Product3 Price \* Product3 No. of Subscribers + (Product4 Price -Discount) \* Product4 No. of Subscribers + Product1 Price \* Product1 No. of Subscribers} / Total Number of Subscribers*

$$\text{Average weighted price cap} = \frac{\sum^n PP_i S_i}{\sum^n S_i}$$

*Where;*

$\sum^n$  = the sum of all product variants

$PP_1$  = the product price paid for each product variant including any discount

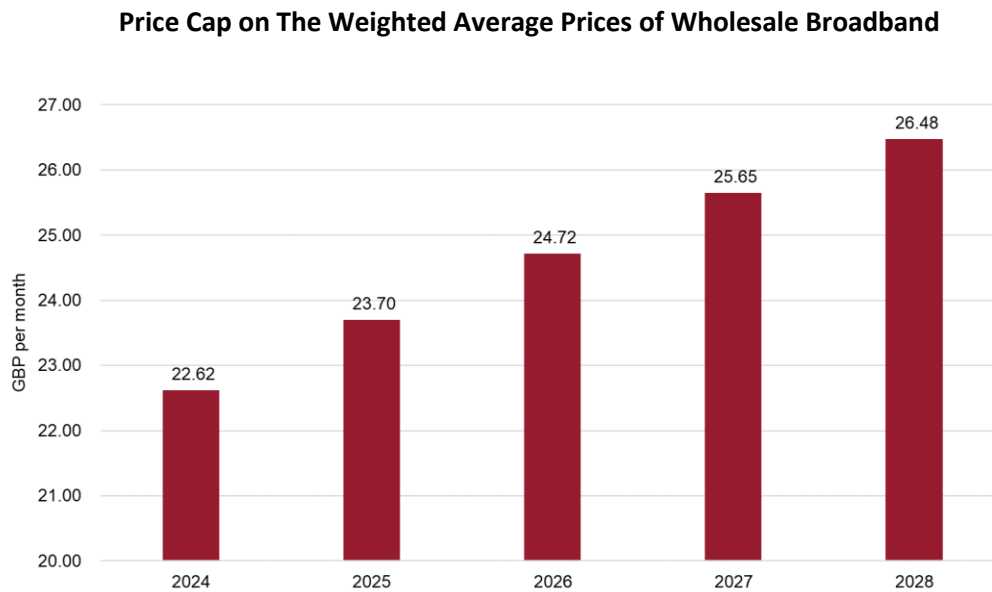
$S_1$  = the number of subscribers of each corresponding product variant

$$\text{Average weighted price cap} = \{10 * 300 + 12 * 190 + 13 * 135 + (20-2) * 100 + 25*50\} / \{300 + 190 + 135 + 100 + 50\}$$

$$\text{Average weighted price cap} = 10,085 / 775$$

$$\text{Average weighted price cap} = \text{£}13.01$$

6.6 The proposed price cap is estimated at £22.62/month in 2024 for the average monthly broadband subscription payment, increasing to £26.48/month in 2028.<sup>25</sup>



6.7 In the judgement of the GCRA, imposing a weighted average price ensures that the SMP operator’s prices are cost-based overall, but gives flexibility within that to set the level of prices for individual product variants. This approach is appropriate because the broadband market is dynamic in nature with frequent technological upgrades and the introduction of new products. By setting price caps on individual product variants, this level of regulatory granularity can reduce Sure’s ability respond to changes in the market.

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<sup>25</sup> This increase reflects the increase in the price of products with the expected long term inflation rate of 2.2% per year, plus the expected shift in the mix of broadband demand towards (high-priced) FTTP products.



## 7. Acronyms & Glossary

<b>Term</b>	<b>Description</b>
<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>Cost orientation</b>	A form of price control whereby prices are set by reference to associated costs.
<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>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>NRA</b>	National Regulatory Authority

<b>Term</b>	<b>Description</b>
<b>Other Licensed Operator (OLO)</b>	A licensed operator other than the incumbent operator
<b>Significant Market Power (SMP)</b>	The ability to behave independently of competitors, suppliers, and ultimately businesses and consumers in the market
<b>UK</b>	United Kingdom

## 8. References

### State of Guernsey References

2021 - The States of Deliberation of The Island of Guernsey Policy & Resources Committee and Committee for Economic Development Delivering Next Generation Digital Infrastructure.

[CHttpHandler.ashx \(gov.gg\)](#)

2021 Digital Framework 2021-2025 Accelerating Guernsey's Digital Capability. [CHttpHandler.ashx \(gov.gg\)](#)

### GCRA References

**2006 Office of Utility Regulation** Media Release – 24th May 2006 Broadband prices to come down. [t06g-broadband-prices-to-come-down-media-release.pdf \(gcra.gg\)](#)

2006 OUR Investigation into Wholesale Broadband Prices, Final Decision.

<https://www.gcra.gg/media/3703/t06g-investigation-into-wholesale-broadband-pricing-final-decision.pdf>

**2017 - Document 17/18.** Licence Modification for SURE (Guernsey) Limited, Network Access Final Decision, 30 June 2017: <https://www.gcra.gg/media/597603/t1248gj-licence-modification-final-decision.pdf>

2019 GCRA Final Decision Broadband Market: Review and SMP Finding, 2019. [t1358gj-broadband-market-final-decision.pdf \(gcra.gg\)](#)

**2021 – GCRA Guideline 7 - Market Definition**, June 2021: <https://www.gcra.gg/legal-frameworks/guidelines/guideline-market-definition/>

**2021 - GCRA Guideline 5 - Abuse of a Dominant Position**, June 2021:

<https://www.gcra.gg/media/598333/guideline-5-abuse-of-a-dominant-position.pdf>

**2023 – GCRA T1621G - Proposed Decision - Wholesale On-Island Leased Line Pricing**

[t1480gj-business-connectivity-market-review-proposed-decision-wholesale-on-island-leased-line-pricing.pdf \(gcra.gg\)](https://www.gcra.gov.uk/data/assets/pdf_file/0023/216086/wftmr-statement-volume-2-market-analysis.pdf)

## UK References

**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)

**2023 Broadband Benchmarking Data** [Worldwide Broadband Price Research 2023 | Cable.co.uk](https://www.cable.co.uk/research/worldwide-broadband-price-research-2023)

## European Union References

**1978 - Court of Justice** - Case C 27/76 United Brands v. Commission, [1978] ECR 207, [1978] 1 CMLR 429, paragraph 250. In United Brands the Court of Justice of the European Union held that: ‘...charging a price which is excessive because it has no reasonable relation to the economic value of the product supplied would be... an abuse’. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61976CJ0027>

**2018 - European Commission.** *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)

**2018 - European Union.** *Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)*, 17 December 2018: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>

**2012 BEREC .** *BEREC common position on best practice in remedies imposed as a consequence of a position of significant market power in the relevant markets for wholesale on-island leased lines*, BoR (12) 126: [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/regulatory\\_best\\_practice\\_s/common\\_approaches\\_positions/1096-revised-berec-common-position-on-best-practices-in-](https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practice_s/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](#)

## 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>26</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>27</sup>

*The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012* sets out six principles of economic regulation, summarised below:<sup>28</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.

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<sup>26</sup> Section 2 of the Regulation Law.

<sup>27</sup> These broad objectives were maintained in the transfer of functions and responsibilities to GCRA, as set out in the *Guernsey Competition and Regulatory Authority Ordinance, 2012*.

<sup>28</sup> *The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012*:  
<https://www.guernseylegalresources.gg/CHttpHandler.ashx?id=75588&p=0>

The Telecoms Law<sup>29</sup> specifically provides that the GCRA may include in any licence conditions that are:

- intended to prevent and control anti-competitive behaviour,<sup>30</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>31</sup>

The GCRA is obliged<sup>32</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.

### 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>33</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>34</sup> the requirement not to show undue preference or to exercise unfair

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<sup>29</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>30</sup> Section 5(1)(c) of the Telecoms Law.

<sup>31</sup> Section 5(1)(f) of the Telecoms Law.

<sup>32</sup> Section 5(2) of the Telecoms Law.

<sup>33</sup> Part IV, Fixed telecommunications licences.

<sup>34</sup> Condition 24, Fixed telecommunications licences.

discrimination;<sup>35</sup> the requirement not to unfairly cross subsidise,<sup>36</sup> supported by accounting processes to demonstrate compliance; regulation of prices, and transparency around pricing.<sup>37</sup>

In addition, the fixed telecommunications licences include conditions specific to the provision of leased lines,<sup>38</sup> which apply where a licensee has been found to be in a dominant position. The conditions applicable to the supply of leased lines refer to the retail and wholesale markets, and require that a dominant provider offers lines 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>39</sup>

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

*" 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.*

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<sup>35</sup> Condition 29, Fixed telecommunications licences.

<sup>36</sup> Condition 28, Fixed telecommunications licences.

<sup>37</sup> Condition 31, Fixed telecommunications licences.

<sup>38</sup> Condition 26, Fixed telecommunications licences.

<sup>39</sup> Part V, Fair competition, Fixed telecommunications licences.



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.*

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.

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.”

## Annex 2: Current wholesale market remedies

### **Sure, Licence condition 29 Undue Preference and Unfair Discrimination**

29.1 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.

- **Accounting separation** – licence condition 27 obliges Sure to prepare and maintain separated accounting information.
- **Sure, Licence condition 27 Separate Accounts**

27 .1 Within six months of the Licence Commencement Date, the Licensee shall prepare and maintain accounting records in a form that enables the activities specified in any direction given by the GCRA to be separately identifiable, and which the GCRA considers to be sufficient to show and explain the transactions of each of those activities. The GCRA may direct the Licensee as to the basis and timing of such reports as the GCRA may require.

- **Cost accounting** – licence condition 28 constrains Sure from unfair cross-subsidisation and maintain cost accounting obligations to demonstrate its compliance.

### **Sure, Licence condition 28 Cross Subsidisation**

28.1 The Licensee shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Telecommunications Network or Telecommunications Services.

28.2 To enable the GCRA to evaluate where any unfair cross-subsidisation or unfair subsidisation is taking place, the Licensee shall record at full cost in its accounting records any material transfer of assets, funds, rights or liabilities between a part and any other part of its business, and between it and any Associated Company, and shall comply with any directions issued by the GCRA for this purpose.

- **Price control** – licence condition 31.2 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

### **Sure, Licence condition 31 Price Regulated Services**

31.2 The GCRA may determine the maximum level of charges the Licensee may apply for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant. 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.

## Annex 3: European Union approach to remedies

- 1.1 The European Union's Electronic Communications Code (**EECC**)<sup>40</sup> provides for a set of behavioural obligations or remedies to be imposed by National Regulatory Authorities (**NRAs**) that establish how the operator with SMP is required to conduct itself in the market.
- 1.2 It has been standard practice throughout the European Union to impose remedies at a high level on the conclusion of a market review, and to further specify in more detail as required. So, for example, if an NRA proposes that a price control is required following a market review, it may impose this in principle, then consult with operators and stakeholders on the detail of how it should be implemented. However, in this case, the GCRA has opted to conduct a remedies consultation separately from and after the conclusion of the market review.
- 1.3 The EECC sets out the obligations that may be imposed by NRAs, including:
  - **Obligation of transparency** (Article 69) – provides for NRAs to impose obligations of transparency in relation to interconnection or access, requiring SMP operators to make public specific information, such as accounting information, prices, technical specifications, network characteristics and terms and conditions for supply and use.
  - **Obligation of non-discrimination** (Article 70) – provides for NRAs to impose obligations of non-discrimination, in relation to interconnection or access, requiring SMP firms to apply equivalent conditions to other licenced operators as is does to its itself.
  - **Obligation of accounting separation** (Article 71) – provides for NRAs to impose accounting separation obligations in relation to specific activities related to interconnection and access.
  - **Obligation of access to, and use of, specific network facilities** (Article 73) – provides for NRAs to impose obligations on SMP operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities.
  - **Price control and accounting obligations** (Article 74) – provides for NRAs to impose obligations relating to cost recovery and price control, including cost orientation of prices and cost-accounting systems, for the provision of specific types of interconnection or access.

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<sup>40</sup> European Union (2018). *Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)*, 17 December 2018: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>

1.4 The Body of European Regulators for Electronic Communications (**BEREC**) has published a common position on best practice remedies for wholesale on-island leased lines markets where a position of SMP has been established.<sup>41</sup> BEREC notes:

*“Wholesale on-island leased lines are key inputs for providing a wide range of business connectivity services. It is therefore vital that, where they are not supplied under conditions of effective competition, they are regulated effectively. This will promote the competition and choice on which businesses throughout the economy are entitled to expect and thereby make a significant contribution to achievement of the Single Market. This best practice is also based on the “Ladder of Investment” principle, as regulated access at different rungs of the ladder promotes both competition and investment.”<sup>42</sup>*

1.5 In its Common Position, BEREC advises that it expects NRAs to explain in their proposed remedy document the steps they have taken to:

- a) analyse the objectives identified in this common position and the related competition issues with reference to the market analysis performed by the NRA;
- b) to the extent consistent with applicable national law, provide an effective and proportionate regulatory solution to those issues; and
- c) explain transparently how those competition issues have been addressed and give reasons when their regulatory solution departs from the best practice remedies identified in this common position.

1.6 In this BCMR remedies consultation, the GCRA proposes to have regard to the EECC obligations, and be guided by BEREC’s Common Position, referencing best practice remedies in relevant sections of this paper. The GCRA considers that its preliminary positions are consistent with the best practice set out in BEREC’s Common Position.

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<sup>41</sup> BEREC (2012). *BEREC common position on best practice in remedies imposed as a consequence of a position of significant market power in the relevant markets for wholesale on-island leased lines*, BoR (12) 126:

[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>42</sup> BEREC, 2012: p1.

## Competition problems

1.7 If an operator has been identified with SMP in a particular market, then it has the ability and incentive to engage in exploitative and exclusionary behaviour to the detriment of competition and particularly to the detriment of consumers. Absent appropriate *ex ante* regulation, examples of the types of competition problems that may arise include:

- Refusing to provide network access to other downstream service providers (or refuse to provide access on reasonable terms, conditions, and charges), which could restrict competition in the provision of retail services to the detriment of consumers.
- Discrimination in favour of its downstream retail businesses to the detriment of competition in retail broadband services (including by price and/or non-price discrimination), and ultimately to the detriment of consumers.
- Fixing and maintaining some or all of its wholesale prices at an excessively high level or engaging in a price squeeze.

## Annex 4: Engagement with parties

Below is a detailed account of interactions and exchanges with parties relevant to the information gathering and modelling process.

- 1.1 On 29 July 2022, the GCRA wrote to Sure and all the other licenced operators (**OLO**) to notify them that it was conducting a Broadband consultation and was considering appropriate remedies for operators with SMP in the relevant markets; and that remedies may include price regulation for the relevant wholesale services.
- 1.2 On 16 September 2022, information requests (RFI) relating to the GCRA's review were sent to Sure and the OLOs. The information requests were set out in two separate documents, one was a letter with specific questions for the operators to answer and the second part was a GCRA spreadsheet, with specific tables which the operators were required to complete.
- 1.3 On 26 September 2022, Sure provided a partial response to the RFI and requested a meeting with the GCRA to discuss the request in further detail.
- 1.4 On 30 September 2022, a meeting was held between GCRA, Frontier Economics (instructed by the GCRA to assist with the project) and Sure to discuss the information request responses and the various matters raised by in correspondence by Sure.
- 1.5 On 6 October 2022, JT provided its response to the information requests and on 7 October 2022, Airtel provided its response to the information requests.
- 1.6 On 10 October 2022, the GCRA held its round table discussion with the OLOs (JT, Airtel) and Sure and the discussion addressed the purpose of the project (GCRA), a high-level approach to the project (Frontier) and follow ups from the parties.
- 1.7 On 11 October 2022, the GCRA provided the operators with the PowerPoint slides from the roundtable meeting and the presentation from Frontier.
- 1.8 On 21 October 2022, the GCRA had a meeting with Sure to address specific questions relating to OPEX values, split by requested categories in the GCRA spreadsheet template (e.g. DSL specific, FttH specific, etc.). Sure used the meeting to provide an update to the GCRA on its General Ledger analysis and cost allocation data analysis. And on the same day Sure provided answers to the GCRA's written questions, additional information, costing data from its management accounts and an updated version 4 of the GCRA spreadsheet template.

- 1.9 On 25 October 2022, after conducting a preliminary assessment of the data provided by Sure in response to Information Request, the GCRA provided Sure with a list of information that had been received and that remained outstanding.
- 1.10 On 25 October 2022, the GCRA followed up with further and additional questions to JT and Airtel following the information both OLO had previously provided. Those questions focused on the following topics:
- Forecast of demand for Sure wholesale products.
  - Demand for additional wholesale products.
- 1.11 On 25 October 2022, the GCRA followed up with additional questions to Sure on the information it had provided.
- 1.12 On 27 October 2022, Sure provided an updated 'version 5' GCRA spreadsheet template with additional information.
- 1.13 On 28 October 2022, Sure provided the latest backing information which reflect its version 7 of the GCRA spreadsheet template.
- 1.14 On 3 November 2022, JT provided further detailed and supplemental information in response to the request on 25 October 2022.
- 1.15 On 8 November 2022, the GCRA wrote to Sure asking for further information and clarification on the data that had been provided in the consultation. And, Sure was also asked to highlight the specific systems where historical data had been extracted from to populate the template spread sheets provided to the GCRA.
- 1.16 On 8 November 2022, there was a further meeting with SURE to discuss outstanding data and related questions. The discussions covered the following topics:
- Sure confirmed it was continuing its work to provide additional data to break down costs to appropriate granularity for the GCRA's analysis (on CAPEX and staff costs in particular).
  - Sure confirmed it would provide clarifications on the outstanding questions.
  - Sure confirmed it was instructing external consultants to provide its assessment regarding its Weighted Average Cost of Capital (WACC).



- Discussion to validate categorisation, allocation and forecast rationales.

1.17 On 10 November 2022, SURE was provided with a populated spreadsheet which detailed the GCRA's work-in-progress on categorisation and allocation of OPEX.

1.18 Sure confirmed that it was happy to review the proposed refinements and would respond in a few days. Sure confirmed that it was coordinating and working on the outstanding questions and would also respond on timesheet data categorisation to inform the appropriate allocation of staff-related costs between services.

1.19 On 14 November 2022, Sure provided responses to the GCRA's questions along with an alternative version 7 of the spreadsheet template, which showed the source system data.

1.20 On 18 November 2022, the GCRA provided further clarification questions to assist Sure in its review and provision of relevant OPEX data.

1.21 On 22 November 2022, Sure provided two additional information spreadsheets, on its 2016 to 2022 Department Report Analysis and its Guernsey staff costs per department from 2016 to 2021.

1.22 On 25 November 2022, Sure provided a response the GCRA's questions and its OPEX and CAPEX related data requests.

1.23 On 1 December 2022, a further meeting was held with Sure to discuss outstanding issues with information required from Sure on its OPEX categories and allocation. The following is a summary of the discussions:

- Frontier asked clarifications on the WLR product, clarification on one-off revenues and the underlying demand (reactivation of fibre ONT and new fibre connection).
- Frontier/Sure reviewed staff cost analysis and Sure confirmed it accepted the GCRA's proposed refinements.
- Frontier/Sure discussed the allocation drivers for biggest shared cost buckets (buildings, data centre, general OPEX, fixed access network).
- Frontier/Sure discussed whether revenue or Equi-Proportional Mark-Up (EPMU) approach should be preferable, that the approach was not settled, Frontier explained when these approaches should be preferred and Sure was agreeable with the rationale.

- Sure agreed to provide more up to date information on data centre space occupied by fixed core network equipment.
- Sure raised questions on the proposed modelling approach for leased line revenues, and forecasts which were addressed by Frontier.

1.24 On 9 December 2022, Sure confirmed that it had instructed external consultants to undertake the work on its WACC report and it would be finalised report by 23 December 2022.

1.25 On 9 January 2023, Sure provided the Oxera produced report on its WACC.

1.26 On 10 January 2023, Sure provided further information on its billing costs, and an updated version 8 of the GCRA's spreadsheet.

1.27 On 12, 13 January 2023, Sure provided answers to outstanding written questions on:

- CAPEX forecasts for *“access network capex (e.g. ducts / poles, buildings)”* and *“core network CAPEX (transport network and core functions)”*.
- Space occupied by fixed network equipment racks in data centres and buildings.
- Reinvestments.
- Billing Costs.
- Voice only subscriptions.

1.28 On 16 January 2023, Sure provided its 'Fixed Asset Review' and version 9 of the GCRA's spreadsheet.

1.29 On 18 January 2023, Sure was asked *“One additional question on management fees: can you describe what type of costs this encompasses? Is there a rationale to support that a share of these should be allocated to BB or LL products?”* and Sure was asked for that information on management fees again on 9 February 2023.

1.30 On 15 February 2023, Sure confirmed it was unable to provide the required clarifications on its management fee questions. It confirmed that *“Unless we're able to provide an update to you by then, we'd probably need to use the cost driver values from 2014.”*