# WHOLESALE BROADBAND

# T1652G

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# Final Decision - Wholesale Broadband Pricing

**18 December 2023**


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# Executive Summary

- **High Broadband Prices:** Guernsey's broadband customers face some of the highest prices in Western Europe. A significant contributor to these high prices is that access to broadband is controlled by Sure's network business, which sets high prices to retailers of broadband with little competition. Retailers like JT, Airtel, and Sure Retail pass these costs to their customers.

- **GCRA's Intervention:** The GCRA is intervening by requiring Sure to reduce its wholesale broadband charges. This reduction is expected to enable retailers to lower their prices significantly, making Guernsey's broadband prices more comparable to those in other Western European countries.

- **Protection of the Guernsey Fibre Roll-Out Project:** Despite the reduction in charges, the GCRA has ensured that Sure can fund its fibre investment programme and earn a reasonable return. The GCRA conducted an extensive review, accounting for Sure's costs and revenues in the coming years as it rolls out the fibre network. This was done to ensure that the reduction in charges still enables Sure to recover its efficient costs and does not undermine Sure's ability to finance its fibre network roll-out.

- **Revision of Initial Assessment:** Initially, in May 2023, the GCRA assessed that the charges should be reduced by 11%. However, it was later brought to its attention that additional line rental revenue to Sure that was necessary for broadband retailers to deliver internet access to their customers was not fully accounted for in that initial assessment. After including the line rental revenue the average reduction in those charges was greater.

- **Methodology:** The GCRA's decision-making process and methodology are consistent with that used in Jersey and its advisors, Frontier Economics, who are specialists in modelling such investment programmes, supported its Jersey counterpart in a comparable assessment. The decision ensures that **Sure's** charges are based on the reasonable costs of providing access and the revenues earned.

- **Outcome and Implementation Timeline:** The GCRA has decided in this **Final Decision** to set the average charge for Sure's wholesale broadband in the relevant market at **£26.40/month** over the 2024-2028 price control period, which equates to a **31% reduction.** The pricing structure as set out in Section 7 of this document will be applied from 1 April 2024 to end December 2028. The estimated reduction in Sure's wholesale broadband revenues for the first full year of the price control in 2025 is **£2.9million**, (a reduction from Sure's 2023 revenues of £11.1million to projected revenues of £8.2million for 2025). If these price reductions were passed on to retail customers, they would see an average annual **saving in 2025 of £116.**

# 1. Background and Policy context

1.1 In accordance with section 2 of the Telecommunications (Bailiwick of Guernsey) Law 2001 (the **Telecoms Law**), the Guernsey Competition and Regulatory Authority (**GCRA**; **Authority)** may grant a licence authorising any person to establish, operate and maintain a telecommunications network or to provide telecommunications services of any class or description specified in the licence. Sure (Guernsey) Limited (**Sure**) was awarded a telecommunications licence for the provision of Licenced Telecommunications Services[1] in Guernsey (the **Licence**).

1.2 Under the terms of the Licence and of the Telecoms Law, the GCRA may regulate the prices that may be charged by a licensee which has a dominant position in a relevant market. Pursuant to section 22 of The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (the **Utilities Law**) the definition of a dominant position in relation to a relevant market "*shall be construed as it would be in the UK under the Competition Act 1998*" (UK Competition Act). There is no statutory definition of a dominant position under the UK Competition Act. Rather, the concept has been developed in EU and UK case law.[2] According to that case law, a dominant position is a position of economic strength affording the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers, thus preventing effective competition.[3] The concept of Significant Market Power (SMP) is equivalent to a dominant position and will be used interchangeably in this decision.[4]

1.3 Under the terms of the Licence[5] and of the Telecoms Law,[6] the GCRA may regulate the prices that may be charged by a licensee which has a dominant position in a relevant market. In a market subject to economic regulation, such as the telecommunications market in Guernsey, the GCRA as the relevant regulatory body may take *ex ante* steps such as introducing price controls and other remedies. Appendix 1 provides a summary of the legal and regulatory obligations and the licensing conditions that govern the GCRA's procedure for imposing a price control decision on a Licensee that is found to have a dominant position in a relevant market.[7]

1.4 The last regulatory price control decision for wholesale broadband was published in 2006[8] by the Office of Utility Regulation. Based on a finding that Sure (then Cable & Wireless) was in a dominant position in the wholesale fixed-line telecommunications market, the control was a revenue-based

1 Telecommunication services are defined in section 31, Telecoms Law, 2001.

2 Once the relevant market is defined, the next stage is to determine whether any firm, singly or jointly, holds a position of Significant Market Power, which is equivalent to a dominant position, defined in the 2018 EU SMP Guidelines (paragraph 52) as 'a position of economic strength affording [the firm] the power to behave to an appreciable extent independently of competitors, customers and consumers'. Also see T1480GJ – BCMR Proposed Decision – Market Definition & Competitive Assessment, 12 April 2022.

3 Case 1001/1/01 *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading [2002]* CAT 1 para 156, citing para 38 of Case *85/76 Hoffman La Roche v Commission* EU:C:1979:36.

4 Article 4, Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Electronic Communications Framework Directive).

5 Sure Licence Condition 31.2 – see Appendix 1.

6 Telecoms Law, s.5 – see Appendix 1.

7 See **Section 3**, below, for the GCRA's assessment of Sure's dominance in the relevant market.

8 **2006** - Investigation into Wholesale Broadband Pricing Final Decision, Document No: OUR 06/13, May 2006.

determination[9], at the time reducing wholesale broadband prices by 15 per cent. That control has not been revised since that date.

1.5 On 9 January 2019, pursuant to s.5(3)(b) of the Telecoms Law, the GCRA published the outcome of its market review of the broadband market, that **2019 Decision**[10] defined the following wholesale broadband market:

> *"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".*

1.6 It further found that Sure had a dominant position on that market.

1.7 The States of Guernsey's 2021 policy letter, '**Delivering Next Generation Digital Infrastructure'**[11] has set out several priorities in the telecommunications sector, including broadband services, which the GCRA has a role in supporting.

> *- 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.*[12]
>
> *- 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.*
>
> *- Encouraging best practice in the telecoms sector, while giving new operators access to the existing network within realistic timescales and at realistic costs.*[13]
>
> *- 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.*

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9 **2005** - Price Control for Cable & Wireless Guernsey – Decision Notice, August 2005.

10 **2019 –GCRA 19/14** Final Decision Broadband Market: Review and SMP Findings. No operator challenged the validity of this market definition.

11 **States of Guernsey (2021)**. *Delivering Next Generation Digital Infrastructure*, Committee for Economic Development, September 2021

12 The GCRA's market definition and the charges applied for wholesale broadband is consistent with the approach taken by the Jersey Competition & Regulatory Authority **(JCRA)** when it set prices for wholesale broadband in Jersey.

13 The price control is designed to ensure that Sure recovers a reasonable return on its investment, to promote retail competition for entrants challenging Sure and ensure customers pay a fair price for their broadband.

1.8 The GCRA therefore prioritised broadband in its work plans,[14] and committed to reviewing broadband provision, specifically whether the charges to retailers by the incumbent, Sure, are reasonable.

14 **2023 – GCRA 2023 Work Programme**

## 2. Consultation Process

2.1 On 23 May 2023, pursuant to s.5(2)(b) of the Telecoms Law the GCRA published a proposed decision to set the weighted average charge for Sure's wholesale broadband in the relevant market lower by on average 11%, with the new price control commencing on 1st January 2024. Written representations were received from Sure, JT (Guernsey) Limited **(JT),** and Guernsey Airtel Limited (**Airtel**).

2.2 Certain respondents identified a material issue regarding Sure's requirement that, in certain circumstances, other licenced operators (**OLOs**) purchase a wholesale line rental (**WLR**) service from Sure when purchasing a wholesale broadband service.[15] This issue is discussed further in Section 3.

2.3 On 5 October 2023, the GCRA therefore published a **Second Proposed Pricing Decision**, in which it proposed to set the weighted average cost-oriented charge for Sure's wholesale broadband in the relevant market at £26.05/month over the 2024-2028 price control period, effectively a 32% average reduction to current prices. In response to the Second Proposed Pricing Decision, the GCRA received written representations from Sure, JT and Airtel and it has considered those representations.

2.4 Following publication of each of its Proposed Pricing Decisions the GCRA discussed submissions with respondents to those documents. Their submissions have been considered and in some cases amendments or adjustments were applied to the underlying costing model where sufficient supporting evidence was provided to the GCRA.

2.5 **Appendix 3** evidences the consultation and engagement undertaken by the GCRA in its review of pricing in the wholesale broadband market. Throughout the consultation process the GCRA has sought to ensure the review was conducted transparently, and that the process allowed all interested parties to provide feedback on the review's objectives, information relied upon to the extent feasible, proposed timelines, and proposed remedies. Therefore, the GCRA is satisfied that those key stakeholders were given opportunity to provide all evidence they considered relevant to the review.

2.6 The consultation and engagement in particular offered Sure the opportunity to provide its costing, and pricing information and engage in rounds of discussions with the GCRA and Frontier Economics, the GCRA advisors for this analysis. Those discussions and information exchanges provided detailed submissions on historical cost systems, cost allocations, and internal systems.

2.7 The price reduction is designed to address Sure charging excessive prices in a market where it has a dominant position. The assessment is not confined to Sure's interests alone. The impact of excessive prices on stakeholders and the wider Guernsey community, other licensed operators and businesses is also a relevant consideration for the GCRA. To achieve a fair reduction to those excessive prices, the underlying cost model allows the GCRA to identify the average prices for wholesale broadband that needs to be set over the review period to allow Sure to both recover its efficient-incurred costs, and make a reasonable return, as defined by its weighted average cost of capital (**WACC**).

[15] This includes Sure Retail buying WLR for its broadband customers.

2.8 In its reply to the Second Proposed Decision, Sure made submissions that there were significant changes to the underlying cost model with the inclusion of WLR revenues, which had not been included in the cost model supporting the First Proposed Decision.

2.9 In its reply to Sure, the GCRA emphasised that while the change in the underlying cost model was material in scale, (a change from an 11% average reduction to a 32% average reduction) the change in the headline figure in the broadband control was made through a relatively straightforward computation to include the WLR revenue that Sure receives which was not fully recognised in the First Proposed Decision. Essentially, when WLR revenues were accounted for, the proposed price reductions were much greater, but the extent of the change was not because significant complexity had been added to the model.

2.10 The GCRA has addressed Sure's associated correspondence on this point in Annex 1.[16]

[16] Annex 1, GCRA reply to Sure's response to the Second Decision.

# 3. Wholesale Broadband Market

### The Defined Market

3.1 In its 2019 Decision,[17] the GCRA concluded as follows:

> "***The appropriate market definition in Guernsey is; "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."***
> ***Assessment of market power: "Sure has Significant Market Power on the market as defined"***."

3.2 The GCRA may regulate the prices charged by a licensee that has a dominant position in a relevant market [18] and Sure was found to have a dominant position on this relevant market. The GCRA, by this decision, is regulating the total charge for wholesale internet access at a fixed location, which an OLO/retailer is required[19] to pay Sure's wholesale network business in order to provide retail internet access at a fixed location to its customers.[20] This charge is comprised of:

i. A wholesale broadband product rental charge; and

ii. A wholesale line rental (**WLR**) charge (when it is purchased for the purposes of providing retail access to the internet)[21, ,22,].

### Current and future market developments

3.3 There have been developments since the 2019 Decision.

3.4 Economic change brought about by new government policy (such as in 2021 in Guernsey) and wider economic factors such as inflation affects priorities. The need to invest in new technology, the impact of innovation on efficiency, and market behaviour may also be relevant to a market power assessment. It is therefore appropriate to consider whether such changes or future developments have any significant impact on the findings in the 2019 Decision.

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17 2019 –GCRA 19/14 Final Decision Broadband Market: Review and SMP Findings. No operator challenged the validity of this market definition.

18 See paragraph 1.1. above.

19 C&W Wholesale Agreement High Speed Internet Services.

20 The GCRA is not setting a charge control on Sure's standalone WLR product, either explicitly or implicitly, or requiring that Sure changes the price it charges for that product.

21 WLR in Guernsey is a wholesale service using the access network of Sure, based on local loops (the line from the customer's premises to the network operator's cabinet).

22 Unless another OLO/retailer provides the retail voice call service in which case it pays the WLR charge and not the OLO/retailer. The customer would pay a retail line rental charge to the other retail provider instead.

3.5 In 2021, the States of Guernsey published its '*Delivering Next Generation Digital Infrastructure'*[23] policy and its '*Digital Framework'*. A Broadband Working Group[24] 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**). An objective was "to achieve a ubiquitous and equitable full island fibre to the premises wholesale broadband network".[25]

3.6 Sure's made a proposal to build a wholesale fibre network with 100% ubiquitous coverage to all premises and to achieve that objective it requested a capped £12.5million '*Digital Accelerator Investment*' from the States of Guernsey to assist with accelerating the build time but also to cover the provision of fibre connections to the uneconomic areas of Guernsey.

3.7 The Broadband Working Group then recommended that the States should contract with Sure and provide the grant capped at £12.5 million to assist in the roll-out of FTTP in Guernsey. An agreement was subsequently signed between the States of Guernsey and Sure setting out the terms of that agreement.[26] As set out in that agreement, the FTTP roll-out will be undertaken solely by Sure, using only Sure's infrastructure.

3.8 JT has also built some fibre-based infrastructure in Guernsey. With its focus of connecting educational institutions, government departments and business districts to its network (mainly driven by the requirement to deliver on its contract with the States of Guernsey), JT rolled out its own FTTP network in some areas of Guernsey. The GCRA has therefore considered JT's investment plans in its own fibre network since the 2019 Decision.

3.9 Another relevant development was that Starlink received a fixed telecom licence in 2022 in Guernsey and made its satellite broadband service available.

**Assessment of market developments relevant to dominance**

3.10 The agreement between the States of Guernsey and Sure has reduced the likelihood of a competitor making the decision to invest in developing its own ubiquitous FTTP network.[27] There is little prospect of the States of Guernsey providing an equivalent subsidy to a competing network provider, and given the size of the subsidy relative to the total investment, any other fibre network investor would be at a significant financial disadvantage to Sure without a comparable subsidy. The only alternative fixed network provider present in Guernsey is JT whose network is only partial in coverage and does not provide a wholesale service on its network. It has no plans to extend its fibre broadband network and

23 **2021** - The States of Deliberation of The Island of Guernsey Policy & Resources Committee and Committee for Economic Development: Delivering Next Generation Digital Infrastructure, 2021.

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

25 **2021** - The States of Deliberation of The Island of Guernsey Policy & Resources Committee and Committee for Economic Development: Delivering Next Generation Digital Infrastructure, 2021. Page 4.

26 **2021** The States of Deliberation of the Island of Guernsey, Delivering Next Generation Digital Infrastructure, P.2021/106.

27 And the States' 'Delivering Next Generation Digital Infrastructure' policy letter envisaged the creation of a **single regulated network infrastructure with** the GCRA encouraging retail competition and not network competition.

will instead be utilising Sure's wholesale broadband products to provide broadband to its customers in Guernsey. Starlink 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. Current Starlink subscriber numbers are low and have not altered the market shares of current providers to any material extent and there is little expectation of this position changing.[28] Sure, continues to hold the majority market share (≥93%)[29] and in the GCRA's view, that position is not likely to change over the course of the review period.

3.11 Sure's dominant position in the relevant market would, if anything, appear to have strengthened since it into entered the FTTP roll-out agreement with the States of Guernsey, suggesting its market power designation in the relevant market is unlikely to change over the term of the price control.

**Consistency of approach with neighbouring jurisdiction**

3.12 The GCRA's approach to market definition and the charges applied for wholesale broadband is consistent with the approach taken in Jersey by the Jersey Competition & Regulatory Authority (**JCRA**). As is the case in Guernsey, for an OLO/retailer to provide retail internet access at a fixed location using JT's network in Jersey, where line rental is not provided by another licensee, a WLR product must be purchased in addition to JT's wholesale broadband rental product (called wholesale bitstream). Within its decision, the JCRA applied a price control which covered wholesale bitstream and WLR (the "maximum price").

3.13 This is consistent with the GCRA's pricing structure set out in this Final Decision, where the GCRA is setting the cost-based cap on the combined charge for wholesale internet access at a fixed location which includes WLR, (where the OLO/retailer requires those products). It is relevant that in its response to the JCRA's consultation on its pricing review, Sure supported the JCRA's proposal to take that approach.

3.14 Further, as set out in Section 5, the GCRA considers that the use of revenue-based cost drivers is reasonable and proportionate given the size of the Guernsey jurisdiction and is also consistent with the approach in Jersey where Sure is the OLO purchasing wholesale broadband from the incumbent with market power, JT. Sure did not raise concerns with the approach in Jersey.

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28 Second Proposed Decision - Sure's enclosed representations at **Appendix 1** of that document. https://www.gcra.gg/cases/2023/business-connectivity-market-review-wholesale-on-island-leased-line-pricing-second-proposed-decision/business-connectivity-market-review-wholesale-on-island-leased-line-pricing-second-proposed-decision/.

29 **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.

# 4. Price control

**Overview**

4.1 To support the States of Guernsey's Digital Framework (2021-2025) objective of "*World Class Digital Connectivity*", the GCRA recognises that significant capital investments are required. Whilst the States of Guernsey granted Sure its £12.5 million accelerating payment, the remaining costs of installing the fibre network (total costs are estimated at £37.5 million) will be borne by Sure. Since a fibre network rollout has risks as well as costs, the GCRA also recognises Sure should be given an opportunity to earn a reasonable return on such capital outlays.

4.2 Excessive pricing refers to a situation where the prices charged are not closely related to the value to the consumer and/or the cost of producing or providing the relevant service.[30] Concerns about excessive pricing can arise where price levels are likely to be persistently high with no effective pressure to bring them down to competitive levels over the period of the review. Given that Sure is dominant in the relevant market it is appropriate to consider whether Sure's charges are excessive, and if so, whether they are likely to remain so. In markets where such conditions exist and are expected to continue, OLOs are more likely to be exposed to charges that are excessive. In markets where such conditions exist and are expected to continue, OLOs are subject to a cost of providing a service that is higher than it needs to be and end users pay more for services in Guernsey as a consequence. These risks are even greater in market conditions where there is vertical integration, and the supplier of the essential upstream wholesale services is also the downstream retail competitor (which is the case in Guernsey).

**Alternative price control structures**

4.3 Guernsey residents who buy broadband will pay a higher price, if the cost to retailers of providing those services is excessive. Similarly, businesses, particularly small and medium businesses, that rely on broadband for connectivity will face a higher cost of doing business in Guernseyif the prices that they are charged for these services are excessive. Wholesale broadband is a key input for telecoms retailers who compete with Sure to provide these services to end users. Reliance for such critical services on a dominant provider represents commercial risk, and in Guernsey retailers are reliant on a vertically integrated supplier that also competes with them for the same customers. The case for ensuring there is suitably robust regulatory oversight that protects competitors and end users in Guernsey from excessive prices is therefore apparent.

4.4 The GCRA has considered alternative methodologies such as benchmarking analysis, and cost modelling to assess whether wholesale broadband prices are excessive.

**Benchmarking**

4.5 When using **benchmarking** as the analysis tool, challenges include: identifying appropriate "peer group" countries; identifying product categories to compare; taking account of time (it is essentially a

[30] **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'.

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. Benchmarking can be a useful tool for broader analysis where the quality of comparator evidence is adequate. Given the information challenges in Guernsey at this time, the GCRA is of the view that this would not be a reliable or robust method for this control.

**Cost orientated price control**

4.6 Cost orientation ensures that the prices of goods and services are based on the actual costs of production, including reasonable profit margins. This approach helps in preventing monopolistic pricing and exploitation, making prices fair and accessible to consumers is a key mechanism for regulatory authorities that are tasked with setting prices for entities who hold dominance in a relevant market. The implementation of a cost orientation obligation requires cost modelling because it is possible that a dominant operator, such as Sure, will have costs that are not efficiently incurred. This means that a cost-oriented control cannot simply rely on Sure's stated costs without considering the need to make efficiency adjustments.

4.7 The overarching aim of a cost-oriented price control is to develop an estimate of prices based on Sure's efficiently incurred costs, whilst ensuring Sure has the opportunity to earn a reasonable return on its investment.

4.8 By linking price to the cost of providing the service, the principle of cost orientation is a fair and reasonable way of ensuring that Sure as the dominant operator does not use its market power to price in a way which is detrimental to its competitors and ultimately end-users. Various pricing remedies have been considered; however, the drawbacks of these outweighed the benefits to be had. Although the cost-oriented pricing approach has its inherent weaknesses, it is the most reasonable and proportionate approach to price setting given the overall value and importance of broadband to Guernsey households and businesses.

4.9 The GCRA is therefore setting the regulatory price control based on cost orientation.

**Form of cost-orientated price control**

4.10 The GCRA has considered several potential approaches for setting regulated cost-orientated prices for wholesale broadband. The costing model variants being: the top-down approach, discounted cashflow modelling approach and the bottom-up approach.

4.11 **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.[31] The capital costs within a cost model are based on the current value of the assets of the operator being modelled, the "Regulatory Asset Base" **(RAB),** from the accounts of that operator. Estimates of costs in future years are developed by "rolling forward" this Regulatory Asset Base, under the general assumption that the network of the operator is in a

[31] In response to Sure's representations on this point, the GCRA can confirm that in referring to the "top down modelling" approach, it is referring to the "top-down Regulatory Asset Base" approach.

“steady state”, i.e. that the future investment in the assets will largely reflect the replacement of existing assets in the network, rather than extending the network or developing a new network.

4.12 This implicitly assumes that the current value of the completed network and annual investments in the network are a good proxy for the value of the assets and investments in the network in future. As such, the implementation of a top-down RAB model approach is more appropriate in a situation where the network of the modelled operator has already been built and is thus in a steady state. Such a modelling approach was implemented by the JCRA in Jersey to inform the cost-based prices of JT’s wholesale bitstream product in its 2021 wholesale broadband access pricing review, reflecting that the FTTP network through which JT provides the wholesale bitstream product had already been fully deployed. This approach was supported by Sure in that context. However, this approach is not suitable in the Guernsey context, given Sure is currently in the process of building its FTTP network.

4.13 **Discounted Cashflow Modelling Approach** (**DCF**) - This involves calculating the future cashflows generated by the regulated products, based on forecasts of 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. The net present value of zero indicates that Sure is expected to generate returns to cover its costs for doing business in addition to a reasonable return. A net present value higher than zero indicates that Sure will be making excessive returns. The calculation of cashflows can be based on a hypothetical operator or aim to reflect the actual network of the regulated operator.

4.14 The GCRA acknowledges Sure’s representation that the DCF model uses some “top down” inputs, i.e. estimates of Sure’s actual cost data.[32] However, the use of top-down data in the modelling does not alter the reasoning set out by the GCRA as to why the DCF approach is more appropriate in the Guernsey context.

4.15 **Bottom-up Approach** - This models the hypothetical network of an operator based on current best in class engineering practices and design for a network to provide the services being modelled. 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 services or building a network themselves.

**Conclusion**

4.16 Sure is still in the process of deploying its FTTP network and the top-down approach is usually used when a network is already built and thus when the actual costs of the network are already known. The bottom-up approach is more appropriate when there is scope for network competition whereas as discussed above, the scope for network competition in Guernsey seems limited. Bottom-up models are powerful but very resource-intensive and can therefore be disproportionate for a small

[32] See Annex 2, Sure and Oxera Consulting’s response to the Second Decision.

jurisdiction. The DCF model is suited to smaller jurisdictions as it is less data intensive and less complex than other cost models such as the bottom-up approach. A DCF approach is also applicable to markets where networks have not yet been fully deployed and uses the operator’s current and forecasted demand data whilst also drawing on the operators' expertise and knowledge of the market. The DCF modelling approach seems more suitable in the Guernsey context, as it is a forward-looking modelling approach that reflects the forecast future costs of the operator being modelled, and therefore allows the expected future investments in Sure’s FTTP network to be taken into account.

# 5. Analysis and assumptions

### Overview of the GCRA DCF modelling process

5.1 The model developed calculates the *"operational cash flows"* related to wholesale broadband customers over a period corresponding to the assets' life, calculated as Sure's expected wholesale revenues from these customers minus its expected efficiently incurred capital and operating costs. The model allows the GCRA to identify the total wholesale broadband charge that Sure would need to set over that period to allow Sure the opportunity 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**). These are the level of changes that result in the sum of Sure's discounted cashflows for wholesale broadband products are equal to zero, when using its WACC as a discounting factor.

5.2 In developing the cost allocation approach, the GCRA aimed to identify a justifiable set of allocation keys drawing on available data, whilst ensuring the approach was proportionate given the size of the jurisdiction, and with a view on the burden of data provision.

5.3 In doing this, the GCRA engaged at considerable lengths with Sure on the cost allocation approach during the development of the model, in which Sure had the opportunity to make suggestions on the appropriate allocation keys and provide data to inform those. Based on this, for Sure cost categories for which there is a clear driver of the costs, the GCRA used specific allocation keys reflecting these drivers for the most material cost items, where data to inform those was available. This was the case for Sure's staffing costs, which account for over 60% of Sure's estimated operating costs each year of the modelled period.

5.4 The GCRA made limited use of "cost-causal" allocation keys from Sure's 2014 cost allocation model, where these keys were likely to still be a reasonable reflection of the appropriate allocations today and going forwards. Together these costs represent **less than 8%** of the costs allocated to wholesale broadband and wholesale leased line services in the model in each year of the modelling period.

5.5 In addition, the GCRA undertook a thorough consultation process, in combination with its advisors Frontier Economics and with Sure during the development of the cost model to identify appropriate allocation keys and data that could be provided to inform these.

5.6 Frontier Economics shared an initial set of proposed allocation keys with Sure on 10 November 2022, based on its understanding of available data and the cost allocation keys available within Sure's 2014 cost allocation model. This included proposals to use demand and revenue-based allocation keys for certain cost categories. Subsequently, there was also considerable correspondence with Sure and the GCRA invited Sure to provide its views on the allocation key proposals and to recommend alternative keys where it considered these were more appropriate and where data to inform those alternative keys was available or could be generated.

5.7 In response, Sure provided feedback which was considered by Frontier and the GCRA, including the provision of staff timesheet data, which was then used to allocate Sure staffing costs. Given this, the GCRA considers that it conducted a thorough process with Sure to identify appropriate allocation keys, in which Sure provided its input on the use of revenue-based (and other) allocation keys. The GCRA provided Sure with the GCRA's cost model both as part of the First and Second Proposed Pricing

Decisions which explicitly sets out the cost allocation keys used for each cost category, the data used to calculate the cost allocation key, and the source of that data. The same applies for the other data used in the cost model. The GCRA therefore considers that there is a clear audit trail which details its cost allocation approach, and the other data used in the model (and throughout the consultation process).

5.8 Beyond these, the remaining costs were then allocated based on "more general" cost allocation keys, such as the split of current subscribers or revenues between services. The GCRA considers that these allocation keys still result in an appropriate allocation of costs between services (see further below). The approach is proportionate given data on subscribers and revenues were readily available from Sure, and in-line with approaches in other jurisdictions (again see further detail below). This is particularly the case for pure "common costs" (such as corporate overheads), which, by definition, do not relate to the provision of specific services, and therefore for which there is no "cost-causal" allocation of costs between services.

5.9 In relation to allocating costs based on revenues, the GCRA considers that revenues by service reflect a reasonable proxy for the efficient allocation of costs. This is because overall, an efficient allocation of costs should take account of both "supply side" factors (such that costs are recovered from the services that drive those costs), but also "demand side" factors, whereby a greater share of costs are recovered from services for which there is a higher willingness to pay. Current prices, and therefore revenues, are a reasonable way to capture these factors, as it is reasonable to expect that an operator sets prices both to reflect the underlying cost of providing them and relative to what customers are willing to pay for them. This is shown by the fact that prices of wholesale leased line products tend to be significantly higher than for wholesale broadband products (as is the case for Sure) despite these being offered primarily over the same network. This in part reflects that wholesale leased line products are purchased primarily by businesses (as opposed to residential customers), which are expected to have a greater willingness to pay for connectivity.

5.10 The GCRA's approach is consistent with the approach used in cost models in other similar-sized jurisdictions. For example, in Jersey, the JCRA cost model used a similar cost model in its 2021 wholesale broadband access pricing review. The JCRA used the split of subscriber lines and revenues between services to allocate costs in certain cost categories, including the cost of JT's access network, software, infrastructure, and common costs. In Jersey, Sure agreed with the specification of the JCRA's cost model in the representation it provided during the pricing review consultation, and within those representations it did not raise any concerns regarding the set of allocation keys used by the JCRA.

5.11 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. This reflects the changes made following the representations provided by parties in response to the First and Second Proposed Pricing Decisions. (See the enclosed appendices to those decisions.)

**Analysis and Key assumptions**

5.12 The GCRA chose 2022 as the starting year for its modelling on the basis that the vast majority (97%) of Sure's forecasted £38.7M build CAPEX for its FTTP network occurred from 2022 onwards and all the model calculations were based on that timeline. The key assumptions that inform the price control model, which is presented in an excel spreadsheet, are discussed below.

5.13 **Assumption 1**: **Duration of the Modelling Period** – The GCRA model is based on a 40-year cycle. The rationale for this 40-year timespan is that the longest-lived assets in Sure's network (poles and ducts) are taken into account. This approach is consistent with the approach in cost models in other jurisdictions.

5.14 **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.[33] The GCRA evaluated Sure's submissions and considered that most of the parameters in the 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%,"*

5.15 The GCRA agreed with the overall approach used to determine the expected returns on capital investments, however, the GCRA was not persuaded by Sure's representations on the inclusion of a uncertainty premium and a forward rate adjustment.[34] As a result, the GCRA proposed 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 had been removed.

5.16 In reply to the First Proposed Pricing Decision, Sure made further representations to support one of the rejected adjustments. Those representations were considered but again not found to be persuasive by the GCRA.[35]

5.17 In its Final Decision the GCRA therefore decided to keep the WACC at 8.8%, in line with its First and Second Proposed Pricing Decision.

5.18 **Assumption 3: Inflation Rate** - Sure's future costs (except for staff related costs where wage growth was used) in the model are adjusted by the expected inflation rate. The GCRA applies the inflation rate at the time it makes its Final Decision. Currently the most recent figure is 6.3%[36] in 2023, based on the latest quarterly actual and forecast RPI-X inflation rates produced by the State of Guernsey. The GCRA assumes that the rate of inflation will decline over the long term (from 2026 and onwards) to 2.2%. The proposed long-run rate of 2.2% is based on the average of Guernsey RPIX[37] between 2016 and 2019 (i.e., the years immediately preceding the COVID pandemic and current high-inflationary period),

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33 **2023 Oxera Report**, Estimating the WACC for Sure's Guernsey business, 9 January 2023.

34 **Second Proposed Pricing Decision**, see Appendix 1

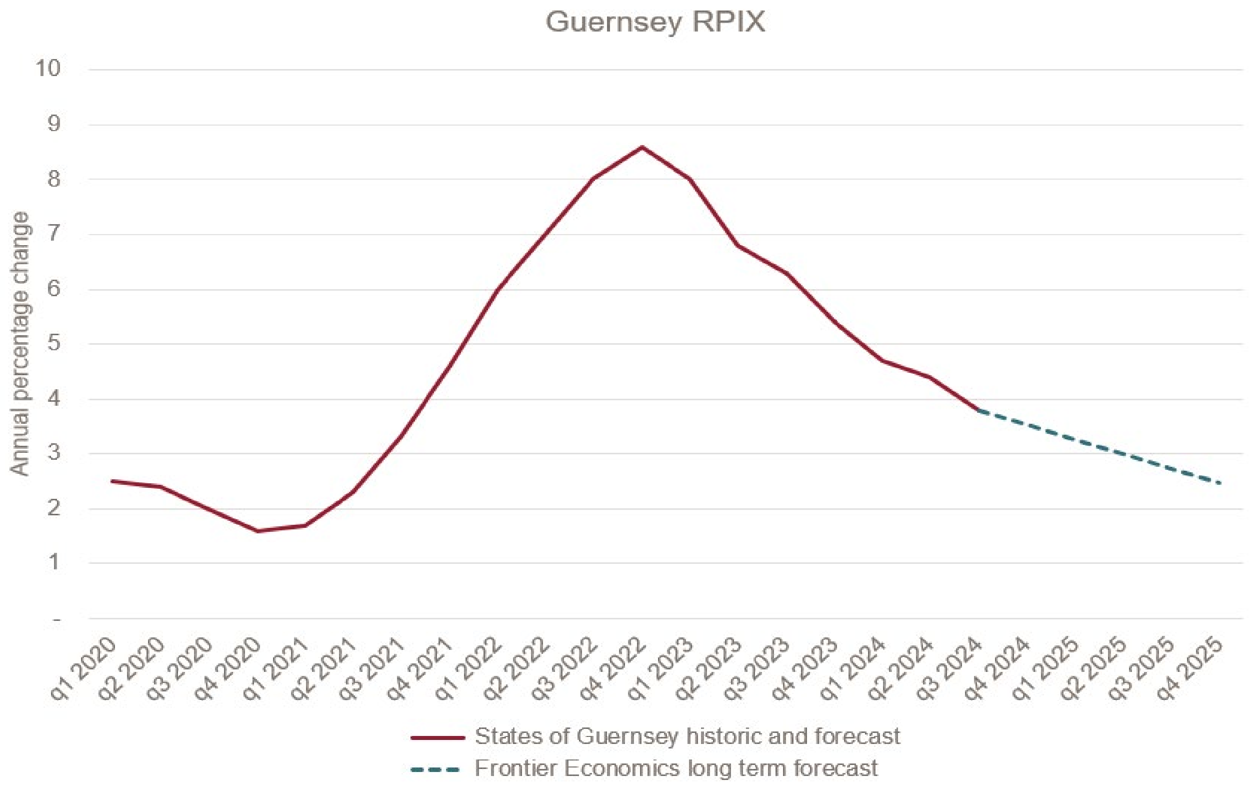
35 See **Appendix 1** – the GCRA's reply to Sure's supplemental WACC representations in Response to the First Proposed Decision.

36 **2023** States of Guernsey Strategy and Policy Unit, Guernsey Inflation Forecast bulletin, published on 24 October 2023, this has been updated in consideration of Sure's representations on the updated RPI-X figures).

37 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.

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%"*. [38]

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




5.19 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 to smooth the current inflation peak for end users.[39]

5.20 The GCRA has incorporated the most recent inflation figures into the model to inform the Final Decision.

5.21 **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

[38] **2022** Bank of England (2022) retrieved 14 March 2023.

[39] 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.

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.

5.22 **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 a range between 2.3% in 2023 and 1.6% from 2028 onwards.

5.23 Firstly, there is an estimate of Multifactor Productivity (MFP) produced by the UK's Office for 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.

5.24 Secondly, Ofcom's Fibre-to-the-Premises **(FTTP)** model developed as part of its Wholesale Fixed Telecoms Market Review Decision 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).

5.25 Thirdly, Ofcom's estimate of efficiency gains for Openreach's network costs used in its RAB developed as part of its 2020 Wholesale Fixed Telecoms Market Review 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 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).

5.26 **Assumption 6: Management fee costs** – The GCRA has not included management fees in the cost model, as it does not consider that these have been sufficiently evidenced or justified by Sure in its submissions.

5.27 **Assumption 7: Cost Allocation to wholesale broadband customers** – The model allocates forecasted "*shared costs*" to wholesale broadband customers. They are designated as 'shared costs' because the activities which give rise to these costs support both the provision of wholesale broadband as well as other Sure services (incl. other wholesale services such as wholesale leased line products and fixed voice to 'voice only' customers, 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.

5.28 The Final Decision reflects the allocation of costs based on revenues across Sure's services to reflect accurate historic prices and revenues for some services that are used to calculate the revenue split and includes wholesale broadband product revenues when calculating the split including WLR charges paid for by wholesale broadband customers, as explained in the introduction and in section 2.

5.29 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[40] references the provision of high-speed broadband services as a key objective for the funding, with no explicit reference to leased lines or other services.

5.30 **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 customers on Sure's network (i.e. wholesale customers of OLOs and the customers of Sure Retail), as it is appropriate to recover the relevant costs of these services from all of these customers.

5.31 Fixed broadband demand on Sure's network is expected to increase from 26.1k users 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 delivered by retail competition.)[41]

5.32 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 consistent with what is observed in other markets where FTTP has been deployed (Ireland, UK), most customers are expected to remain on lower speed products (~70% on speeds less that 100Mbps in 2028).

5.33 **Assumption 9: Wholesale Line Rental (WLR)** – Access to the internet at a fixed location using a copper or fibre based local loop access network cannot be provided to a customer if line rental is not also available.[42] Therefore, given the requirement for OLOs/retailers to purchase WLR, it is appropriate for the GCRA to consider both the wholesale broadband product rental charge and the WLR charge when considering the profitability and appropriate level of wholesale charges that broadband customers (OLOs/retailers) are required to pay. The process involves the GCRA identifying the relevant costs to be recovered from those customers and then identifying the wholesale revenues from those customers (i.e. from the wholesale broadband rental products and wholesale line rental products). Whilst WLR costs had been included in the underlying cost model (which Sure had reviewed) not all of the associated WLR revenues received by Sure were included in calculations that informed the proposed pricing in the First Proposed Decision.[43]

5.34 WLR revenues from these wholesale broadband customers within the GCRA model are forecast based on how Sure's pricing of this product is expected to evolve in the future from the current prices for WLR (i.e. reflects the current WLR price that Sure charges, with an assumption that this increases

[40] States of Guernsey (2021). Funding Agreement Relating to Acceleration of Fibre Rollout to All Premises in Guernsey. 26 October 2021.

[41] The GCRA expects that the imposition of costs-based pricing for Sure's wholesale broadband services should also contribute to significant price reductions.

[42] See footnotes 19, 20, 21.

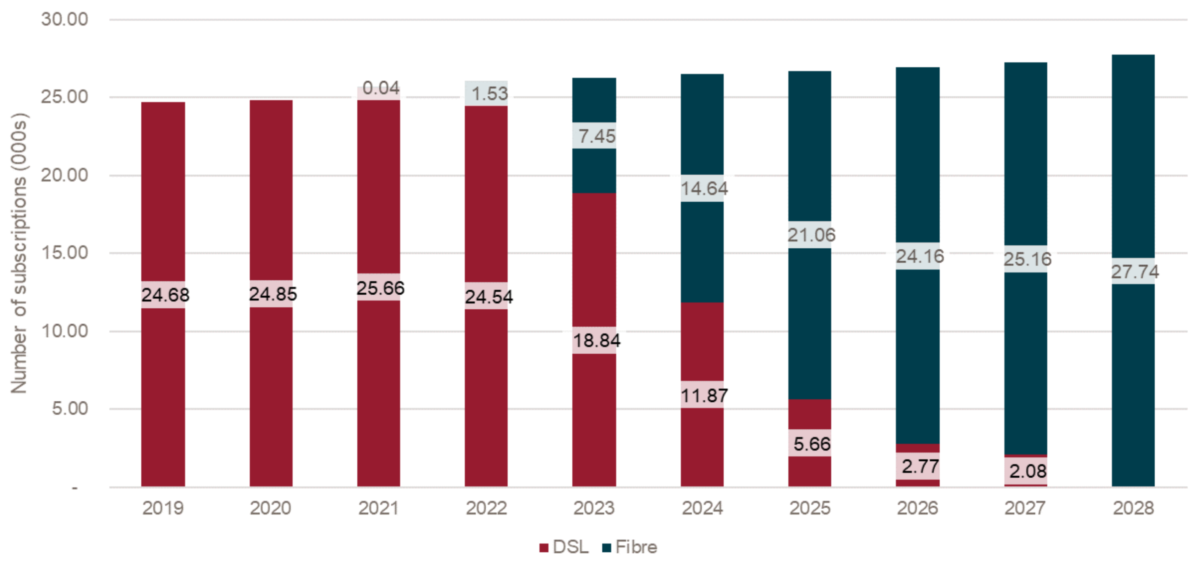
[43] It is noteworthy, given Sure current objections to the inclusion of WLR in the market definition, that Sure did not object to the inclusion of WLR costs in the model or highlight the omission of the associated WLR revenues, following its detailed review of the model.

with inflation, consistent with Sure's pricing approach over the last few years). This finding is reflected in row 16 of the "Prices" sheet within the underlying cost model. In doing this, it should be underlined that the GCRA is not setting a charge control on Sure's standalone WLR product, either explicitly or implicitly, or requiring that Sure changes the price it charges for this product. The wholesale broadband charge set by this control is comparable to the 'maximum price' set in the neighbouring jurisdiction of Jersey where Frontier Economics was also the advisor.

5.35 This approach informed the modelling calculations for this GCRA Final Decision (and the Second Proposed Decision) and requires Sure to adjust its charge for wholesale broadband, such that the revenues it generates from wholesale broadband customers covers the efficient cost to Sure.

***Forecast for Fixed Broadband Subscriptions on Sure's Network - DSL and FTTP***

*Source:* *SURE, JT and Airtel*



## 6. Remedies

**Overview**

6.1 Sure has been designated as having a dominant position in the relevant market as defined in paragraph 3.1. It has both the ability and incentive to set its charge for wholesale broadband which might serve its own commercial interests at the expense of those of the wider market and in particular, consumers.[44] The GCRA has found that Sure's wholesale broadband prices are above the appropriate cost-based price.

6.2 Therefore, the GCRA considers it appropriate to impose a price control remedy pursuant to Condition 31.2 of the Sure Licence.

6.3 In addition to the risk of excessive prices other types of competition problems may 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 the retail market (including by price and/or non-price discrimination), and ultimately to the detriment of end users.

- Engaging in a margin squeeze.

6.4 The existing measures that are designed to mitigate these types of potential competition problems associated with Sure's dominance designation are set out in Sure's Licence and continue in force (See Appendix 2).

**Compliance**

6.5 The GCRA's decision places a cap on the weighted average price covering the whole range of Sure's wholesale broadband products. The compliance-checking process will require Sure to submit a report, within two months from 31 December of each defined period[45] of the price control, demonstrating compliance with the "weighted average" price.[46] The report should confirm the set of prices actually paid by purchasers of each wholesale broadband product variant over that period (wholesale line rental and wholesale broadband product rental); weighted by the volume of sales of the relevant broadband product in the year prior to the compliance period reported. Table B in Section 7 below provides a worked example of how the control will operate.

[44] **2019 –GCRA 19/01** Final Decision Broadband Market: Review and SMP Findings.

[45] As per section 7, below, the defined periods for the price control means 1 April to 31 December in 2024, and for each of the years 2025, 2026, 2027 and 2028, it means 1 January to 31 December.

[46] As per section 7, below, given the price control begins on 1 April 2024, the weighting by the volume of sales of the relevant broadband product in the year prior shall be assessed as being from 1 April 2023 to 31 March 2024.

6.6 The weighted average price cap will give Sure the flexibility to adjust prices during the period, provided Sure maintains the notification requirements listed in its Licence and ensures that the actual weighted average price is at the level of or below the weighted average price cap.

6.7 For compliance purposes, the weighted average price is calculated by weighting the price of each service by the proportion of volumes of sales attributable to the relevant service in the prior year to each of the defined periods . There is a risk of specific forms of gaming by Sure involving targeting price increases on broadband products whose weights are growing over time, so that the prior year weighting understates the effect of the price increase on actual revenues. There are other approaches that might have been used to set the weighting, such as current year weighting or what is referred to as the 'snapshot approach' (where the volumes at a point in time are multiplied by the average charge made during a period of 12 months prior to the start of the charge control year). However, we have not used these approaches as these also suffer from their own gaming risks which could be greater than the gaming risks associated with the prior year volume approach. The GCRA therefore considers the prior year volume weighting approach is the one which, will enable Sure to plan its charges in a year to best satisfy the objectives of the control.

6.8 In the judgment 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 its level of prices for individual product variants. This approach is appropriate because the broadband market is one that is generally more dynamic in nature than some telecom markets with frequent technological upgrades and the introduction of new products. It is better than the alternative of setting prices on individual product variant. By setting price caps on individual product variants and absent other reasons to do so, such a degree of regulatory control could reduce Sure's ability to respond to changes in the broadband market where there is greater uncertainty as to market developments.

6.9 The GCRA recognised there may be extraneous circumstances which may case Sure's prices to deviate from the cap set by this control. Where these are beyond Sure's control and are not reasonably foreseeable, the GCRA would not expect to take enforcement action.

# 7. Statutory Notice of the Final Wholesale Broadband Pricing Decision.

**Determination**

7.1 For the reasons set out in this Final Decision, the GCRA makes the following determination (the **Decision**) pursuant to Licence Condition 31.2 of the Licence to set the average weighted prices that may be charged by Sure for wholesale broadband, as set out in the Decision.

**DETERMINATION**

1. This Determination shall apply from 1 April 2024 and shall remain in force until 31 December 2028.
2. For the purposes of this Determination:

“**Authority**” means the Guernsey Competition and Regulatory Authority
“**Compliance Statement**” means a statement of compliance consistent with paragraph 6 & 7 of the Schedule to this Determination.
**“Defined Periods”** means for 2024, 1 April to 31 December 2024, and for each of 2025, 2026, 2027 and 2028, means 1 January to 31 December.
**”Wholesale Broadband**” means a wholesale broadband product rental and wholesale line rental.
“**OLO/Retailers**” means Sure Retail and all other licenced operators.
“**Sure**” means Sure (Guernsey) Limited.
“**Table A**” means the table set out in the Schedule to this Determination labelled Table A specifying the Weighted Average Price that may be charged by Sure for Wholesale Broadband.
“**Weighted Average Wholesale Broadband Charge**” is calculated by multiplying, the prices after any discounts, by the corresponding number of subscribers in the previous year. The product of this multiplication is then divided by the total number of subscribers in the previous year.

**SCHEDULE**

3. The Authority will regulate the charge for Wholesale Broadband, as set out in Table A below.
    a. Sure can continue to provide different Products to OLO/retailers with different price points.
    b. Sure is able to make changes to its WLR prices, subject to any regulatory restraints on its WLR product. However, the Weighted Average Broadband Charge must not exceed that set out in **Table A.**
4. For the Wholesale Broadband sold by Sure on or after 1 April 2024, the price to be charged by Sure for those Products shall not exceed the Weighted Average Broadband Charge for the Defined Periods.
5. Within two months from the end of each of the Defined Periods Sure shall provide to the Authority

a Compliance Statement.

**Table A – Weighted Average Wholesale Broadband Charge which comprises wholesale line rental and wholesale broadband product rental.**

| | unit | 2024 | 2025 | 2026 | 2027 | 2028 | 2024-2028 average |
|---|---|---|---|---|---|---|---|
| **New weighted average broadband charge (including WLR)** | **£/month** | **24.79** | **25.62** | **26.44** | **27.21** | **27.94** | **26.40** |

6. The compliance-checking process requires Sure to submit a Compliance Statement within two months after the end of each year demonstrating compliance with the "*weighted average*" price over the Defined Period just ended, which reflects: the set of prices actually paid by OLOs/retailers for each wholesale broadband variant over that period (wholesale line rental and wholesale broadband product rental); weighted by the volume of sales of the relevant broadband product in the year prior to the compliance period reported. Given the first year of the price control begins on 1 April 2024, the weighting by the volume of sales in the year prior shall be from 1 April 2023 to 31 March 2024.

7. Below provides a worked example of how the control will operate.

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

**TABLE B – Worked Example of Compliance Statement**

| ***Wholesale Broadband*** | ***PRICE (£), (FOR COMPLIANCE PERIOD REPORTED)*** | ***Discount (£)*** | ***NO. OF SUBSCRIBERS (FOR PREVIOUS YEAR)*** |
|---|---|---|---|
| *Product1* | *20* | | *300* |
| *Product2* | *23* | | *190* |
| *Product3* | *25* | | *140* |
| *Product4* | *36* | *2* | *99* |
| *Product5* | *40* | | *70* |

b. The weighted average price cap is calculated by multiplying, the price paid by purchasers after any discounts, for each wholesale broadband variant, by the corresponding number of subscribers in the previous year, the sum of this multiplication is then divided by the total number of subscribers in the previous year.

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

d. Weighted Average 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 + Product5 Price * Product5 No. of Subscribers} / Total Number of Subscribers

e. Weighted Average price cap = $\sum^n PP_i S_i / \sum^n S_i$

f. Where:

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

   ii. PPi = the product price paid for each product variant, including WLR and any discount

   iii. Si = the number of subscribers of each corresponding product variant in the previous year

   iv. Weighted average price cap = {20 * 300 + 23 * 190 + 25 * 140 + (36-2) * 99 + 40*70} / {300 + 190 + 140 + 99 + 70}

   v. Weighted average price cap = 20,036 /799

   vi. Weighted average price cap = £25.08

**Comparison of existing wholesale broadband changes with the new proposed charges**

7.2 As illustrated in Table C below, the new wholesale broadband price in 2024 for example would be **31% lower than Sure's 2023 price level** (adjusted for inflation).

**Table C – Comparison of existing charges for wholesale broadband with the new proposed charges**

| | unit | Current (2023) | 2024 | 2025 | 2026 | 2027 | 2028 | 2024-2028 average |
|---|---|---|---|---|---|---|---|---|
| **New weighted average broadband charge** | **£/month** | | **24.79** | **25.62** | **26.44** | **27.21** | **27.94** | **26.40** |
| Weighted current broadband charge | £/month | 35.30 | 36.08 | 37.29 | 38.48 | 39.59 | 40.66 | **38.42** |
| Difference | £/month | | -11.29 | -11.67 | -12.04 | -12.39 | -12.72 | **-12.02** |
| Difference (%) | % | | -31% | -31% | -31% | -31% | -31% | **-31%** |

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**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

**1979 - Court of Justice** - Case 85/76 Hoffman La Roche v Commission EU:C:1979:36. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61976CJ0085

**1991 -** Case C62/86 *AKZO Chemie BV v Commission* [1991] ECR I-3359. https://curia.europa.eu/juris/showPdf.jsf;jsessionid=F17467BB56CF029E45B4711DCC37561C?text=&docid=94611&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=877728

**2012 - BEREC -** BEREC Common position on best practice in remedies on the market for wholesale broadband access (including bitstream access) imposed as a consequence of a position of significant market power in the relevant market. https://www.berec.europa.eu/sites/default/files/files/document_register_store/2012/12/BoR_(12)_128_CP_WBA.pdf

**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

**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

# Appendix 1: Legal background and licensing framework

## GCRA general duties

1.1 *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.[47] 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.[48]

1.2 *The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012* sets out six principles of economic regulation, summarised below: [49]

- 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.

1.3 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.

1.4 The Telecoms Law[50] specifically provides that the GCRA may include in any licence conditions that are:

- intended to prevent and control anti-competitive behaviour;[51] and

[47] Section 2 of the Regulation Law.
[48] 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*.
[49] The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012:
[50] 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.
[51] Section 5(1)(c) of the Telecoms Law.

- 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.[52]

1.5 The GCRA is obliged[53] 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.

### Dominance and significant market power

1.6 The GCRA's assessment of whether a licensee holds a dominant position and any directions related to a dominance designation are governed by its regulatory duties under the Regulation of Utilities (Bailiwick of *Guernsey*) Law, 2001 (**Utilities Law**), the Telecoms Law, and in accordance with the principles for economic regulation specified in the Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012 (**Economic Principles Ordinance**).[54]

1.7 Pursuant to section 22 of the *Utilities* Law, the definition of a dominant position in relation to a relevant market "*shall be construed as it would be in the UK under the Competition Act 1998*" (**UK Competition Act**).

1.8 There is no statutory definition of a dominant position under the UK Competition Act. Rather, the concept has been developed in EU and UK case law.[55] According to that case law, a dominant position is a position of economic strength affording the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers, thus preventing effective

[52] Section 5(1)(f) of the Telecoms Law.
[53] Section 5(2) of the Telecoms Law.
[54] Accountability, focus, predictability, coherence, adaptability and efficiency.
[55] Once the relevant market is defined, the next stage is to determine whether any firm, singly or jointly, holds a position of Significant Market Power, which is equivalent to a dominant position, defined in the **2018 EU SMP Guidelines (**paragraph 52**)** as 'a position of economic strength affording [the firm] the power to behave to an appreciable extent independently of competitors, customers and consumers'. Also see **T1480GJ – BCMR Proposed Decision** – Market Definition & Competitive Assessment, 12 April 2022.

competition.[56] The EU has considered the concept of Significant Market Power (**SMP**) as equivalent to dominance.[57]

1.9 The Guideline[58] produced by the UK competition authority reflects these case law principles and confirms that an undertaking will not be considered to be dominant unless it has substantial market power. Whether or not an *undertaking* has such market power will depend on the facts of each case and, whilst not determinative, the market share held by the undertaking will be relevant to this analysis. There have been only a very small number of cases in which undertakings have been found to be dominant with a market share of less than 40%. Furthermore, case law establishes a rebuttable presumption that an undertaking with a market share that persistently exceeds 50% on a relevant market holds a dominant position on that market.[59] This analysis is also accepted by UK courts when they consider question of dominance under the UK Competition Act.

1.10 In 2018, in consideration of the States of Guernsey's telecommunications strategy[60] the GCRA engaged SPC Networks to carry out a market review on the broadband market, which primarily assessed two objectives[61]:

i. To define the relevant product and geographic markets, and

ii. To assess whether any operator holds a position of Significant Market Power (**SMP**) on the market(s).

1.11 As SPC set out in its report, "*a "relevant market" is defined to set boundaries for competition analysis and is the first step in the assessment of SMP or dominance".* The review took account of the process for market definition and assessment of SMP used by the EU, and the review documents confirmed that the assessment would be proportionate, and pragmatic given the size the jurisdiction.[62] Sure and JT provided full responses to the consultation documents.[63]

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[56] Case 1001/1/01 *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading [2002]* CAT 1 para 156, citing para 38 of Case *85/76 Hoffman La Roche v Commission* EU:C:1979:36.

[57] Article 4, Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Electronic Communications Framework Directive).

[58] "Assessment of Market Power, Understanding Competition Law" Office of Fair Trading, 415, December 2004.

[59] Case C62/86 AKZO Chemie BV v Commission [1991] ECR I-3359

[60] 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.

[61] **2018 – SPC Network Report –** *Wholesale Broadband Access Market Review: Market Definition and SMP Assessment*, 25 July 2018.

[62] *Ibid.*

[63] OLO responses are published on the GCRA website - **Case T1358HJ** Broadband Market Final Decision

1.12 The Final Decision published in 2019[64], found that Sure held a SMP (a dominant position) on the wholesale broadband market which was defined as:

> *"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".*

1.13 Sure did not challenge the accuracy of the finding in the Final Decision.

1.14 In the linked Guideline, it is also stated that "*it is also necessary to consider the position of other undertakings operating in the same market and how market shares have changed over time. An undertaking is more likely to be dominant if its competitors enjoy relatively weak positions or if it has enjoyed a high and stable market share*"[65].

## Licensing framework

1.15 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.[66] 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.

1.16 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,[67] the requirement not to show undue preference, or to exercise unfair discrimination,[68] the requirement not to unfairly cross subsidise,[69] supported by accounting processes to demonstrate compliance; regulation of prices, and transparency around pricing.[70]

1.17 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.[71]

1.18 The form and implementation of the price control are addressed in licence condition 31, which deal with Price Regulated Services and the conditions that apply for Licensed Telecommunications Services[72] within a relevant market in which the Licensee has been found to be dominant.

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[64] **2019 –GCRA 19/14** Final Decision Broadband Market: Review and SMP Findings.
[65] "Assessment of Market Power, Understanding Competition Law" Office of Fair Trading, 415, December 2004, para 2.11.
[66] Part IV, Fixed telecommunications licences.
[67] Condition 24, Fixed telecommunications licences.
[68] Condition 29, Fixed telecommunications licences.
[69] Condition 28, Fixed telecommunications licences.
[70] Condition 31, Fixed telecommunications licences.
[71] Part V, Fair competition, Fixed telecommunications licences.
[72] As defined in section 31, Telecommunications (Guernsey) Law, 2001.

# Appendix 2: Licence Obligations for Licensee with dominant position.

**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.

**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.

**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[73] 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 m 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.

[73] As defined in section 31, Telecommunications (Guernsey) Law, 2001.

## Appendix 3: Engagement with parties

**Detailed account of interactions and exchanges with parties relevant to the information gathering and modelling process.**

3.1 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.

3.2 On 13 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. The spreadsheet requested demand, revenue and costs data for all wholesale broadband products including wholesale line rental (WLR).

3.3 On 26 September 2022, Sure provided its initial response to the RFI by partially completing the spreadsheet with the requested information and requested a meeting with the GCRA to discuss the request in further detail.

3.4 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.

3.5 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.

3.6 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.

3.7 On 11 October 2022, the GCRA provided the operators with the PowerPoint slides from the roundtable meeting and the presentation from Frontier.

3.8 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, extensive costing data from its 'Management Pack' and an updated version 4 of the GCRA spreadsheet template.

3.9 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.

3.10 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:

i. Forecast of demand for Sure wholesale products.

ii. Demand for additional wholesale products.

3.11 On 25 October 2022, the GCRA followed up with additional questions for Sure on the information it had provided.

3.12 On 27 October 2022, Sure provided an updated 'version 5' GCRA spreadsheet template with additional information.

3.13 On 28 October 2022, Sure provided the latest backing information which reflect its '*version 7'* of the GCRA spreadsheet template.

3.14 On 3 November 2022, JT provided further detailed and supplemental information in response to the request on 25 October 2022.

3.15 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 spreadsheets provided to the GCRA.

3.16 On 8 November 2022, there was a further meeting with SURE to discuss outstanding data and related questions. The discussions covered the following topics:

i. 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).

ii. Sure confirmed it would provide clarifications on the outstanding questions.

iii. Sure confirmed it was instructing external consultants to provide its assessment regarding its Weighted Average Cost of Capital (WACC).

iv. Discussion to validate categorisation, allocation and forecast rationales.

3.17 On 10 November 2022, Sure was provided with a populated spreadsheet, included the initial analysis of the Sure's 'Management Pack' which detailed the GCRA's work-in-progress on categorisation and allocation of OPEX.

- *"Raw data from management packs is in green tabs;*

- *We have proposed refined categories in Cost categories tab. We did this using ledger codes documentation from 2014 CP Visio and 2014 DAM documents + our understanding of items labels. There are a few comments to explain our choices. Happy to discuss if you see things differently;*

- *In the OPEX tab we have organised all OPEX in line with our initial template and have included consistency checks between different sources of data;*

- *The Allocation tab is a work in progress. The main input here will be your timesheet data to allocate staff costs. Depending on available data and buckets of shared costs we can envisage allocation in one or more steps. Also happy to have your views on this."*

3.18 On 10 November 2022, 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.

3.19 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.

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

3.21 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.

3.22 On 25 November 2022, Sure provided a response the GCRA's questions and its OPEX and CAPEX related data requests. In an email from Sure's regulatory Team, they confirmed that they had created a pivot table in the data request spreadsheet to allow them "*to readily see the materiality of each category and therefore the expected focus for the upcoming process of apportionments. As expected, staff costs is the largest category and hopefully our recently provided spreadsheet will be of material help in that process."*

3.23 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:

i. Frontier asked clarifications on the WLR product, clarification on one-off revenues and the underlying demand (reactivation of fibre ONT and new fibre connection).

ii. Frontier/Sure reviewed staff cost analysis and Sure confirmed it accepted the GCRA's proposed refinements.

iii. Frontier/Sure discussed the allocation drivers for biggest shared cost buckets (buildings, data centre, general OPEX, fixed access network).

iv. 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.

v. Sure agreed to provide more up to data information on data centre space occupied by fixed core network equipment.

vi. Sure raised questions on the proposed modelling approach for leased line revenues, and forecasts which were addressed by Frontier.

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

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

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

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

i. CAPEX forecasts for "*access network capex (e.g. ducts / poles, buildings)*" and "*core network CAPEX (transport network and core functions)*".

ii. Space occupied by fixed network equipment racks in data centres and buildings.

iii. Reinvestments.

iv. Billing Costs.

v. Voice only subscriptions.

vi. Leased line prices.

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

3.29 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.

3.30 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*."

3.31 On 31 March 2023, the GCRA issued the First Proposed Pricing Decision for Wholesale On-island Lease Line and provided Sure with a version of the underlying costs model.

3.32 On 22 May 2023, the GCRA provided Sure with the '*Costing Model'* for wholesale broadband which was used to produce the proposed price cap level presented in the Proposed Decision. the model contained the following reference to WLR revenues.

3.33 On 23 May 2023, the GCRA published its Proposed Decision (First Proposed Pricing Decision) for Wholesale Broadband Access.

3.34 On 14 June 2023, Sure provided written representations on the First Proposed Decision.

3.35 On 20 June 2023, and based on a review of Sure's written representations, the GCRA requested additional data from Sure based on demand and Optical Network Terminals (ONT) lifetimes.

3.36 On 20 July 2023, the GCRA requested data from Sure on Wholesale Line Rental (**WLR**) – specifically whether WLR and wholesale broadband services were bundled or offered as individual products that could be combined and Sure responded on the same day.

3.37 On 24 July 2023, GCRA asked Sure to confirm whether WLR is required to enable broadband services and Sure confirmed that a WLR landline was required for broadband services.

3.38 On 25 July 2023, the GCRA met with Airtel to discuss its representation on the First Proposed Decision and the GCRA's initial comments in response.

3.39 On 25 July 2023, the GCRA met with Airtel to discuss its representations on the First Proposed Decision and the GCRA's initial comments in response.

3.40 On 1 August 2023, the GCRA met with Sure to discuss its representations on the First Proposed Decision and the GCRA's initial comments in response.

3.41 On 4 August 2023, the GCRA met with JT to discuss its representations on the First Proposed Decision and the GCRA's initial comments in response.

3.42 On 10 August 2023, GCRA sent information requests and data clarification requests to Sure.

3.43 On 8 August 2023, the GCRA confirmed that it would provide Sure with an updated version of the cost models which would be a "combined model" which calculates the cost-based prices for both wholesale broadband and wholesale on-island leased lines.

3.44 On 15 August 2023, Sure sent a partial response to the information and data clarification request.

3.45 On 18 August 2023, Sure provided further responses to the GCRA information request made on 10/08/2023.

3.46 On 22 August 2023, Sure provided further responses to the GCRA information request made on 10/08/2023.

3.47 On 4 October 2023, the GCRA held a meeting with Sure to brief it on the headline figures that would be presented in the Second Proposed Wholesale Broadband Pricing Decision.

3.48 On 5 October 2023, the GCRA published the Second Proposed Wholesale Broadband Pricing Decision. Sure was also provided with the GCRA's combined costing model which was used to produce the proposed price cap level for wholesale broadband products and the proposed prices for wholesale leased line products which were presented in the Second Proposed Decision. The updated model also reflected the additional WLR revenues which were omitted from the calculations that informed First Proposed Decision.

3.49 On 9 October 2023, the GCRA offered JT, Airtel and Sure meetings to discuss the Second Proposed Wholesale Broadband Pricing Decision, during the week being 23 October 2023.

3.50 On 10 October 2023, Sure wrote to the GCRA requesting an extension to the deadline for its written representations, from 3 November 2023 until 30 November 2023.

3.51 On 11 October 2023, Airtel asked the GCRA to extend the response time for written representations.

3.52 On 12 October 2023, the GCRA responded to Sure's request for an extension to the deadline and confirmed that, in its view, requested extension was not proportionate, unless Sure could identify in detail which elements of the Second Proposed Decisions required more than four weeks to formulate a response to.

3.53 On 17 October 2023, in a letter from its lawyers, Sure submitted a second request for an extension to the deadline in which to provide its written representations.

3.54 On 25 October 2023, following correspondences between the GCRA and Sure, the GCRA confirmed that the purpose of its planned meeting was not to facilitate an exchange of views between economic advisers on the merits or otherwise of the approach adopted or to have an open-ended discussion about the economic model which was used to set the proposed pricing. Instead, the meeting would give Sure the opportunity to share any observations that it had on the content of the proposed decision before it submitted written representations. And to indicate whether there were any points in the proposed decision that Sure considered were unclear. The GCRA would then take those away (unless they could be answered quickly and easily during the meeting) and respond as appropriate. Further, the GCRA confirmed that if Sure and its advisers considered that the approach that the GCRA had adopted in the proposed decision was incorrect, then they could explain that reasoning in the written representations.

3.55 On 26 October 2023, the GCRA held discussions with Sure's regulatory team and its external advisors, Oxera Consulting and GOS Consulting, to discuss the Second Proposed Wholesale Broadband Pricing Decision. And, following the meeting, Sure provided follow up questions and comments to the GCRA.

3.56 On 26 October 2023, the GCRA provided its response declining Sure's second request for an extension to the deadline to submit written representations. However, the GCRA confirmed, that should the external specialists, instructed by Sure to review the model, identify any material errors in the price control model, then the GCRA would accepts those specific representations by 10 November 2023.

3.57 On 27 October 2023, the GCRA provided a number of answers to Sure questions from 26 October 2023 and confirmed it was reviewing the remaining questions.

3.58 On 27 October 2023, the GCRA held discussions with Airtel's regulatory team to discuss the Second Proposed Wholesale Broadband Pricing Decision. And following that meeting Airtel provided additional questions and information for the GCRA to consider.

3.59 On 27 October 2023, in a letter from its lawyers, Sure submitted a third request for an extension to the deadline in which to provide its written representations.

3.60 On 30 October 2023, the GCRA provided the remaining answers to Sure questions from 26 October 2023, with only one issue remaining, which Sure had to address.

3.61 On 30 October 2023, the GCRA provided its response which declined Sure's third request for an extension to the deadline in which to provide its written representations. The GCRA's response confirmed that in its view, Sure's submissions were not within the parameters on which extensions to the deadline would be considered and that its letter of 27 October 2023 raised no issues which materially satisfied those parameters nor any issues which has not already been addressed by the GCRA.

3.62 On 1 November 2023, in a letter from its lawyers, Sure confirmed that it would provide its written representations by the stated deadline of 3 November 2023.

3.63 On 2 November 2023, Airtel wrote the GCRA requesting an extension of the deadline to submit written representations to the to Second Proposed Decisions to 6 November due to Airtel's employees being affected by storm Ciaran, which had crossed the Channel Islands on 1 and 2 November 2023.[74]

3.64 On 2 November 2023, the GCRA wrote to Airtel approving the extension of the deadline to provide written representations to the Second Proposed Decisions from 3 November 2023 to 6 November 2023.

3.65 On 2 November 2023, the GCRA wrote to Sure and JT to offer an extension of the deadline to provide written representations to the Second Proposed Decisions from 3 November 2023 to 6 November 2023.

3.66 On 3 November 2023, JT accepted the offer for the extension of deadline to submit written representations from 3 November to 6 November 2023.

[74] https://www.metoffice.gov.uk/binaries/content/assets/metofficegovuk/pdf/weather/learn-about/uk-past-events/interesting/2023/2023_09_storm_ciaran.pdf

3.67 On 6 November 2023, Sure, JT and Airtel provided their respective responses to the Second Proposed Wholesale Broadband Pricing Decision.

3.68 On 10 November 2023, Sure assisted by its external consultants, Oxera Consulting, provided additional comments and representations on the cost model. These matters were considered by the GCRA and are addressed in Annex 2 to this document.

# Annex 1 – GCRA reply to Sure’s written representations in response to the Second Proposed Decision

GCRA EMBEDDED RESPONSES TO SURE SUBMISSION

# Sure response to Wholesale Broadband Market: T1652G - Second Proposed Pricing Decision – Wholesale Broadband Pricing



6 November 2023

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# 1 Executive Summary

1 Sure welcomes the opportunity to comment on the GCRA's Second Proposed Pricing Decision - Wholesale Broadband (the WBB PD)[1], but has concluded that the GCRA's analyses, conclusions and proposals are flawed, unsafe and not fit for purpose.

2 Sure has identified a number of material flaws and weaknesses in both the GCRA's approach and its factual analyses. These can be summarised as follows:

a. **The market definition is out of date and based on out of date data.** The WBB PD proposes to set price regulation for the next five years[2], in relation to a market that was defined by the GCRA in March 2019 nearly five years ago, which in itself relied on data that in some instances dated back to 2017. This is inappropriate as a general approach but particularly so for a market that is experiencing rapid changes, as is the case for broadband. This approach contrasts starkly to established international practice, which stipulates that a market review must be undertaken at least every five years, so as to ensure that any remedy imposed remains appropriate for the market as it currently operates. Reliance on such out-of-date market data and analysis risks the inappropriate design and application of remedies that are either unwarranted or disproportionate.

b. **The 2019 Final Decision on Market Definition did not include Wholesale Line Rental (WLR) whereas this second proposed pricing decision does.** The GCRA has incorrectly and unilaterally included WLR (and without explicitly stating that it has done so), changing the WBB market definition to now include an associated product and has additionally apparently redefining the WBB product itself to be a combined broadband and narrowband product. The original market definition published by the GCRA was 29 pages long but did not have one single mention of the WLR product.

c. **The GCRA is not following the internationally recognised 3 stage market review process.** The GCRA appears to treat the remedy-design part of the internationally recognised three-step market review process as a separate and independent process. This is in stark contrast to recognised best international regulatory practice – implemented by the EU and the UK - and puts at risk the integrity of the entire regulatory framework in Guernsey. The three-step market review process must be considered as a whole. No single step can be conducted in isolation or it will lose its foundation or have no purpose.



1 https://www.gcra.gg/media/qwnfdmew/t1652g-second-proposed-pricing-decision-wholesale-broadband.pdf
2 2024-2028.

d. **The GCRA's approach to modelling, to support the setting of regulated price levels, is flawed in a number of ways**:

   i. In 2016 the GCRA removed the obligation on Sure to produce separate accounts for individual regulated products. Despite this, the GCRA has created and is reliant on a costing model that in effect reverts back to and requires costing data from this time and earlier (2014). The GCRA also seeks to criticise and hold Sure accountable for any failure in respect of the availability and accuracy of costing data. This has resulted in material and counterintuitive swings in the unit costs produced by the new combined WBB and WLL model. These swings are of such a magnitude that it removes all credibility from that model and renders its outputs unsafe and unfit for purpose.

   ii. Ironically, therefore, whilst the GCRA concludes that it would be inappropriate to use historical costs for a market in which significant new investment is taking place, it then proceeds to do just that by applying the 2014-derived costing data for the broadband market. Notably, this is the market where Sure and the States of Guernsey are in the process of investing £37.5M to deploy Island-wide Fibre to the Premises (FTTP), which represents a significant change within the market. The magnitude of this change is exacerbated through the polling of every customer, at the time of migration from copper to fibre as to which retail broadband and/or landline provider they wish to contract with. The FTTP project is therefore not simply an engineering function; it is a disruptor to the commercial choices expressed by all customers and hence has created a significant change in the market.

   iii. The new combined model also appears to inappropriately allocate costs between WBB and WLL products, again resulting in material swings in WLL unit costs when changes are made to the WBB revenues by adding in the WLR revenues.

e. **The GCRA has failed to conduct any impact analysis**.

   i. The GCRA does not consider the impact of its proposals on the joint Sure and States of Guernsey FTTP deployment project, which is a key market development.

   ii. The GCRA does not consider the impact on Sure's commercial viability of the very material price reductions proposed.

iii. In addition to these substantive impacts, the GCRA has failed to consider the appropriate means of implementing any decision it reaches, and in particular does not consider the (common regulatory) approach of using a 'glide-path' over the five-year market review period so as to gradually reduce Sure's WBB prices to the level the GCRA (acting properly) considers reflective of Sure's efficiently incurred costs.

3 **The GCRA has clearly not given any consideration to the specific impact of its proposals on the FTTP deployment project**. Sure has significant concerns that the GCRA's proposals will have such a materially adverse impact on the project that it will affect the viability of the joint funding contract it has with the States of Guernsey. Sure has requested an urgent meeting with the States of Guernsey to discuss its concerns.

4 **Sure considers that the GCRA's consultation approach and process – including the timeframe for responding - falls significantly short of international regulatory practice [as applicable in Guernsey] and of what can be considered reasonable and proportionate.** This is especially so given the materiality of the GCRA's proposal both in its own right and relative to the proposals in the First Proposed Pricing Decision – Wholesale Broadband issued by the GCRA on 23rd May 2023 because:

- The WBB PD was issued in parallel with the Second Proposed Pricing Decision – Wholesale Leased Lines (the WLL PD).[3] Both documents ran to approximately 130 pages, yet stakeholders were allowed only four weeks[4] to respond to both.
- The two PDs were accompanied by a new combined Excel model.
- The GCRA only made itself available for a meeting with Sure, for Sure to seek clarification on the content of both PDs, during the third week of this very short consultation period.
- Upon Sure stating at the outset of the consultation period that it would not be able to fully analyse and respond to the two parallel consultations within the four week timeframe, the GCRA twice encouraged Sure to request an extension to the response deadline, but on both occasions denied those requests unfairly and without proper consideration of the justifications Sure had provided.
- The GCRA proposes to implement the new regulated prices for both WBB and WLL on January 1st 2024. Given Sure's notification obligations, implementation on this date will only be possible if

3 Sure comments separately on the WLL PD.
4 Of which one was school half term, with several key Sure employees away on annual leave.

the GCRA publishes its Final Decisions within a week of receiving stakeholder comments.[5] This does not allow sufficient time for a full consideration of stakeholder inputs, especially when the GCRA will receive substantive comments across a range of aspects of the PDs, including detailed comments on the new combined Excel model.

- Due to the limited time available this response is incomplete and we have summarised areas where we require more time.

5 Sure urges the GCRA to take the necessary time to fully review the contents of this document and Sure's WLL PD response. Each response stands on its own, but due to the GCRA's approach and blending of data as between the two decisions, Sure considers that it is imperative both documents are read together. This is particularly so because neither of these Sure documents are as comprehensive as Sure would want them to be, given the compressed response window imposed by the GCRA. Having regard to the stated timetable, the GCRA is also urged to ensure that it allows sufficient time to explore the facts and issues identified by Sure in full - it would surely be better to get to the right decision, rather than one which is rushed but wrong. Indeed, the potential consequences of the proposals in the WBB PD are of a magnitude that it would be reckless to implement the PD *without* due process and rigorous and transparent analysis.

6 To that end, the GCRA needs to restart the WBB market review with a full market definition and SMP analysis, followed by the design of remedies which are appropriate and proportionate to any market failures defined in the newly defined relevant markets. This remedy element of the review must use appropriate data.

7 The GCRA may consider itself under pressure to complete its current review as quickly as possible. However, good regulation is not about concluding actions quickly; it's about concluding actions appropriately, having undertaken an evidence based process, leading to an informed and fair outcome. Based on the work that the GCRA now needs to undertake, by restarting the WBB market review, we recognise that it cannot be rushed and therefore that an interim solution may be appropriate.

8 As a result, Sure would be amenable to the GCRA retracing its steps to the approach in the First Proposed Decision, including the use of a separate cost model. Whilst this also suffered from some fundamental weaknesses, as previously identified, the more limited scope of the approach at least had the effect of limiting the harm resulting from those weaknesses. This temporary solution would be used only until such time as the GCRA's revised review of WBB has been completed. This

[5] Which, as a result of the GCRA accepting Airtel's request for a short extension to the deadline, is now the 6th November 2023.

approach would avoid the potential harm from the lack of reliable data and undue reliance on inappropriate assumptions and proxies and enable the GCRA to move forward quickly, both on an interim basis and during its revised market review.

**(A) GCRA Response to executive summary**

**It is concerning that Sure has seen it appropriate to use the opportunity for responses by portraying balanced judgement on methodology & approach, and necessary estimates of future costs and revenues as 'flawed, unsafe, and not fit for purpose'. There are also assertions made emphatically but which are incorrect, including the portrayal of the GCRA approach as unprecedented, which as the GCRA response in the pertinent sections will explain, is not consistent with the evidence. This is not to say that all Sure's views are unpersuasive and, in some cases, the GCRA's modelling has been adjusted in response.**

**The basis for the GCRA's views and evidence it has weighed up, have been presented through two public consultation processes, one in May and the other in October of this year, accompanied by models that set out the analyses in detail and transparently at each stage of the process. When new information informed the GCRA's decision to alter its First Proposed Decision it accorded Sure, among others, an additional opportunity to respond to its reasons for doing so in a transparent model accompanied by a document setting out its reasoning. The GCRA certainly did not proceed in what Sure portrays in its response as an 'arbitrary' way. The evidence gathering and assessment was also supported throughout by a highly regarded international economic advisor, Frontier Economics, that is a specialist in this subject matter and modelling of such controls. The GCRA has followed the law in giving all parties opportunity to respond to its assessment not just during the consultation period itself, but in Sure's case, bilaterally given the commercially sensitive nature of some of the information and in consideration of the impact on Sure.**

**Sure has therefore been accorded a great deal of engagement but maintains a portrayal of the approach and process as 'unilateral'. While any incumbent has reason to seek a better regulatory price control settlement through advocacy and evidence, it has a responsibility to do so by engaging with the explanations put to it and the evidence given to it by its regulator, which is the purpose of the consultation process. It is unfortunate that Sure has in many respects chosen rather to not engage directly with the explanations already given to it but simply repeat its original position.**

**These will be public documents and key stakeholders have a right to a fair representation of arguments and positions being exchanged. Sure's views on specific aspects of the control are addressed below but it is felt necessary to preface these with the above observations.**

# 2 Confidentiality

9 Sure highlighted in this document any information that it considers to be confidential and not to be included in the published version of its response, or shared with any other parties apart from the GCRA and its appointed advisers, Frontier Economics, without Sure's express permission.

10 Sure would be pleased to provide the GCRA with a redacted version of this response.

# 3 Introduction and background

11 The Second Proposed Decision for the wholesale broadband access (WBB) market (the WBB PD) covers the remedies stage of a market review that the then joint Channel Islands' regulator, CICRA, started in 2018 for which the market definition and significant market power (SMP) findings were concluded in 2019 and set out in the Statutory Notice of a Final Decision – Broadband Market, dated 20th March 2019 (the 2019 Decision) [6].

**(B) GCRA Response**

**Sure considers that the process which is the subject of this price control decision began in 2018. The designation of market power was a regulatory decision under a separate decision-making process that concluded in 2019. Designations of market power are intended for a range of purposes to provide regulatory certainty for Sure and other licensees and can be relied on in some cases for long periods of time. These purposes included the applicability of certain licence conditions where a market power designation is a prerequisite for them to have effect. The relevance to price controls is only one of those purposes. The price control process began with evidence gathering in the second half of 2022 and formally commenced in May 2023. This does not equate to the price control process beginning in 2018.**

12 The WBB PD was published and is being consulted on in parallel with the Second Proposed Decision for remedies in the wholesale leased lines market (the WLL PD) and the GCRA has created a combined model to assess the revenues and costs associated with each of the relevant services in those markets, using a discounted cashflow model (DCF) approach. In this document we refer to the two decisions collectively as the PDs.

**(C) GCRA Response**

**The models of wholesale broadband and leased lines costs/prices share a great degree of similarity given the extent of shared costs supporting broadband and leased line provision; the associated calculation mechanisms and data are consistent with this. It is therefore**

**important to underline that the review of those models by Sure did not in practice require entirely separate reviews of two models. Sure was given a period of time to review the models when the First Proposed Decisions were issued (23 May 2023 to 14 July 2023 for broadband and 31 March to 12 May for leased lines) and subsequently had the ability to familiarise itself with both models up to October when the Second Proposed Decisions were issued after which it was given four weeks to review a single common model with a structure and data it would at that stage have been very familiar with.**

13 The PDs were issued on 5th October 2023 for consultation, with the GCRA giving stakeholders a concurrent four week period to respond to both proposed decisions. Sure has provided reasoned requests for extensions of time on both decisions but these have been refused by the GCRA.

14 The WBB PD and the WLL PD propose a reduction in Sure's wholesale revenues of 32% and 23% respectively in the two markets. For 2024, the WBB PD is forecast to reduce Sure Guernsey's revenues by £[redacted] of total revenue), with the WLL PD affecting [redacted] of revenues ([redacted] of total revenue)[7].[6] The forecast total impact, across the five years of the GCRA's proposals, is £[redacted]

15 [redacted]

**(D) GCRA Response**

**The GCRA has identified that Sure charges other retailers, who are also its competitors, at levels that are not justified by the cost of providing them. The scale of that overcharge is material. This means that if allowed to continue, the cost of doing business in Guernsey and the cost of living for Guernsey households who take broadband, would be a lot more expensive than they need to be. The difference would be retained by Sure as a private business serving the interests of its shareholder. The level of the control has been set by the GCRA to ensure Sure's revenues will cover the cost of its FTTP deployment (along with other costs associated with providing wholesale broadband services), plus a reasonable rate of return. Sure has had considerable opportunity to put forward submissions on the estimated costs and revenues on which this control is based .**

16 The WBB PD does not pose specific questions that consultees should address, and Sure has therefore responded to the main points and proposals made by the GCRA. The fact that Sure has not responded to a specific point should not be interpreted as Sure agreeing with or conceding that

[6] Measured on an arm's-length basis, in alignment with the GCRA's cost modelling methodology.

point. Rather, the consequence of the extremely short timeframe for responding to the two substantive decisions, the very limited time allowed by the GCRA to produce this response and the lack of clarity and uncertainty surrounding the process has necessitated that Sure prioritises its analysis and resources on what it has understood to be the main themes and principles underlying the GCRA's Proposed Decision. Had the extensions that we sought been granted, Sure would have been able to provide a fuller response including details of precedents from other jurisdictions and a full review of the model.

**(E) GCRA Response**

**In several parts of Sure's response it comments on the issue of time to respond. Sure was provided with information to assist in its response to both the May and October Proposed Decisions, in particular the Second Proposed Decision. The extent to which it was guided is apparent from the dedicated tab in the model providing explanations and references to the specific changes made from the model in May to the model in October; highlighted in each sheet of the model were the specific changes made. The extent of these changes was not large. This assistance is a matter of record but because no reference is made in its response to the considerable assistance given to Sure, to summarise:**

**With the May 2023 Proposed Decision for broadband, Sure was given from 23 May 2023 to 14 July 2023 to examine the GCRA's First Proposed Decision as well as the model on which that proposed wholesale broadband regulated control was based. The broadband element of the model that accompanied the Second Proposed Decision in October was substantively the same as that in May 2023.**

**As explained in detail in correspondence to Sure, there were ten changes in the October 2023 version of the model from the model Sure had received in May 2023 relevant to the wholesale broadband control. Eight of those were made at Sure's request and were minor. These could easily be verified by Sure and there is no dispute that these were minor. The final two changes had a large impact on the headline price reduction because an additional revenue stream was included, previously omitted. This was the revenue Sure received from OLOs for wholesale line rental when OLOs rented wholesale broadband rental products from Sure so that they can retail a broadband service. The reasons for including it are explained in the Second Proposed Decision. The additional revenue materially changed the output of the model in terms of average level of charges that were needed to cover costs (an 11% average price reduction changed to a 32% reduction), but the complexity of the model had not altered to any material extent. Sure has not addressed itself to the specifics of why these ten changes required an even longer period for it to respond than the time given.**

**From the instructions given to its advisors Sure then decided to undertake a root and branch**

**review of the model at a very late stage in the overall process even though it had access to the model since May 2023 and had considerable time to familiarise itself with the methodology up to October 2023.**

**The purpose of a regulatory consultation process is to give opportunity to engage with the assessments made and evidence used in a timely manner. Because other stakeholders bear the considerable costs of delay where charges are excessive, the impact is not solely about the incumbent's interests. Sure's interests had to be weighed against those of other stakeholders. An extension of the response period would have risked a material delay to the start of the price control to the detriment of OLOs and (given the reasonable expectation these reduced costs would be reflected in lower retail prices) to Guernsey consumers and businesses. Given the time that Sure had already had to review the model, and the purpose of this consultation - which was only concerned with the changes to the model since the previous consultation, we concluded, having balanced these interests, that an extension could not be justified.**

17 Sure has made extraordinary efforts - efforts beyond what should be reasonably be expected of it - to analyse and process the GCRA's documents and model and to produce reasoned and factually supported responses to those. This has involved near-24-hour shift working between Sure's in-house team and their legal and economic advisors including over weekends and it resulted in the Sure's legal and regulatory Director cancelling long-planned personal leave.[7] These facts are mentioned to demonstrate the pressure which the GCRA's timeline has placed on Sure and which was, on any view, out of the ordinary and unlike anything Sure has ever experienced before, in any of its regulated jurisdictions.

**(F) GCRA Response**

**Given the changes from the First Proposed Decision, which were explained in detail to Sure, there is difficulty understanding the rationale for the lengths to which Sure felt it necessary to go to address the ten changes to a model it was already familiar with. These did not require the amount of time and effort to examine and respond compared to earlier consultations, particularly given the signposting provided by the GCRA through highlighting and explanatory tab intended to assist Sure.**

18 Despite these extraordinary efforts, this document and the accompanying response to the WLL PD do not provide full and comprehensive analysis of all issues identified (and may not have identified all relevant issues), nor do they provide the full supporting collateral that would be expected for a well-reasoned and -supported regulatory submission, and which are the usual feature of Sure's

[7] A full representation of the efforts applied to produce these documents can be supplied on request.

submissions.

19 Below is a summary of some content that Sure would normally have included in its response, had it been afforded the necessary and appropriate time to do so:

- Examples and precedents for the purpose of the market definition within the overall market review process, including comments made by the Competition Appeal Commission in relation to approach taken by Ofcom in past market review processes.
- Possible impact on the functioning of the Guernsey telecoms markets of using very old market data, including on industry stakeholders and on consumers of telecoms services as well as the overall Guernsey economy.
- The possible impact of changes in the Guernsey market since the original data collection including whether ex-ante regulation remained justified, regardless of Sure's market shares.
- Analysis of the approach taken in other countries, including the UK, to regulation of products associated with those to which the SMP remedies are being applied.
- Research into whether other regulators internationally have ever adopted the approach of including revenues for an associated product into the profitability analysis of the regulated product for the purpose of setting the cost-based regulated price for the SMP product.
- A full analysis of possible unintended consequences resulting from the inclusion of WLR revenues in the WBB product profitability analysis.
- A comprehensive analysis of the GCRA combined WBB and WLL Model. In this response we have had to limit our analysis to issues that were most obvious and (we hope) of most material importance to the resulting unit costs and regulated prices.
- Research into examples of good regulatory practice in the setting of principles for cost modelling and sharing of assumptions and detailed modelling working prior to reaching conclusions for implementation.

**(G) GCRA Response**

**The GCRA has engaged in a meaningful and transparent consultation process in arriving at its Final Decision and Sure has been given opportunity to examine and respond to the GCRA's assessment. The points described above that Sure now raises are all ones that Sure could have addressed at earlier stages of the process. None of them are issues that arose because of the changes made between the First and Second Proposed Decisions.**

20 The GCRA has published separate documents setting out the WBB PD and the WLL PD and Sure has

produced a response to each of those. There is, however, significant overlap and interdependencies between the two PDs and it is necessary, therefore, for Sure to occasionally address WLL-related issues in this document and vice versa for our response to the WLL PD. As the same concerns apply to the two PDs, some parts of the two Sure response documents will be similar or identical.

21 Sure would welcome the opportunity for follow-up discussions with the GCRA to explain the points and analyses set out in this response document and to produce follow-up documentation and analyses that the GCRA will require in order for the GCRA to make a fully reasoned, evidence-based decision.

22 The main concerns set out in this document are that:

- The WBB PD presents materially different remedies and associated financial impacts to those set out in the First WBB PD and allows stakeholders insufficient time to analyse and understand both how the GCRA justifies these changes and whether they can be objectively justified.
- The WBB PD relies on out-of-date market data and analysis and presents a material risk of regulatory error and overreach.
- The WBB PD either has the effect that it amends the 2019 Decision on market definition and/or redefines the WBB product to include a separate product (the wholesale line rental (WLR) product).
- The GCRA's choice of costing approach is inappropriate and contradicts the GCRA's own assessment of the available options.
- The creation of a combined model for WBB and WLL and the inclusion of WLR revenues has highlighted a number of material weaknesses in the GCRA's model,
- Having removed the obligation on Sure in 2016 to produce separated regulatory accounts, the GCRA now seeks to rely on the types of data that can only be generated as an output of separated accounts. The result of the GCRA's approach is that there are clear inaccuracies resulting from using out-of-date data (as Sure can only provide this data by going back to separated accounts that are almost 10 years out of date), coupled with excessive use of assumptions and approximations which render the model outputs unreliable and unfit for purpose.

## 4 The recognised best practice approach to market reviews

23 Across telecoms regulation internationally, it is recognised that the market review process should be seen as a single process albeit with a number of distinct but interrelated steps. We describe below the three main steps within the market review process and how they interrelate. In summary, those steps are: (1) market definition including review of whether the market is susceptible to ex-ante regulation; (2) SMP analysis, and (3) design of remedies.

24 The WBB market review, of which the WBB PD constitutes the third and final step, started in 2018, when the GCRA (then as part of the joint Channel Islands' regulator, CICRA) issued its first request for information to enable it to determine the market definition and SMP steps and, in 2019, CICRA issued its Decision on market definition and, with it, its SMP findings. That 2019 Decision should then have formed the basis of the GCRA's subsequent further analyses when it sought to determine what it considered to be appropriate and proportionate remedies to address any market failures identified in the 2019 Decision.

25 However, it is difficult to recognise or trace the work done over 2018/19, and recorded in the 2019 Decision, within the WBB PD; the work does not appear to form part of the same market review process. The reason for that is primarily one of timing. To explain this point it is helpful to consider the origins of the three-step market review process and how it has evolved.

26 The market review process used widely across the world today was developed by the European Commission and first introduced in the Framework Directive in 2002. The Framework Directive mandated that national regulatory authorities (NRAs) perform market reviews every three years, regardless of whether there was evidence that any significant changes had occurred in the market. This approach ensured that regulation could not fall significantly out of step with real-world market developments and imposed a rigour on the NRAs to observe and reflect the current market reality in each market review analysis and associated decisions. In general, end-to-end market review processes were expected to take 12-18 months, including the design of remedies. Those remedies would then be applicable for a three-year period. Given that the GCRA started collecting data for the current WBB market review in Guernsey in 2018 and reached its market definition and SMP conclusions in 2019 there can be no doubt that the GCRA's chosen approach falls significantly outside the rules set out in the Framework Directive.

27 The process and timeframe for the three-step market review remained largely unaltered until 2018, when the European Electronic Communications Code (EECC) was introduced. Under the EECC, the three-step market review process remains almost completely unchanged, save for some changes to the guidelines. Under the EECC the minimum frequency for NRAs to perform market reviews was changed from three years to five years, so that <u>NRAs must complete new market reviews at least</u>

every five years. The reduction in market review frequency was much debated, with the rationale for the increase to the maximum gap between completed market reviews being the need for increased regulatory certainty [for telecoms operators] during a period of significant investment in new FTTP network infrastructure.

28 Viewing the GCRA's chosen approach to this WBB Market review against the EECC rules, it is again clear that the GCRA falls far short of compliance with accepted best regulatory practice. Under the EECC, the NRAs must review the relevant market reviews at least every five years, with the market review decision then being implemented as appropriate during that period; to do otherwise is to divorce the implementation from the market conditions it is intended to manage. In particular the EECC states that any such review must include "a new assessment of the market definition and of SMP" and that "a mere notification of new or amended regulatory remedies, imposed on the basis of an outdated market analysis" is unsatisfactory.[8] In contrast, here the GCRA is proposing to conclude a market review five years after it collected the relevant market data and performed the market definition and SMP assessment. In other words, the GCRA is completing the first market review at the time it was supposed to have undertaken and completed the next market review.

29 This is not simply a concern that the GCRA is not performing market reviews in accordance with best practice (with the correct frequency), but that this decision is now based on out-of-date data that should have been used for the market review process that was initiated and (should have been completed) 4 to 5 years ago.

30 Sure's concern about the timing of the GCRA's market review process is not one of pedantry or undue rigour, but of the GCRA seemingly not recognising the criticality of making decisions based on current and reliable data. The materiality of the proposed WBB PD has already been highlighted. It is extraordinary that the GCRA should seek to impose remedies of such a magnitude on Sure, based on old data which is no longer apt, and to do so in a market which is undergoing rapid and material change.[9]

31 The GCRA states[10] in the WBB PD, and its guidelines (and those of the States of Guernsey) that the GCRA should take account of international best practice[11].

**(H) GCRA Response**

**On Page 2 of Sure's response to the First Proposed Decision (Executive Summary) a similar position was advocated for a new market review process. The GCRA responded to that but the**

8 European Electronic Communications Code – paragraph 177

9 We note that Sure's FTTP deployment project was not known at the time of the market definition and SMP assessment in 2018/19.

10 See, e.g. the reference to EECC in section 3 of the WBB PD at page 7, and footnote 13

11 E.g. Article 54 of the Competition (Guernsey) Ordinance 2012.

**Sure response to the Second Proposed Decision repeats arguments already submitted.**

**The GCRA's position as set out in Appendix 1 of its Second Proposed Decision is repeated here:**

**"The GCRA acknowledges the value of a contemporary market definition and market power assessment. Regulatory good practice is however not defined by only one approach in all contexts since the context is relevant to considering what is proportionate and effective as an approach. The GCRA has been directed by the States to be proportionate and cost effective. Since a first principles approach to market definition and market power assessment is generally a burdensome and lengthy process, and given the existing designation on Sure was informed by very large market shares which have not on the face of it altered materially since that designation was made, the approach taken has been to first consider whether there has been or it can reasonably be expected there will be, material changes to the basis for the current designation that might alter that position. Based on evidence available to the GCRA it is not apparent that regulatory good practice in these circumstances obliges a first principles review of the market and market power that Sure is requiring. To the extent there have been developments such as technology, market entry, or observable competitor behaviour, Section 3, of the Second Proposed Pricing Decision weighs up these factors and comes to conclusion. The GCRA has taken an approach that it considers is appropriate in the context of the market in which it regulates and contemporary evidence and is therefore a sound basis on which to consider whether remedies for wholesale prices are reasonable."**

**If Sure considered that material evidence exists that would lead to a different outcome in a new market assessment, it was obliged to explain what that evidence is. Hypothetical questions is not evidence. Without such evidence, Sure is submitting that a new market review must be conducted prior to any new price control, adding a further step at not insignificant cost, to a process whose advantages are not explained, beyond their apparent compatibility with practice in significantly larger jurisdictions. It is in the GCRA's view significant that the outcome of the GCRA's review is that wholesale broadband charges would be significantly higher than justified by cost – if Sure was not dominant in the relevant market this is an unlikely outcome.**

32 We set out in more details below why this extended timeline is of particular concern in the market review.

# 5 The GCRA's WBB market review process

33 The market for which the WBB PD proposes to impose remedies was defined by the GCRA in its

Decision in 2019[12] (the 2019 Decision), using data collected in the two years preceding that decision.

34 In Sure's response to the First Proposed Decision, we explained why it is important that the market definition and SMP determination are clear and based on accurate and recent data and that, therefore, the 2019 Decision was not fit-for-purpose for the design and imposition of remedies at this time.[13]

35 In the WBB PD, the GCRA seeks to justify not performing an up-to-date market definition and SMP assessment on two grounds:[14]

- Sure retains and is likely to continue to hold a high market share, and
- Due to the market share picture, it would not be proportionate for the GCRA to engage in a new market definition and SMP process.

36 Sure does not dispute its market share, nor that it is likely to retain SMP in an updated market definition and SMP exercise for wholesale broadband services in Guernsey. However, focussing on those two aspects alone is misguided. The importance of renewing that analysis lies in ensuring that the relevant market definition either remains unchanged or, if not, to address changes since the 2019 Decision and calibrate remedies to address those changed market conditions.

37 As precedent elsewhere recognises (and which would have been supplied had further time been permitted), the purpose of the market definition process is not simply to determine whether or not a party enjoys a position of significant market power (SMP). Instead, for forward-looking regulatory ex-ante market analysis such as this[15], the market definition process seeks to understand likely market developments over the period in which the ex-ante remedies are intended to apply and any harm to consumers (directly or indirectly) that could arise by the abuse by an SMP operator of its market power. This then influences the nature and detailed designs of the remedies imposed on that SMP operator. This element of the analysis is one of the crucial respects in which the PDs are fundamentally flawed and flawed through a deliberate decision by the GCRA as to its approach.

38 The profile of broadband services consumed in Guernsey has changed in the past six years. It is, therefore, necessary to reassess the definition of the relevant market. Are all speeds still in the same market? Are copper and fibre services in the same market? Are wireline and wireless services in the same market? Does the rapid deployment of FTTP across Guernsey and Herm, which was not

12 Document No: CICRA 19/14, dated March 20 2019.
13 Sure refers to its analysis presented in its response to the First proposed Decision.
14 Paragraphs 3.18 and 3.19.
15 As opposed to ex-post market analyses under competition law.

foreseen in 2019, mean that the broadband connections and leased lines become substitutable at certain speeds? There are likely to be further relevant considerations in this regard, but the limited time permitted has not been sufficient for Sure to identify all of these.

39 One example, however, is that Sure has recently launched a 2Gb symmetrical broadband product, which could significantly influence the substitutability between broadband and leased lines services. Other significant product developments may well occur during the period for which the proposed remedies would apply.

**(l) GCRA Response**

**Paragraph 12 of Appendix 1 gave a detailed response by the GCRA to this type of submission in its Second Proposed Decision. Sure has not engaged with that response and Sure has not argued against the points made. This is repeated below:**

**"On the suggestion that leased lines are likely to offer a material degree of substitution of broadband products in future, the evidence for this being a material change and likely outcome has not been provided and appears to be a theoretical outcome only.**

**It is not apparent that this substitution argument has been accepted in other jurisdictions and Sure has not provided evidence that it has or that there are particular features of the Guernsey market that make it more likely in this market. The service standards are materially different and the technical features of these two product categories are also significantly different. It is possible that at the lowest leased line speeds some consumers may opt to take broadband. However, broadband as a product for household needs does not have the same or similar service level standards that leased lines which support business needs provide. The price levels are materially different between them and the GCRA understands Sure actively dissuades consumers from using broadband instead of leased lines because it does not give the same quality of service standards for broadband as leased lines. Businesses may of course use broadband as a fallback or as well as leased lines and the GCRA understands this already happens but the GCRA has seen no evidence that the leased line market and the broadband markets are likely to converge in the medium term."**

**The existence of a 2Gb symmetrical broadband product launched by Sure does not constitute evidence that there is a change in substitutability between broadband and leased lines. If Sure had evidence of customer behaviour around substitutability, despite the observations above on different quality service standards, price levels, Sure's own behaviour dissuading people from using broadband as substitutes for leased lines, this would have been expected to have been provided, but was not.**

40 The Covid pandemic changed the ways that people use their broadband services and the reasons for doing so. In short. it would seem that significant changes have occurred in both the supply and demand for broadband services in Guernsey since the GCRA's 2019 Decision.

**(J) GCRA Response**

**See GCRA Responses (H) and (I) above.**

**Also, Sure is commenting on changes in the retail broadband market, and not changes to the relevant wholesale market that is the subject of this price control in which it holds a market share of over 98% the GCRA has determined it is likely to retain over the period of the proposed price control.**

41 To the best of Sure's knowledge, the GCRA has asked none of those questions when assessing whether the 2019 market definition is still appropriate for the application of these new remedies. Certainly, the WBB PD only refers to the likelihood of Sure retaining SMP in the relevant market, even if it were to be redefined.

42 The omission of an up-to-date market definition analysis is aggravated by the fact that this should be a forward-looking analysis, applicable for at least the next five years[16]. Putting to one side the materially adverse impact on Sure, it is not in the interest of Guernsey (businesses and consumers alike) that its regulatory controls should be based on up to 12 years-old data, but that is what will happen by the end of the period this review is intended to cover. Again, had more time been permitted this is an aspect upon which Sure could have provided further examples.

**(K) GCRA Response**

**The GCRA's modelling takes into account the current and expected future market situation and the modelling used to set the pricing reflected current and forecast future data i.e. Sure revenues based on forecasts of future WBB demand, and Sure's costs based on future cost forecasts, including Sure's forecast of its FTTP deployment costs.**

43 It is also noticeable that the GCRA appears to look to market share only, when stating that Sure would certainly continue to enjoy a position of SMP. Market shares are important indicators of SMP, but before assessing SMP, the regulator first needs to determine whether the relevant market as defined is susceptible to ex-ante regulation. This includes considering whether there are material and long-term barriers to market entry and competition, which therefore relies significantly on the demand- and supply-side substitution analysis the regulator will (should) have performed as part of the market definition. This approach is best practice and had further time been available Sure could have provided more specific examples of this.

16 And the GCRA has typically extended the duration of markets reviews, even though as noted above best practice as per the EECC is to conduct them every five years.

44 For example, the 2019 Decision concluded that Sure had SMP in the relevant market, despite also having found that wireless services using current 4G and future 5G networks were direct substitutes to the fixed line (then copper, now copper or fibre) broadband connection. With several 4G networks in existence in Guernsey, this would suggest that the barriers to market entry were substantially lower than would have been the case if wireless 4G and 5G broadband services were *not* included in the relevant market.

45 Whilst the purpose of this document is not to revisit the 2019 Decision, the above clearly identifies that a more up-to-date analysis (with 5G launch in Guernsey likely during the period the proposed remedies will be in force) should have been done by the GCRA and that there is a very real probability that, had it been done, it would conclude that the market is not susceptible to ex-ante regulation and thus that no SMP would be found.

46 The GCRA cannot legitimately close its mind to that (and other) possibilities. The very purpose of the three-stage market review process (consisting of: (1) market definition including review of whether the market is susceptible to ex-ante regulation; (2) SMP analysis, and (3) design of remedies), and the need for regular reviews, is that only through doing that detailed and current analysis can the need for ex-ante regulation be properly determined and only through identifying any market failures that give rise to SMP, can appropriate and proportionate remedies be designed. The lapse of time since the 2019 Decision and the market changes mean that the GCRA's approach to the PDs is fundamentally out of date and, critically, falls short of regulatory best practice.

47 There may be times when the GCRA could seek to justify departure from best practice, for example in the name of proportionality given the size of the Guernsey telecoms markets. This is, however, not such a time. The materiality of the GCRA's proposals and the likely impact on Sure's ability to continue its joint FTTP deployment project with the States of Guernsey means that this decision must be underpinned by the strongest and clearest analysis.

**See GCRA Responses (H), (I) & (J) above.**

48 As summarised above, a regulatory market review is a single process with a number of distinct but highly inter-dependent steps. Sure is concerned that the GCRA does not appear to understand this fundamental principle. In fact, in the GCRA's most recent letter to Sure in relation to this consultation process, Michael Byrne (CEO of the GCRA) states as follows:

*"The price control process began in the summer of 2022 (not 2019 as repeatedly suggested in your*

*communications)"* [17]

49 Contrary to Mr Byrne's apparent misunderstanding, there is no separate price control process (or, at least, there should not be a separate process). There is a remedies definition stage of the market review process – with a price control being one such remedy that could be seen as appropriate to address SMP in the relevant market - but that step is closely linked to and entirely based on the analyses and findings in the two preceding steps (market definition and SMP analysis). To suggest that the price control activity is a separate process to the market definition and assessment of SMP stages of the overall market review demonstrates the error in the GCRA's reliance on a market definition and SMP finding that was done nearly 5 years in the past (and based on 6-7 year' old data). The GCRA's stated approach reflects a fundamental lack of appreciation of the market review process. It is such a significant matter that it fatally undermines the PDs (in the common phrase, it is the malfunctioning '13th chime' that brings everything else into question). Again, had more time been available to Sure it would have supplied a detailed analysis of these matters, with reference to the relevant regulatory guidelines and precedents.

**See GCRA Response (B) above.**

50 Returning to the issue of how to determine SMP in a relevant market (which the regulator has determined is susceptible to ex-ante regulation), Sure agrees that market shares are important parameters to consider. However, Sure reminds the GCRA that other important parameters should also be considered. It is important that the analysis should be forward-looking and take into account the likelihood of the potential SMP operator being able to sustain its high market shares.

51 Based on the very brief and high-level analysis set out above, it is clear that this analysis has not been done and that Sure, therefore, does not accept the GCRA's justification for not performing a new market definition and SMP analysis. The GCRA's resistance to performing that analysis is increasing the prospect of its decisions being challenged and, in turn, delaying the implementation of any appropriate new remedies, and which in turn will further exacerbate the impact of the out-of-date analysis.

52 The market definition set out in the 2019 Decision reads as follows:

"*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*".

53 The 2019 Decision further clarifies[18] as follows:

17 Letter from Michael Byrne to Alistair Beak, dated October 30th 2023, paragraph 2.

- Broadband products of different speeds are in the same market;
- Business and residential broadband products are in the same market;
- 4G-based broadband services are included in the market; and,
- Future 5G-based services are included in the market.
- The 2019 Decision, however, does not consider or address whether leased lines and broadband services are in the same market. The omission of that analysis is particularly concerning given Sure's current progress in FTTP deployment and recent launch of a symmetrical 2Gb broadband service, which a large number of leased lines customers may find an attractive and cost-effective substitute.

54 Further, the wording of the above market definition suggests that it focuses on the physical broadband customer connection and the fact that it provides connectivity to the internet. It does not, it seems, focus on the ability of a user of that physical access to provide retail internet services. In other words, the product is not defined as the facility(ies) required for an internet service provider (ISP) to deliver retail internet access to retail customers in Guernsey. In fact, when defining the product market, there is no mention at all of how OLOs use the products included in the relevant market and any ancillary or associated services required alongside those products. This lack of analysis is important because, as explained below, it now seems that the GCRA may have changed the market definition so that it now includes those products and services which are necessary for an OLO to deliver retail internet services in Guernsey. Whilst the GCRA's apparent recognition that the market definition does need changed is telling, changing that definition on the hoof is not an appropriate way to go about the process, nor is the apparent change made by the GCRA rational or appropriate.

**(L) GCRA Response**

**These issues are dealt with in Section 3, of the GCRA Final Decision.**

## 5.1 Changes to the WBB market definition

55 Despite stating that the WBB PD uses the market definition set out in the 2019 Decision (as was the case for the First Proposed Decision), the GCRA proposes in the WBB PD that revenues for the wholesale line rental (WLR) product should now be included when calculating the price remedy to be applied to the Sure WBB products.

[18] Paragraphs 3.15 – 3.30

56 In so doing, the GCRA thus appears to alter the definition, by suggesting that it is not only the Wholesale Broadband Access (WBB) products that are covered by this market definition, but also the WLR product. Indeed, the GCRA appears to be suggesting that the WLR product is *a part of* the WBB product.

57 It is notable that the 2019 Decision does not make a single mention of the WLR product, nor of any other products other than the core WBB products (products in plural as there are several versions of WBB at different speeds).

58 For clarity, the WLR product is the Sure wholesale product that enables a retail telecoms provider in Guernsey to offer a fixed voice service to end customers. The retail fixed voice service is available as a stand-alone service, but in order for an end customer to purchase a fixed broadband services, they must also purchase a fixed voice service. The GCRA therefore postulates that OLOs wishing to offer retail broadband services in Guernsey, using the Sure network to do so, must purchase both the WLR product and a WBB product.[19]

59 Despite making this very material change, the GCRA does not even refer to the market definition in this context; it simply states that, as OLOs must purchase both services to deliver internet services to retail customers, the WBB PD *must* cover them both.

60 In other countries, including the UK, regulators will sometimes include remedies for access to associated facilities or ancillary products that must be purchased by the wholesale customers, in order that those wholesale customers can make effective use of the core regulated product(s) within the relevant market definition. However, that does not mean that those associated facilities and ancillary products are part of the relevant market definition, not least as the conditions for access to those facilities and products are regulated separately from the core products within the relevant market. In many instances the terms for access to the associated facilities and ancillary products are set using very different principles from those applied to the core product(s). Had Sure had a longer period in which to produce this response, specific research would have been undertaken into this matter and additional data provided to bolster this point, albeit it should be self-evident to any person experienced in this area.

61 That is, however, not what the GCRA is proposing to do. Instead of seeking to ensure that associated facilities and ancillary products are available on reasonable terms for OLOs to be able to use the WBB product set, the GCRA is proposing to include the revenues received by Sure for an ancillary product (namely the WLR) with the revenues of the WBB products and to count *all* of those revenues as being included within its calculation of the profitability of the WBB product. To

19 See Sure's analysis of that assumption later in this document.

the best of Sure's knowledge and that of its international advisors, there is no precedent anywhere for this novel approach. Again, had Sure had a longer period in which to produce this response, specific research would have been undertaken into this matter and further data provided to support this point albeit, and again, it should be self-evident to anyone with experience in this area.

62 Despite the absence of that specific research, it should nonetheless be evident that the WLR product *is* a separate product and one which is or should be treated independently from the WBB products. The WLR product can be purchased separately and independently from the WBB product and is, in fact, consumed by Sure's retail business and at least one OLO to serve customers who wish to take only a voice service and no fixed broadband service.

63 That the WLR is a separate stand-alone product is further supported by the fact that OLOs and Sure's retail business can (and do) charge end customers separately for the fixed voice service that is delivered through the WLR product.

64 The necessity of purchasing a fixed voice connection (a landline) in order to be able to purchase a fixed broadband connection is not unusual internationally. Despite that, we are not aware of any instances where, for costing purposes, landline revenues have been added to fixed broadband revenues, with the total being used to directly influence the profitability of fixed broadband services. For the GCRA to do so and to provide no valid explanation or justification as why that is appropriate, nor what the potential unintended consequences could be of doing so, appear to be significant failures by the GCRA in both substance and process. Indeed, as explained elsewhere in this response and in the WLL PD response, the inappropriately material impact that WLR revenues have on the profitability of WLL services provides clear evidence of such a failure.

65 During a call between the GCRA and Sure on October 26th, Sure asked the GCRA whether it considered WLR to be included within the relevant market definition and the GCRA explicitly took away as an action that it should provide an answer to that question. When the GCRA replied to Sure's questions on October 27th[20], however, the GCRA simply referenced the WBB PD, stating that it had nothing further to add. This is bewildering, as the subject of the WLR being included in the relevant market or not is not mentioned once in the WBB PD. The point is important and material because it is having a fundamental effect on the outcome (in that it skews the figures used substantially). Sure can only conclude that the GCRA either does not know the answer or is unwilling to share it with Sure.

20 Note that, in that reply email, the GCRA did not provide a single answer to any of Sure's clarification questions.

In fact, the inclusion of the WLR revenues in the calculations of the WBB product profitability means that the WLR product has (whether explicitly or implicitly) been included by the GCRA into the relevant market. To have made such a material change to the relevant market definition without even mentioning it in the PD, and also declining to provide clarification on the matter when explicitly asked to do so, not only falls short of good regulatory practice. At its heart, it invalidates the conclusions reached by the GCRA in the PDs. As explained above, the market definition is the critical foundational cornerstone on which the entire market review process is built, and any remedies must be designed with a focus on that market definition and any market failures within that market.

66 If the market definition is changed, the entire market review needs to be revisited as a consequence. This may not necessitate starting from scratch, but a robust impact assessment would need to be undertaken, as a bare minimum. Given that the market definition in this market review is already woefully out of date, however, Sure suggests that the only appropriate and responsible action by the GCRA would be to restart the wholesale broadband market review. If done quickly and efficiently, it is possible that it could still use some of the work undertaken in the current review (if considered relevant).

67 The GCRA has a duty to create a stable and transparent regulatory framework that encourages market players to invest in facilities and services to the benefit to consumers in Guernsey and the overall Guernsey economy. Its regulatory actions must be fair and in accordance with best practice, particularly where it seeks to intervene in a manner which has impacts of the magnitude proposed here. Its interventions have a direct effect on the market. Here, Sure is in the process of the largest telecoms capital investment Guernsey has seen for decades – namely the island-wide rollout of a fibre broadband network, which is being partially funded by the States of Guernsey - , but alongside that work it faces an erroneous and haphazard approach by the GCRA in these PDs which presents significant risks to Sure's ability to successfully complete that programme within the scheduled timeframe.

68 It is in Sure's interest – and indeed Guernsey's interest - to gain regulatory certainty as quickly as possible. It goes without saying that Sure would be willing to collaborate fully with the GCRA on a new wholesale broadband market review being undertaken at the earliest opportunity.

## 5.2 Identifying associated facilities and ancillary products for the WBB products

69 As the GCRA appears to wish to change the market definition to potentially include all relevant products that an OLO needs to consume in order to offer internet access to retail consumers in

Guernsey, we set out below some products that fall within that category and discuss briefly whether they logically form part of the WBB product definition.

### *5.2.1 The WLR product*

70 As explained above, retail customers in Guernsey must purchase a fixed voice service if they want a fixed broadband service. However, there are a number of different ways in which both the retail and wholesale customers can access and combine the fixed voice service and the corresponding WLR product:

- Some retail customers take the fixed voice service only. If OLOs wish to address that market, they have to purchase the WLR product. In reality the vast majority of retail customers in this category are Sure customers and almost no stand-alone WLR products are purchased by OLOs.
- Some retail customers decide to purchase a broadband service from an OLO but purchase their fixed voice service from Sure. Our expedited analysis appears to show that this is the case for approximately [redacted]% of customers using an OLO's broadband service. In this situation, the OLO does not have to purchase the WLR service; it is instead purchased by Sure Retail for those customers.
- Some customers choose to purchase both fixed voice and fixed broadband services from either Sure or an OLO. In that scenario either the OLO or Sure retail purchase both WLR and a WBB product.

71 From the above, it would seem that the GCRA has incorrectly assumed or concluded that it is mandatory for an OLO to purchase WLR together with WBB. In fact, it is entirely up to an OLO if it chooses to offer broadband services only and asks its retail customers to continue purchasing the fixed voice service from Sure.

72 In the context of the market definition, the WLR product is not a substitute for the core WBB product, so would be excluded from the market when the standard market definition tests are applied.[21] Nor is the WLR a part of the WBB product, as very clearly illustrated above.

73 The WLR is therefore best described as an ancillary service, which OLOs can chose to use, or not.

### *5.2.2 SP Link*

74 A further wholesale product offered by Sure, linked to the use by OLOs of the WBB product and the supply of fixed retail internet services in Guernsey, is the SP Link (or the Service Provider Interconnect, as it is formally named).

21 Supply- and demand-side substitution and the Small but Significant Non-transitory Increase in Price (SSNIP) test.

75 The SP Link is the connectivity between the OLOs' retail broadband server(s) and the Sure network. It operates as the bearer circuit for the physical connectivity between the customer's premises and the relevant OLO, as opposed to an OLO just reselling the Sure Retail broadband services.

76 The SP Link is a necessary precondition for an OLO to be able to access the WBB product, but it is used to aggregate many end customer connections, rather than the OLO purchasing a single SP Link for each end customer WBB product purchased. As the OLO connects more customers and as the broadband connection speeds supplied to those customers by the OLO increase the capacity of the SP link needs to expand to accommodate this increase in both speed and traffic volumes. The OLO can decide whether to purchase a diverse or non-diverse SP Link and there are charges associated with the changes and reconfiguration of this product.

77 The SP Link product is not optional. Each OLO must purchase the product before the first WBB product to an individual end customer connection can be purchased. Associated with the SP Link are likely services such as testing, fault repair etc.

78 The SP Link is not, however, a substitute to the WBB product and would not be included in the WBB marked as a result of the conventional supply- and demand-side substitution and SSNIP test. In Sure's view the SP Link is best described as an associated facility to the WBB product.

#### *5.2.3 Commercial wholesale services*

79 In addition to the services and products outlined above, Sure offers commercial services to OLOs providing retail internet service in Guernsey. These services are entirely optional and offer the OLO the choice of either self-providing those functionalities or purchasing them from Sure. Sure's commercial wholesale products and services primarily focus on the provision of Broadband Network Gateway (BNG) facilities.

## 5.3 Conclusion

80 Although by no means a full and thorough market definition analysis, the facts presented above make it clear that neither the WLR product, the SP Link product or Sure's commercial services could, by any regulator applying recognised regulatory standards, be considered to be part of the WBB market; proceeding on the basis set out in the PDs would be irrational and susceptible to review.

81 Both WLR (provided through any retailer) and an SP Link (required by each OLO) are associated with the WBB market and the existence of them is an essential precondition for an OLO's ability to

consume Sure's WBB services- but that does not mean that they are part of the WBB market. They are complements rather than substitutes.

82 To include WLR revenues in the profitability analysis for the WBB product can therefore only be considered a material factual error that inevitably leads to incorrect outcomes and potentially material market distortions through unintended consequences. One such consequence is the knock-on impact on WLL unit costs, resulting from the methodology used by the GCRA within its model. This will be addressed in detail in Sure's response to the WLL PD.

83 Sure believes there are likely to be other (and potentially material) unintended consequences and market distortions resulting from the incorrect inclusion of WLR revenues in the WBB profitability analysis. Had Sure had a longer period in which to produce this response, specific research would have been undertaken into this matter in order to demonstrate the significant body of precedents supporting the points Sure makes.

**(M) GCRA Response to 5.1 , 5.2 & 5.3**

**Section 3, GCRA Final Decision, sets out the GCRA's consideration on market definition. The reasoning for wholesale line rental's inclusion in the scope of the control is discussed in the Final Decision, in particular paragraphs 3.11-3.14.**

**The SP Link provides the connectivity between the OLOs' retail broadband server(s) and the Sure network. Many products can be required to ensure that operators can effectively provide broadband access services using other operators 'access networks, these include backhaul products, colocation services, interconnect services, and unbundling. However, it does not follow that they necessarily fall within the relevant market of this price control. SP Interconnect relates to interconnection links between core networks and as such fall outside the access network based on local loops.**

**The GCRA is setting the charges in the defined wholesale market, which is consistent with the approach used in Jersey in relation to its equivalent review of wholesale broadband access prices, where the Jersey Competition & Regulatory Authority (JCRA) considered JT's WLR and wholesale broadband bitstream together and set the cost-based price control on the combined WLR and wholesale broadband bitstream charge.**

## 6 The GCRA's approach to cost-orientation

84 The WBB PD purports to establish cost-based wholesale price regulation for access to Sure's WBB

products.[22] It is, however, important that the decision is seen in the context of the data available to the GCRA to establish the appropriate cost-base for those services.

85 In the WBB PD, having dismissed the use of benchmarking, the GCRA considers the use of three methodologies to calculate the costs to Sure of providing the WBB services. Those methodologies are: top-down costing, bottom-up costing and discounted cashflow (DCF) modelling. The GCRA selects the DCF modelling approach and states:

86 "*The DCF model is suited to smaller jurisdictions as it is less data intensive and less complex than other cost models such as the bottom-up approach. A DCF approach is also applicable to markets that set cost-based prices where networks have not yet been fully deployed and uses the operator's current and forecasted demand data whilst also drawing on the operators' expertise and knowledge of the Guernsey market. Based on its assessments of the various costing models, the GCRA proposes to rely on DCF modelling using forecasts based on Sure's actual cost data as the appropriate cost modelling* approach."[23]

87 This approach is wrong. Presenting the DCF approach as an alternative to top-down and bottom-up costing is not correct, as the DCF model needs costing inputs in order to function and those costing inputs can be either bottom-up or top down. In fact, it would seem that the GCRA's DCF model attempts to rely on top-down costing data ("*based on Sure's actual cost data*").[24] Ironically, the GCRA's own assessment of using top-down costing is that they deem this to be inappropriate due to Sure still being in the process of building its FTTP network ("*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*").[25] Again, therefore, the GCRA falls into the very trap that it has said should be avoided.

88 This apparent contradiction by the GCRA throws into serious doubt the validity of the costing approach adopted to set the proposed price levels. For example, had the GCRA used the DCF model to set an anchor price for a *legacy* product to act as a constraint on Sure's FTTP products, then the use of top-down costing data would have been much more appropriate. For the costing of a network that is currently being constructed, however, is it not appropriate and indeed, according to the GCRA's own assessment, is not an acceptable approach.

89 In addition to the significant uncertainty created by concerns of the appropriateness of the GCRA's choice of costing approach, there are material concerns as to how the top-down costing inputs for

22 Paragraph 4.19.
23 Paragraph 4.13.
24 Paragraph 4.13.
25 Paragraph 4.13.

the DCF model were derived. Sure has consistently alerted the GCRA to the fact that it does not collect and generate costing data and analysis to support the setting of cost-based charges. Sure stopped doing that in 2016, when the GCRA withdrew the cost accounting obligation,[26] and the last year for which Sure completed separated accounts work was for its 2014 accounting period.

90 In its 2016 Decision "Reducing the burden of regulation" the GCRA explains that the separated accounts: "*are a bespoke arrangement designed specifically for the regulator and produced in-house annually by both Sure [and JT]*[28][27]*; they provide greater transparency on the financial performance of the telecom operators in key areas of activity as compared to public reports*". Further, that: "*It's a good step in the right direction to be honing the information required by CICRA and allowing the operators to use existing information when reporting their financials for regulatory purposes*".

91 As a consequence of this GCRA Decision, Sure now only produces standard statutory accounts. As such it neither holds the data nor retains the systems to produce costing data for individual products or activities.

92 Astonishingly, and despite its own decision, the GCRA has served information requests on Sure that can only be discharged by Sure if Sure was to re-establish a process and systems to produce separated accounts, underpinned by a detailed costing system.

93 The process of garnering the necessary data now, from scratch, in order to supply the information that the GCRA requested earlier this year during the data collection process to populate its costing model, would take approximately 24 months – the forecast timeframe required to reestablish a costing (and separated accounts) model. It would require the definition of costing categories, cost drivers and cost allocation keys and then collection of the necessary data to produce the separated accounts. The GCRA's approach to this is wholly unacceptable, especially now that it seeks to impose remedies of such considerable magnitude against Sure on the back of its analysis that Sure asserts is not fit for purpose.

94 In the absence of those processes and systems, the GCRA has asked Sure to produce inputs to the GCRA model. That model relies heavily on cost drivers and cost allocation keys from 2014. For these, Sure has had to estimate the source data (because that data is no longer collected by Sure). The GCRA now seeks to pin its decisions to that data, despite Sure highlighting to the GCRA consistently since the GCRA's first proposal to abandon the remedy (to produce separated accounts), that it would not be in a position to supply reliable data to support any attempt by the



26 https://www.gcra.gg/blog/reducing-the-burden-of-regulation/

27 This Decision was issued together with the JCRA (as CICRA) and applied to Sure in Guernsey and JT in Jersey.

GCRA to set cost-based regulated charges. This is grossly unfair.

*95* In response to Sure's comments on the First Proposed Decision that the GCRA has used unreliable data for its modelling, the GCRA states:

*"it has consistently been communicated to Sure in communications over several years that Sure is expected to maintain adequate detailed records in respect of its licensed telecoms activities as required by its licensing obligations."*[28]

96 That statement is both puzzling and worrying and, arguably, disingenuous given the GCRA's own 2016 Decision. It is entirely unclear what the GCRA means when it refers to maintaining *"adequate detailed records in respect of its licensed telecoms activities as required by its licensing obligations".* Having told Sure to step away from the records that it previously maintained at the regulator's direction, what exactly is Sure supposed to do other than that which it has done, namely, to ensure accounts prepared in accordance with all statutory requirements? Quite simply, Sure does not know which licence obligations the GCRA refers to here nor what the GCRA had expected Sure to do, especially in light of the 2016 Decision to remove the requirement for producing separated accounts.

97 Sure notes that in the WBB PD Annex 2: "Licence Obligations for Licensee with dominant position" the GCRA has included Condition 27.1, which the GCRA explicitly disapplied in its 2016 Decision. This is a clear error. Further, the GCRA cites Conditions 28.1 and 28.2, but they address unfair subsidisation. They do not require the creation or maintenance of separated accounts for defined regulated markets and/or individual products and therefore offer no support for the GCRA's stance on this. The GCRA cites no other licence conditions and Sure is not aware of any such conditions that could impose accounting separation or detailed cost accounting obligation on Sure (and, if there were any, would have expected the GCRA to identify these, which it has not).

98 For the avoidance of doubt, Sure does not object to the introduction of cost-based charges which it considers may be of use in respect of some regulated products in Guernsey. What it does object to is the imposition of regulated charges that purport to be cost-based but which are not, and instead are based on an elaborate set of assumptions by the GCRA, building on data estimates for which there is no solid foundation nor indeed any audit trail.

99 In the limited time available, Sure has set out below some very significant concerns over the input data. In the time available and with the lack of transparency over the input data used by the GCRA, this is by no means a comprehensive statement of the concerns. It is simply the best that

[28] Page 11 of Annex 1.

Sure can do within the time available. It sets out what we believe to be the direct results of the GCRA model being built on insufficient and unreliable data and the excessive use of proxies. Some of these issues have been highlighted by the combination of the WBB model with the WLL model, which has for example – and significantly - exposed the excessive reliance on revenue as a cost allocation key.

100 Whilst the excessive reliance on revenues is the most obvious of the issues identified in the modelling outputs, it is clear that the outputs in the model will only ever be as good as the inputs used and that the fundamentally flawed approach to assessing forward-looking costs in a network which is currently under construction is unlikely to produce outcomes on which the sustainability of two of Sure's significant product groups can be based.

101 As already noted, whilst below we present some details identified as part of our review of the GCRA's WBB model, we must particularly highlight in this section the effect of the very short response time allowed to this consultation. This is likely to have resulted in an incomplete analysis of that model and therefore potentially significant issues remain un-discovered. Whilst the GCRA has allowed Sure an additional week to provide specific comments on the GCRA's cost model, it is unsatisfactory for the GCRA to ignore the fact that any points that may come to light in that additional week should properly be reflected in Sure's written response – which will be impossible given the GCRA's insistence that this must be submitted a week earlier.

**(N) GCRA Response**

**The current and expected future market situation was taken account by the GCRA. In particular, in deciding the appropriate form of price regulation i.e. between cost orientation and other alternatives such as economic replicability tests. In response on Sure's reply to the First Proposed Decision, the GCRA explained that cost-orientation was considered an appropriate remedy because there is no material infrastructure competition (and no prospective material infrastructure competition in future), and that Sure had set out clear plans to deploy its FTTP network.**

**This means that there is a limited case to provide Sure with greater pricing flexibility on wholesale broadband to promote further FTTP investment (which would be the purposes of lighter-touch regulatory options such as economic replicability tests). The GCRA considered that cost oriented prices are appropriate, as that maintains Sure's incentives to invest in its FTTP network (by setting prices at a level that would cover the expected costs of that deployment plus other costs associated with providing WBB services, plus a reasonable rate**

**of return on investment), whilst protecting retail competition and end users by ensuring WBB prices (and in turn retail prices to end users) are no higher than they need to be.**

**The GCRA decided the appropriate cost modelling approach to determining the cost-oriented prices which are set out in section 4 of the Final Decision (and the previous proposed decisions).**

**On 26 August 2016, in a letter headed 'Separated Accounts / Regulatory reporting' the GCRA conveyed its position that the relaxation of Sure's requirement to submit a full set of yearly audited regulatory accounts, was only on the proviso that Sure maintained adequate detailed records in respect of its licensed telecoms activities, and subject to agreement from Sure that it would provide an appropriate form of alternative annual financial reporting to be agreed with the GCRA. The GCRA has, since that date, communicated its concerns about the adequacy of the information systems Sure has put in place to comply with its the above agreement, and its obligations under Condition 4 of its fixed telecommunications licence. However, during the consultation, Sure's initial inability to provide the requested data was overcome by the GCRA submitting multiple targeted requests for information, and these requests ultimately led to Sure providing its 'Management Packs' which was a comprehensive spread sheet of its business revenues, costs and financial information. Those 'Management Pack' included all the necessary data required to populate the cost orientated model.[29]**

**While it is correct for Sure to submit that it is not required to maintain or submit a full set of yearly audited regulatory accounts, it is incorrect for it to claim that is does not possess the required information which allowed the GCRA to build and populate its costs model.**

**Further, Sure's statement that the GCRA model relies heavily on cost drivers and cost allocation keys from 2014 is factually incorrect. The GCRA recognised that Sure's 2014 cost driver information may not fully reflect the current situation in Guernsey, and as such, it made limited use of that information in the model. As outlined in more detail below, the 2014 cost driver data was only used as allocation keys for two cost categories (Buildings and Electricity), and they allocate less than 8% of the estimated wholesale broadband and wholesale leased lines costs in each year of the modelling period. As such, the GCRA considers that the use of the 2014 cost driver data in the model is reasonable, proportionate and does not have a significant impact on the estimated cost-based prices.**
**The GCRA acknowledges Sure's representations regarding the cost allocation approach used in the GCRA cost model. However, it continues to be of the view that its approach is reasonable and proportionate given the small size of the Guernsey jurisdiction and is consistent with international precedent including in Jersey. See section 5, Overview and**

[29] [GCRA Footnote: 21 October 2022: Email from Sure to GCRA and Frontier Economics enclosing Management Pack and other documents.

**modelling, in the Final Decision, for the GCRA's comprehensive approach to assessing and setting the assumptions used in the modelling process.**

**Given this, the GCRA considers that it has already conducted a thorough process with Sure to identify appropriate allocation keys, in which Sure was given ample opportunity to raise concerns regarding the use of revenue-based (and other) allocation keys and to suggest alternatives.**

**Finally, the GCRA is unclear as to the basis of Sure's statement that the cost allocation approach lacks any audit trail. The GCRA provided Sure with the GCRA's cost model both as part of the First and Second Proposed Decisions, which explicitly sets out the cost allocation key used for each cost category, the data used to calculate the cost allocation key, and the source of that data. The same applies to the other data used in the cost model. The GCRA therefore considers that there is a clear audit trail for the cost allocation approach, and the other data used in the model.**

# 7 Comments on the GCRA's model

102 Sure is submitting separate responses to the WBB PD and the WLL PD, but for the modelling analysis, there is inevitably a significant amount of overlap between the two responses.

As a result of the materially impacting errors and omissions relating to the two separate cost models for WBB and WLL, which were provided alongside the First PDs, Sure set out in its response to those First PDs what it saw as necessary corrections and improvements to the models. For each model, we proposed five changes (and provided associated financial impact values), with the GCRA accepting all but one amendment in each case – that being our suggested WACC uncertainty premium adjustment.

103 What could not be seen from these separate cost models at the time Sure commented on the First PDs, was the impact that each agreed input value change to one model would have on the output values of the other model. For this reason, we requested that the GCRA provided a single model, encompassing WBB and WLL. This it did, at the time of publication of its Second PDs, with the output values of that single combined model matching the revised wholesale charges that the GCRA is now proposing.

104 Our first sight of the combined model (on 5th October 2023) revealed the huge impact of the GCRA proposed its late inclusion of WLR revenues. This was in stark contrast to our previous expectations, based on the proposed changes made by Sure, which had been accepted by the GCRA, during the review process that followed the submission of our responses to the First PDs. <u>Whilst the GCRA appears to treat the inclusion of WLR as a simple matter, with little impact on the</u>

model structure, what quickly becomes evident on scrutiny is the extent to which the addition of WLR revenues inappropriately influences the model's dynamics.

105 One of the key reasons for this is the disproportionately large percentage of costs associated with WBB and WLL that are apportioned based on the revenue that they are forecast to provide. To explain the extent of the issue – during the years in which Sure was required by the GCRA to create and submit annual separated accounts, the GCRA placed a requirement on Sure that within each model the maximum percentage of unattributable costs[30] that could be apportioned across our product ranges, was 10%. For prudence and to align with best practice, we set our operational target for the apportionment of such costs at 5% of total costs. In almost all years, from 2008 to 2014 we met this 5% target. Had we gone above 10%, according to the GCRA's own rules, our submission would not have been compliant.

106 A major deficiency with the GCRA's (combined) cost model can be evidenced through the calculation of the percentage of shared costs (i.e. costs not specific to either WBB or WLL) that are apportioned between WBB and WLL based on the revenue that these products are forecast to produce.

107 Oxera, our external advisors for the detailed review of the GCRA's new combined WBB and WLL model, undertook this analysis on our behalf. In the case of WBB, 99% of costs in the GCRA's model are treated as shared[31]. Of that, 28% are driven based on the revenue that WBB is forecast to produce. Based on the GCRA's 10% cap rule that it applied to Sure's separated accounts models, a figure as high as 28% would have failed the compliance test – i.e. **the model would not be considered fit-for-purpose**.

108 Oxera also looked at the costs calculated by the GCRA in relation to WLL. In that instance, 83% of its costs were treated as shared, with 57% of that proportion being driven to the WLL products, based on the revenue that WLL is forecast to produce. Again, applying the GCRA's own 10% cap rule, **the model would not be considered fit-for-purpose**.

30 These are costs that have no clear or directly relevant basis for apportionment (one input to many outputs) or allocation (one input to one output) within the model.

31 A value of 99% shared costs is unacceptable for the purposes of cost modelling and is a core weakness in the GCRA's model. This level of shared costs stems from the GCRA's inappropriate expectation that Sure can identify shared and direct costs for individual products from its statutory accounts, which is simply not possible. This again portrays the GCRA's lack of understanding of how different forms of accounting work and of the consequences of it having in 2016 removed the obligation on Sure of producing separated accounts.

109 The reason these excessive apportionments, based on revenue, are so important is that they provide clear evidence that the GCRA's model lacks specificity and is materially flawed – both in its design and application. Whilst these flaws existed in the separate models used by the GCRA for its First PDs, the materiality of the impact of the flaws went undetected, for two reasons:

1. The calculations for the pricing of the WBB and WLL products existed in isolation (i.e. the relevance of the methodologies applied to one product had no measurable impact on the other product, as the models were not linked); and
2. The combination of the two models showed that the materiality of the size of WLR revenues very visibly inappropriately skews the forecast profitability – not only of WBB (which the GCRA believes is directly relevant, for the reasons set out elsewhere in this response), but of WLL (a product that could never have any relevance to WLR). So even if the GCRA were correct in claiming that WLR revenues *should* be associated with WBB (a position that Sure fundamentally disagrees with), there is no credible reason that the inclusion of WLR revenues should have such a material impact on the costs, profitability and proposed pricing of WLL.

110 To gauge the extent of the inappropriateness of the GCRA's model, we created a version of its model that excluded WLR revenues. Using the GCRA's chosen WLL reference product of 'LanLink 10', we can see that if WLR revenues are not erroneously applied to the LanLink 10 service, the annual rental charge would be [redacted]. However, incorrectly applying WLR revenues to WLL services (as the GCRA is proposing) produces a charge of £1,823 – a [redacted]% lower figure. The reason for the significance of that impact is what could be described as 'widespread short-cutting' by the GCRA, through its acceptance of the material overuse of revenue as a cost driver.

111 The use of revenue as a driver, which then impacts the forecast revenue required, creates an inappropriate methodology in the model – one of near-circularity. This has led to a fundamentally unsound model, which is not fit for purpose. In addition, considering the very impactful outcome within the GCRA's model that the addition of WLR revenues produces, even if it were appropriate to include them for the WBB cost and price modelling (and again, Sure asserts that it is not), the GCRA must have noticed that its model produces counterintuitive outputs which cannot be rationally justified.

112 Given the model's deficiencies, and if the GCRA decides to proceed with the approach in the WBB PD and the WLL PD, Sure would expect the GCRA to work through a process with Sure which identifies additional cost-based (rather than revenue-based) drivers. The result should be that the

GCRA could appropriately update its model to materially close the gap between the likes of the 57% of costs being driven on revenue and the 10% cap figure previously stipulated by the GCRA for Sure's cost modelling outputs.

113 Whilst, in the absence of Sure's separated accounts, it is unlikely that the gap will be closed entirely, within a reasonable timeframe Sure would very much expect that more appropriate modelling would bring the 57% down to no more than 20%. That would still be far from ideal but should bring significant quality increases to the model and provide an outcome that would materially more reflective of a fit-for-purpose methodology.

114 Looking at some of the specific elements within the model, we have observed the following:

115 On row 33 of the Capex forecasts tab, the 2021 DSL re-investments value of £[redacted] has been omitted. The GCRA's model shows the 2022 value (£[redacted]) in its place. Correction of that will therefore add £[redacted] of cost to the model.

116 Cells L55 and L56 of the Prices tab erroneously show Sure's 2023 wholesale charges for new fibre installations and reactivation of ONTs as £131.17 and £51.07, respectively. Sure has not changed its charges for these one-off activity types since 2015, so the correct values are £128.35 and £49.97, respectively.

117 Sure's Optical Network Terminals (ONTs), used as the wholesale fibre service termination point with each customer's premises, had originally been deemed by the GCRA to have an economic lifetime of 20 years. The GCRA had not consulted with Sure on the appropriateness or otherwise of this before applying this period within its First PD model for WBB[32]. In our response to the First PD, we expressed our concern over the proposed application of a 20 year timeframe. [redacted]

[redacted]

[32] And indirectly, in its First PD model for WLL.

[33] That figure having been validated for Sure by an independent consultant as the likely maximum period.

[redacted]

[redacted]

122 We believe that this is important for this change to be reflected within the GCRA's combined model. Taking account of this and the correction of the modelling errors described above, the average WBB charge[35] increases from £14.04 to £14.37. In isolation, this change in value may appear minor, but when applied across a five year period, the impact is over half a million pounds[36]. It is therefore important that the GCRA takes account of these necessary revisions before it formalises its WBB Final Decision.

**(O) GCRA Response**

**It is incorrect to maintain that it was not possible for Sure to test from the separate cost models the impact of changes to agreed input values in one model on the output values in the other model. This is because the two models where structured in an identical way, contained almost the same data inputs, and the models contained almost identical intermediary calculations. For example, the calculation of the costs to be recovered from wholesale broadband customers in the wholesale broadband model, and the wholesale leased lines costs in the wholesale leased line model, were calculated from the same raw data, and using the same set of allocation keys. It was therefore possible to make the same changes in both models to see the impact on the estimated cost-based prices.**



34 Excluding the preceding period, covering an initial trial and pilot phase.

35 Across the period 2024-28.

36 Based on the comparison of revenue between that shown in the GCRA's combined model and Sure's adjusted model (to reflect the changes discussed above).

**As Sure notes, the 10% cap rule was part of the of requirements on the production of Sure's separated accounts in 2014, that no longer apply. See section 5, Overview and modelling, in the Final Decision, which provides the GCRA's assessment, headed Analysis and Assumptions.**

**Sure's representation is understood but the assertion that this means the model is not fit-for-purpose has little validity. The GCRA considers that imposing a cap on "non-attributable" costs on a forward-looking basis would not be appropriate given the nature of telecoms networks and businesses and that it could in fact lead to a distortion in the appropriate allocation of costs. It is notable that such networks increasingly share common costs to a far greater extent than in the early 2000's.**

**In particular, the vast majority of network costs cannot be directly attributed to any given service, given a large number of assets within a network that support the provision of multiple services: Most of the equipment in access networks (such as access network cabling and supporting infrastructure) support the provision of broadband, voice, and leased lines to end users, and in the core network, equipment also supports mobile services. This means that, for example, Sure's FTTP network deployment, which represents over £38m of investment over 2021-2026, is not attributable to a single service.**

**In addition, there are pure "common costs", such as corporate overheads, that are by definition not related to the provision of individual services (so are "not-attributable"), but it is reasonable to include an allocation of these to individual services to ensure Sure is able to recover these costs.**

**Given this, depending on the specific breakdown of Sure's costs in a given year, it could reasonably be the case that the share of costs that should be recovered from a given service that are "non-attributable" is greater than 10%. It follows that limiting this share to 10% could set artificial limits, and in turn result in incorrectly adjusting cost allocations in order to meet this threshold. The GCRA therefore considers that making a comparison of the share of costs that are considered non-attributable to a 10% threshold does not represent a reasonable test of whether a cost model is fit-for-purpose.**

**In addition, the above points also mean that by extension, its reasonable that a large share of costs within the model should be considered as "shared", so this being the case in the GCRA's model is not an indication of weaknesses in the model as Sure suggests in paragraph 109. Finally, as outlined in response to paragraph 99 above, the GCRA considers the use of revenue allocation keys to be reasonable and proportionate given the size of the jurisdiction and the engagement with Sure during the model development and is consistent with the cost allocation approach used in Jersey which Sure did not raise concerns with.**

**The submission by Sure in paragraph 109 is factually incorrect. As set out in section 5 of the**

**Final Decision, Sure was able to identify the use of revenue-based allocation keys in the separate wholesale broadband and wholesale leased lines cost models provided as part of the first proposed decisions and was made aware of the proposed use of these keys earlier than that during the development of these models. It was also able to identify the share of the calculated wholesale broadband and wholesale leased lines costs that were allocated using revenue-based keys within those separate models.**

**As set out in section 5 of the Final Decision, the GCRA considers that the use of revenue-based cost drivers is reasonable and proportionate given the size of the Guernsey jurisdiction, and consistent with the approach in Jersey which Sure did not raise concerns with.**

**In addition, the GCRA does not agree that the inclusion of WLR revenues for wholesale broadband customers in the model would not be expected to impact the allocation of costs to wholesale leased lines.**

**As set out in section 5 of the Final Decision, prices and in-turn revenues for a given service provide a reasonable and proportionate proxy for the efficient allocation of costs between services, with higher prices/revenues for a given service suggesting that it is efficient for more costs to be recovered from that service.**

**Having become aware that a customer required a WLR in order for an OLO to be able to provide broadband services using Sure's network to that customer, the GCRA has had to adjust the effective "total price" for wholesale broadband services accordingly. It follows that it is reasonable to recover a greater share of costs from wholesale broadband customers than previously envisaged to reflect the existence of WLR in the wholesale broadband "product set", as is reflected in the model underlying the Final Decision.**

**In addition, as noted above, a large share of relevant Sure costs are "shared" between wholesale broadband, wholesale leased lines, and other services. It therefore follows that if a larger share of costs are to be recovered from wholesale broadband customers, a lower share should be recovered from other services, including wholesale leased lines: if more costs were recovered from wholesale broadband customers, but the same from wholesale leased lines and other services, then this would result in over-recovery of costs by Sure.**

**Taken together, the impact of the introduction of WLR revenues for wholesale broadband customers on the modelling outputs is an expected outcome, not an indication of "short-cutting" as suggested by Sure.**

**As set out in section 5 of the Final Decision, the GCRA considers it has already undertaken a thorough process with Sure during the development of the cost model, to identify appropriate allocation keys and data that could be provided and produced to inform these keys.**

**The GCRA accepts the need to update the DSL re-investments value for 2021 and 2022, and to**

**adjust the one-off wholesale charges in 2023, and has therefore updated the cost model to reflect this.**

**Regarding the asset lifetime for Sure's Optical Network Terminals (ONTs), the GCRA acknowledges the additional information provided by Sure on the number of ONT failures during its initial roll-out period, and its resulting further views on the likely lifetime of these assets. In particular, the GCRA notes that the number of ONT failures that Sure has incurred over the initial 18 months of the fibre roll-out suggests an annual failure rate of around 13%, which if this was maintained throughout the rollout over several years would imply an average asset lifetime of around 8 years.**

**However, it can be expected that the level of failure in the very early phases of a new rollout might be higher than the long term average as the experience and training of installers and processes improve. Since Sure is in the initial phase of the roll-out, the failure rate over the full roll-out period might be considerably lower (and in turn the implied asset lifetime longer). The evidence the GCRA has is that Adtran will cover the replacement cost of the initial ONT failures in any event leads to the conclusion that a 12 year life time in the cost model remains appropriate since Sure will not bear the costs of the higher failure rate, so an adjustment would realise revenue to cover costs Sure had not incurred.**

# 8 Impact analysis

123 The impact of the proposed WBB price control on Sure is severe and would inevitably have material consequences across a number of its activities and services. Of immediate concern is the consequences for the timing and extent of the current fibre rollout programme, which is being partially funded by the States of Guernsey given its strategic importance to the Bailiwick.

124 This level of change proposed could not have been anticipated by Sure until the publication of the WBB PD on October 5th 2023. Models previously shared with Sure in the First WBB PD and discussions about the model during the consultation process leading up to the First WBB PD suggested a significantly lower impact.

125 The impact of the proposed price control is therefore not only material to Sure but is also completely unexpected. Good regulatory practice is built on principles such as predictability, stability and transparency, but the GCRA's approach in this process appears to have no regard to any of those.

## 8.1 International best practice for regulatory impact assessment

126 Neither the WBB PD nor the WLL PD contain an analysis by the GCRA of the likely impact of its

proposed decisions.

127 As presented in this document, the WBBPD, if implemented as they stand, will have a very material impact on Sure. I It is, therefore, essential that the GCRA conducts an impact assessment to ensure that the proposed remedies are appropriate and proportionate to the potential market failures identified and that they are the least intrusive option that can deliver the GCRA's objectives.

128 International best practice for regulatory analysis and decision-making includes a rigorous and transparent impact assessment. This is reflected in legislation and regulations across the world, including in the European Electronic Communications Code and in the Telecommunications Act in the UK.

129 Ofcom recently updated its impact assessment guidelines[37] in which it explains the purpose of and processes for conducting impact assessment. Below we have extracted a few relevant sections but we recommend that the GCRA study the entire document and adopt a similar approach.

130 Ofcom states that its principles for regulatory decision-making require that it:

*"a) operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;*

*b) strive to ensure our interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome; and*

*c) always seek the least intrusive regulatory mechanisms to achieve our policy objectives."*

131 Sure considers that the GCRA has not been guided by these and similar international best practice principles.

132 Ofcom further states that:

*"An impact assessment is a structured process to consider these potential impacts, including:*

*a) general impacts on citizens and consumers;*

*b) impacts on the industries we regulate;*

*c) impacts on specific groups of persons, including persons sharing protected characteristics identified in equality legislation."*

133 From the GCRA's decisions, it is apparent that the GCRA has not undertaken this structured process or, at the very least, if it has done so it has failed to document this process and to explain

37 https://www.ofcom.org.uk/data/assets/pdf_file/0026/264707/Impact-assessment-guidance.pdf . Published on 19th July 2023.

its decision-making adequately, as required of it.

134 And:

*"To fulfil our duties, an impact assessment will generally:*

*a) specify the outcome we want to achieve, in some cases balancing multiple objectives;*

*b) identify the general impacts of a proposal on citizens and consumers as well as impacts on the industries we regulate and any impacts on specific groups of persons;*

*c) identify any impacts the proposal could have on competition or the wider market;*

*d) identify and, where possible and proportionate, quantify the costs and benefits we expect the proposal to have;*

*e) assess the key potential risks of the proposal; and*

*f) where appropriate, consider how the success of the policy might be monitored or evaluated."*

135 Sure has found no evidence in the decisions that the GCRA has performed the steps set out above.

136 From the above excerpts, it is clear that impact assessment is an integral part of how Ofcom operates and that it forms a critical component of Ofcom's decision-making process, as well as operating as a key component in how Ofcom demonstrates its accountability to all its different groups of stakeholders. Sure considers that, as regularly recognised by the GCRA, Ofcom is a good representative for best international regulatory practice and, therefore, the Ofcom Impact Assessment Guidelines are a reasonable basis upon which the GCRA should base its own impact assessment approach.

137 Sure is concerned that the GCRA appears not to have undertaken (or at least not shared) any impact assessment of its two PDs. In particular, the GCRA does not appear to have assessed whether less intrusive remedies could achieve its objectives, nor what the implications of its proposals could be for Sure and other stakeholders in the market. The only statements it has made in this regard have been contained, not in the decisions (where they should be) but in the recent correspondence relating to the refusal to grant Sure extensions to the deadlines for responding to its consultations. Even then, the statements have been ambiguous: the GCRA has made reference to any delays in implementing the proposed decisions as causing consumer harm at a time of cost of living pressures. If this is the extent of any impact assessment, it is plainly far too narrowly focused and fails to take any account whatsoever of the impact on the industry that the GCRA is regulating. This self-evidently fails to meet with the most basic requirements set by Ofcom.

138 As set out in detail in this document Sure has sought clarification from the GCRA on a number of matters and has also requested that more time is allowed for Sure and other stakeholders to review the proposals set out in the WBB PD and the WLL PD.

139 In addition to the substantive issues noted above, not only does the GCRA propose to reduce Sure's total revenues by [redacted] it proposes that a disproportionally large part ([redacted] M) of this reduction is implemented in a single step. This runs counter to good international regulatory practices, which favour the use of a glide-path approach to any such significant changes.

140 Neither the WBB PD nor the WLL PD discuss the possibility of using a glide-path approach to reducing the regulated prices. The single step one-off adjustment (proposed to be introduced on January 1st 2024 – less than three months after these significant changes were first made known to Sure) shows a complete lack of regard for the impact by the GCRA of its regulatory decisions in the real commercial world.

**(P) GCRA Response**

**There is no legislative requirement for the GCRA to conduct a detailed impact assessment while Ofcom is legally obliged to do so in the UK. Further, as set out in Section 4 in the Final Decision (and in the previous Pricing Decisions), the price reduction is designed to address Sure charging unjustifiably excessive prices in a market where it has a dominant position. The GCRA has a duty to customers to address this failure, and it is not solely concerned with Sure's interests. The impact of excessive prices for stakeholders and the wider Guernsey community is also a relevant consideration for the GCRA and a decision to delay the reduction of costs in order to maintain Sure's higher return to its shareholders for longer is not a persuasive submission. Therefore, the suggestion of a glide-path approach is not acceptable and would mean that customers pay excessive prices for longer.**

# 9 The effect of the GCRA's approach in relation to the Sure and States of Guernsey FTTP deployment Funding Agreement

141 The GCRA is aware that Sure is currently undertaking the deployment of a fibre to the premises (FTTP) network to all premises in Guernsey. This project started in 2021 with Sure committing to connect up to [redacted] Guernsey premises over a time period [redacted] As was discussed with the States of Guernsey Sure's commercial plans [redacted]

38 Measured on an arm's-length basis, in alignment with the GCRA's cost modelling methodology.

[redacted]

142 In October 2021, recognising the strategic importance to Guernsey of an island-wide FTTP rollout, Sure and the States of Guernsey ("the parties") signed a Funding Agreement[39] whereby the States of Guernsey agreed that it would provide a subsidy to Sure. This would enable Sure's FTTP rollout to be extended to the uneconomic premises and accelerate the entire FTTP rollout programme such that it could be completed within a five-year timescale as opposed to the timeframe of [redacted] years which would apply in the absence of this subsidy. Sure and the States of Guernsey envisaged that this would mean a complete migration from the existing copper network to the FTTP network by the end of this 5 year period. The accelerated FTTP rollout that is facilitated by the States is referred to as the Project within the Funding Agreement and in the text below.

143 Whilst the GCRA is not a party to this Funding Agreement, it has a copy of it and was involved in dialogue with the parties leading up its completion. This is noted in the introductory Background section of the Funding Agreement, which also highlights that actions that may be taken by the GCRA are a material part of the framework that the parties consider relevant to the fulfilment of the Project.

144 The GCRA will also be aware that the Funding Agreement [redacted]

145 [redacted]

[39] Funding Agreement relating to acceleration of fibre rollout to all premises in Guernsey, between States of Guernsey acting by and through the Policy and Resources Committee and Sure (Guernsey) Limited, dated 26th October 2021. The contents of the Funding Agreement are confidential to the States of Guernsey, Sure, the GCRA and their respective advisers.

[redacted]

146 The GCRA's WBB PD will indisputably have a materially adverse impact on the ongoing viability of the Project. As already communicated by Sure to the GCRA through its several requests for an extension - which have all been unreasonably rejected by the GCRA – Sure also does not consider that the GCRA is following a fair and reasonable administrative process with respect to the WBB PD, nor has the GCRA explicitly justified the proposed measures in relation to the Project. Sure is therefore reviewing urgently the implications of the GCRA's current proposals on the Project. For now, it is sufficient to note that the GCRA's timeframe denies Sure sufficient time to make full and detailed representations to what is a significantly revised proposed decision compared to the GCRA's original Proposed Decision, and also strongly suggests the GCRA will not be able to give due and proper consideration to Sure's representations, thereby increasing the risk of legal challenge. Further the GCRA proposes to implement the new price regulation in a single step without consideration of the impact on Sure or consideration of the use of a glide-path approach to soften the impact on Sure.

147 In summary, the GCRA's approach to the WBB PD is such that there is a material regulatory change that puts at risk the ongoing viability of the FTTP project, with the scope and timing of the planned island-wide rollout under threat.

**(Q) GCRA Response**

**The GCRA does not agree with Sure's representations for the reasons given. The cost model was designed to ensure that Sure obtained a reasonable return on its investment which included FTTP.**

## 10 The GCRA's WBB market review process and timeline

148 Below is a summary-level table of the correspondence and interactions between Sure and the GCRA in relation to the current WBB PD consultation.

149 **Table 1: Overview of interactions between Sure and the GCRA during the WBB PD consultation period**

| Date | Activity |
|---|---|

| | |
|---|---|
| 03-10-23 | GCRA emails Sure to confirm that it intends to publish "T1621 – Second Proposed Decision – Wholesale On-Island Leased Line Pricing" and "T1652 – Second Proposed Decision – Wholesale Broadband Pricing" at 12:00 on 5th October 2023 (the Second Proposed Decisions). |
| 04-10-23 | The GCRA and Sure had an online meeting to discuss the publication of the GCRA's Second Proposed Decisions. Sure sets out its initial concerns about the GCRA's proposed four week timeframe. |
| 05-10-23 | The GCRA publishes the Second Proposed Decisions. An embargoed copy of the Second Proposed Decisions is provided to Sure at 07:02. |
| 09-10-23 | Sure responds to the GCRA's 9th October email to accept the GCRA's offer and requests that the meeting be held during the week commencing 16th October. Sure also requests recording of 4th October meeting. |
| 10-10-23 | Sure requests an extension of the 3rd November deadline to 30th November. |
| 11-10-23 | GCRA emails Sure stating that it can only facilitate a meeting during the week beginning 23rd October. |
| 12-10-23 | Sure asks the GCRA for a response to its 10th October extension request. GCRA rejects Sure's extension request via an email. |
| 13-10-23 | Sure confirms receipt of GCRA's rejection and again requests that the GCRA provides the 4th October meeting call recording, which it subsequently provides |
| 17-10-23 | Carey Olsen, on behalf of Sure, submits a second extension request containing more details of reasons for request whilst offering a one week reduction to the duration of extension to 23rd November. |
| 19-10-23 | Sure informs GCRA it has engaged external consultants and that it would be able to have a meeting on either 26th October or 27th October. Sure also requests that Frontier Economics (the GCRA's economic advisors) be invited to the call. |
| 20-10-23 | GCRA confirms its availability for call on either date suggested by Sure, who responds to confirm meeting for 9am on 26th October. Sure provided a list of its attendees, including its external consultants. The GCRA issues meeting invite (not including Frontier Economics) and an agenda. |

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| 24-10-23 | Sure again requests that Frontier Economics be invited to the 26th October call, so that its queries about the changes to the model and overall methodology can be dealt with quickly. |
| 25-10-23 | The GCRA rejects Sure's request to invite Frontier Economics. The GCRA also requests meeting delayed to 10 am on Friday 27th October due to travel disruption for a GCRA Case Officer. Sure requests a response to its 17th October 2023 extension request. Sure agrees to delay the meeting to 3 pm on Thursday 26th October to accommodate the travel disruption. |
| 26-10-23 | The GCRA and Sure have a call to discuss the Second Proposed Decisions. The GCRA agrees to take away questions as they are unable to answer Sure's questions on the call. Subsequent to the call, Sure provides GCRA with a list of questions about the Second Proposed Decisions<br><br>The GCRA responds to Sure's 17th October extension request, again rejecting it. |
| 27-10-23 | A recording of the 26th October meeting is provided to Sure by the GCRA.<br><br>The GCRA provides short responses to some of Sure's questions and confirms that further responses will follow.<br><br>Sure responds to the GCRA's 26th October rejection of Sure's extension request via Carey Olsen. |
| 30-10-23 | The GCRA responds to Sure's 27th October letter to again reject the request for an extension. |
| 31-10-23 | GCRA provides the remaining, brief responses to Sure's questions on the cost model. |
| 02-11-23 | Sure emails the GCRA to inform them that Sure had conducted its own analysis of the pasted values in certain cells of the spreadsheet, so this information no longer needed from GCRA. |

150 In Annex A we have included a more detailed summary of the communications between Sure and the GCRA in the given period, along with the other key dates and processes relating to the overall market review process that started in 2018.

151 As clearly demonstrated above, even before it received the PDs, Sure had alerted the GCRA to its

concerns that a thorough and meaningful response to both the WLL PD and the WBB PD consultations could not be produced within the four-week consultation period proposed by the GCRA. In response to these concerns, the GCRA invited Sure to submit a request for an extension to the response deadline, explaining why this would be justified. Despite doing so, the GCRA initially took two weeks to reject the initial request (with the justification that -in the GCRA's view- Sure did not need more time) but inviting Sure to provide further justification for the extension sought. The GCRA then rejected Sure's 2nd more detailed request for an extension, this time with the justification that an extension would jeopardise the GCRA's planned launch date of 1st January 2024 for the new pricing[40].

152 At the meeting for Sure to seek clarification on queries from the two PDs, held on October 26th (just over 1 week before the response deadline, as the GCRA had not been able or willing to arrange the meeting for an earlier date), the GCRA declined to answer any of the questions posed, instead asking that they be submitted in writing after the meeting for the GCRA to reply at a later time. The GCRA also did not invite its advisors (Frontier Economics) to that meeting, so it was not possible to seek clarification on detailed modelling queries from them. By the following day, the GCRA provided part answers to some of the questions, but overall, simply referred to the same documents which had given rise to the need for clarification in the first place. The responses to modelling queries were only received on the 31st of October and were very brief and lacking in the required detail.

153 In summary, the GCRA rejected Sure's reasonable requests for extensions, prevaricated over replies to those requests and wasted considerable resources for Sure by requesting more detailed justification for the extension request and extending the uncertainty for Sure as to the final deadline and the amount of analysis that could therefore be accommodated. It then hosted a very ineffective meeting, late in the review period, for clarifications and took additional time to provide only very limited answers.

154 Returning to the GCRA's refusal to grant an extension to the extremely short response time, Sure is particularly concerned that the GCRA appears to use different reasons for why an extension cannot be granted. Specifically, the refusal of the extension requests due to this putting at risk the GCRA's planned January 1st 2024 launch date for the new regulated wholesale prices gives rise for concern.

155 The revised deadline for responding set by the GCRA (after the GCRA agreeing to an extension

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40 Note, that at this time the GCRA, however, offered Sure the possibility of submitting evidence of any material errors within one week of the original 3rd November deadline, thus by the 10th November.

requested by another stakeholder) is 6th November 2023 [41]and the GCRA would need to carefully review the contents of all responses received, including the review of issues raised relating to the modelling that underpins the proposed prices. The GCRA had allowed Sure a further week, to the 10th November, to identify any material errors in the modelling. To the extent that there are such errors, these would ordinarily need to be reflected in Sure's written representations. However, this will not be possible given that Sure's responses will have been submitted four days beforehand. In addition to analysing the qualitative comments received on matters like market analysis and due process, Sure reasonably expects that, if acting properly, the GCRA would need to get Frontier Economics to review all the modelling comments and, where necessary, perform impact analyses to assess those comments. The GCRA would then need to review Frontier Economics' analysis and recommendations and decide whether and (if so) how to modify the regulated prices. At the completion of those tasks the GCRA would then need to produce its Final Decision document. Of course, if the GCRA were to produce its Final Decision prior to these steps, not only would this be very inefficient (due to the need for changes to address comments received) but it would also suggest that the GCRA had a closed mind, with no intention to change any of its proposals regardless of the comments received.

**(R) GCRA Response to paragraphs 148- 155**

**It is not apparent whether Sure has an alternative timeline for engagement with the GCRA or is disputing the chronology of engagement set out in the Second Proposed Decision. The GCRA has provided its summary of the consultation process which is included in the Final Decision and has outlined in substantial detail through its responses, why it considers that Sure has been provided with sufficient opportunity to respond to the proposed decisions throughout the consultation process. The meeting on 26 October 2023, was held in week three of the consultation period to allow Sure to develop its representations in advance of the meeting and then to discuss those with the GCRA. There should be no expectation that GCRA Officers would have answers to questions raised by Sure at the moment they are asked and a portrayal that this constitutes refusal to answer questions is without foundation.**

**The GCRA with assistance from Frontier Economics has provided substantive replies to Sure representations and has adjusted the cost model accordingly, to take account of Sure's submissions.**

156 It would be reasonable to expect the GCRA to need a minimum of 4-6 weeks to complete the

41 The original deadline was 3rd November 2023, but on 2nd November the GCRA notified stakeholders of an extension, at the request of Airtel-Vodafone.

post-consultation processes and produce the Final Decision document; certainly, Sure cannot see from the GCRA's records of published decisions on its website that it has ever reached a Final Decision within one week of the consultation closing. Indeed, in the context of this current market review process, it can be seen from Annex A that the Final Decision on market definition and SMP finding was published in March 2019, 5 months after the publication of the draft decision (and 4 months after the consultation period on that draft decision had closed).

157 However, if the GCRA wishes the amended wholesale prices to apply in the market from January 1st 2024, the GCRA *would* have to complete all the activities described above in seven working days or fewer. This is because Sure is required to provide a minimum of 30 clear working days' notice to its wholesale customers of any price changes and (due to the Christmas period) that means that Sure would have to notify the new prices on November 15th at the latest. Assuming the GCRA adopts its usual course and allows Sure a short period of notice so that it can, on a practical level, prepare and publish the relevant notices, that would further reduce the time available to the GCRA.

158 This is therefore an all-but impossible timeframe for the GCRA and calls into question the overall approach. It is further complicated by the GCRA's offer that Sure can submit evidence of material modelling errors by November 10th. It is Sure's view that a submission by Sure of modelling errors by as late as November 10th would in practical terms render it impossible for the GCRA to have performed a reasonable review of such comments and incorporated them into a Final Decision issued in time for Sure to notify its wholesale customers of new prices by November 15th, just three working days after November 10th.

159 Sure queries whether the GCRA has miscalculated the date from which the new prices could be available. It would certainly not seem credible that the GCRA would expect to be able to review, assess and process all comments and produce a Final Decision document in such a short period.

160 This being the case, it would seem that at least the rationale given for rejecting Sure's second request for extension was invalid. As for the reason for rejecting the first request for extension, it seems unusual that the GCRA considers itself in a position to determine how much time one of its stakeholders requires to review and respond to proposals that could materially affect the viability of their business. It would seem reasonable that Sure itself has the best understanding of its resources and the time necessary to perform those tasks.

## 11 Conclusions

161 The WBB PD amounts to an arbitrary slashing of Sure's wholesale broadband prices, with a severe

initial penalty, followed by lesser, but still material impacts throughout the remainder of the five year period of the price control. In doing so, the GCRA's proposals, without due process and transparent analysis and engagement, cause a material impact on Sure and indeed put at risk the joint Sure and States of Guernsey FTTP deployment project.

162 The GCRA's conduct and the quality and transparency of its analysis and processes in relation to the WBB PD fall far short of good international regulatory practice.

Presenting no transparent analysis or justification, the GCRA proposes to change an already highly questionable market definition in a manner that not only would result in Sure losing £[redacted]M[42] of its WBB revenues but for which no rational justification can be conceived.

163 To that end, the GCRA needs to restart the WBB market review with a full market definition and SMP analysis, followed by the design of remedies which are appropriate and proportionate to any market failures defined in the newly defined relevant markets. This remedy element of the review must use appropriate data.

164 The GCRA may consider itself under pressure to complete its current review as quickly as possible. However, good regulation is not about concluding actions quickly; it's about concluding actions appropriately, having undertaken an evidence based process, leading to an informed and fair outcome. Based on the work that the GCRA now needs to undertake, by restarting the WBB market review, we recognise that it cannot be rushed and therefore that an interim solution may be appropriate.

165 As a result, Sure would be amenable to the GCRA retracing its steps to the approach in the First Proposed Decision, including the use of a separate cost model. Whilst this also suffered from some fundamental weaknesses, as previously identified, the more limited scope of the approach at least had the effect of limiting the harm resulting from those weaknesses. This temporary solution would be used only until such time as the GCRA's revised review of WBB has been completed. This approach would avoid the potential harm from the lack of reliable data and undue reliance on inappropriate assumptions and proxies and enable the GCRA to move forward quickly, both on an interim basis and during its revised market review.



42 Again, measured on an arm's-length basis.

# 12 Annex A

**Annex 1: Overview of timeline of GCRA'S market reviews of wholesale broadband and wholesale leased lines (business connectivity)**

| Date | Activity |
|---|---|
| 26 April 2018 | CICRA (the then joint Channel Islands regulator for Guernsey and Jersey) hosts a stakeholder meeting to launch its broadband consultation covering both Bailiwicks. |
| 4 May 2018 | CICRA publishes Consultation Document 18/21: Future Economic Regulation of the Broadband Market<br><br>CICRA appointed SPC Networks to undertake this part of the market review. In summary, CICRA described the purpose of the consultation as an initial step in progressing actions contained the 2018 CICRA work programme, to address any structural or behavioural constraints in wholesale service provision and to review wholesale charges for broadband services. |
| 19 October 2018 | CICRA publishes Draft Decision Document 18/41: Broadband Market – Market Review and SMP Finding.<br><br>The draft conclusion was that the appropriate market definition for Guernsey was for 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.<br><br>The draft conclusion on SMP was that Sure had SMP in this market. |
| 9 January 2019 | CICRA publishes its Final Decision Document 19/01: Broadband Market, Market Review and SMP Finding. This largely confirmed the draft decisions. It was a non-statutory decision for Guernsey and did not become binding until the statutory Final decision was made. |
| 20 March 2019 | CICRA publishes its Statutory Notice of a Final Decision Broadband Market, Market Review and SMP Finding |
| 28 October 2019 | CICRA issues Call for Information (Business Connectivity Market Review) |
| 1 July 2020 | CICRA disbanded and GCRA re-established as the separate regulator for Guernsey |

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| January to December 2020 | <u>No activity by the GCRA with respect to the Market Review for wholesale broadband</u>. |
| 4 March 2021 | GCRA publishes T1480GJ Business Connectivity Market Review (BCMR) Draft Decision GCRA 21/4.<br><br>Document identifies eight relevant markets, four at retail level and four at the wholesale level. Sure is deemed to be have sole SMP in 5 of the markets defined; JT is deemed to have sole SMP in 1 of the markets; Sure and JT deemed to have joint SMP in 1 of the markets. |
| January to December 2021 | <u>No activity by the GCRA with respect to Market Review wholesale broadband</u> |
| 14 January 2022 | T1602G Consultation paper - Price control for wholesale on-island leased lines. This proposed an alternative approach to the existing price control, despite it having started a BCMR in March 2021, which was still ongoing. The GCRA appears here to have moved the remedies stage of the market review prior to having concluded the market definition and SMP stages. |
| 22 March 2022 | T1602G Price control for wholesale on-island leased lines: Information Paper & Conclusion (dated 17 March 2022). GCRA announces it will not proceed any further with the consultation on the alternative approach given the voluntary price reductions undertaken by Sure. In the Next Steps section of the paper the GCRA says it will proceed with its ongoing BCMR market definition and market power assessment. It notes that the final part of the BCMR process is the remedies review that will follow the market definition and competitive analysis and will include proposals for any regulatory action that may be necessary should competition be found to be deficient. |
| 12 April 2022 | T1480GJ Business Connectivity Market Review, Proposed Decision: Market definition and competitive assessment. This replaced the March 2021 market definitions and SMP findings, with the GCRA noting that – following concerns expressed by respondents to the March 2021 consultation - it was instead now adopting the EU approach to market analysis, <u>recognising both the importance of the three-criteria test and that the remedies stage is the final stage of the overall review, should a finding of SMP be made</u>.<br><br>The GCRA defines a retail market for on-island leased lines but finds that the three criteria test is not passed and no operator has SMP. |

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| | The GCRA defines a wholesale market for on-island leased lines and designates Sure as having SMP in that market. |
| 29 July 2022 | GCRA informs Sure in writing it that it has appointed Frontier Economics to support the GCRA in its review of wholesale broadband service pricing and the development of any appropriate remedies regarding wholesale leased lines. The letter states that the GCRA and Frontier would be collecting relevant information and date, that would be comprehensive enough to ensure the analysis is robust and in line with international best practice but proportionate to the size of the jurisdiction. Relevantly, given what the GCRA now proposes, it states that "It is also important that the analysis conducted to inform potential remedies is based on accurate information." |
| 19 August 2022 | T1480GJ Business Connectivity Market Review Final Decision: Market Definition and Competitive assessment. The GCRA largely confirms its Proposed Decision. |
| 30 September 2022 | GCRA writes to Sure regarding its compliance with Licence Condition 4 relating to the maintenance of costing information systems, claiming that Sure had taken unilateral decision to reduce the quality of its costing information systems and risked failing its licence obligation. |
| 10 October 2022 | Round Table meeting held with operators where Frontier Economics sets out its high level approach for considering wholesale prices for broadband and leased lines services. |
| 28 October 2022 | Sure writes to GCRA expressing concerns that the GCRA is progressing to review Sure's wholesale broadband pricing without revisiting the market definition and assessment of SMP within the relevant market. |
| 21 October 2022 | Sure responds to GCRA letter of 21 October 2022 stating that it is not in breach of Licence Condition 4, which does not require Sure to maintain a cost accounting system. Condition 4 requires Sure to provide on request from the GCRA "any documents, accounts, returns, estimates, reports or other information included but not limited to [those] specified in Sure's licence. However, having explicitly disapplied Condition 27 (the obligation for SMP provider to produce and maintain separate accounts), Condition 4 could not reasonably be interpreted as requiring Sure to provide such data. |
| 22 December 2022 | Sure writes to GCRA asking for a response to its letter of 28 October 2022. Sure repeats its concerns that the GCRA is continuing to proceed on basis of outdated |

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| | market definition and SMP assessment, and to determine remedies based on 5 year old data. |
| October 2022 to January 2023 | Various data requests from Frontier Economics relating to the remedies stages of both market reviews |
| 11 January 2023 | GCRA responds to Sure's letter of the 22nd December stating that it will not respond to bilateral correspondence with Sure. It goes on to say that instead, the Authority will engage with all parties once its process of evidence gathering is complete and Sure will have the opportunity then to make representations, including any objections to the approach the Authority is proposing. |
| 31 March 2023 | GCRA publishes T1621G Business Connectivity Market Review: Proposed Decision – wholesale on-island lease line pricing. Proposal is to reduce prices of wholesale on-islands leased line products by 18% on average over a 5 year period from 1 January 2024 to 31 December 2028. |
| 23 May 2023 | GCRA publishes Proposed Decision – Wholesale Broadband Access Pricing. Proposal is to reduce the prices of wholesale broadband services by 11% on average over a 5 year period from 1 January 2024 to 31 December 2028. |
| 20 July 2023 | Email from the GCRA to James Williams, Regulatory Manager at Sure, asking if a fixed line element - Wholesale Line Rental (WLR) is required to enable a broadband service to end customers |
| 24 July 2023 | Email sent to the GCRA by James Williams in response to its query of 20th July about WLR. Email confirms that a landline is required alongside the broadband service. Email concludes by stating "Should [this] confirmation have any material impact on the GCRA's proposals then we would expect you to engage with us and other stakeholders as a matter of priority." No further communication from the GCRA on WLR is received. |
| 27 September 2023 | GCRA emails Sure's regulatory team to inform them that the GCRA would be publishing updated proposed decision for WLL and WBB in the week commencing 2nd October. It offers a courtesy meeting with Sure prior to publication to provide a short debrief on the high-level changes to the original proposed decisions, which Sure confirms it would like to have. |
| 3 October 2023 | GCRA emails Sure to confirm that it intends to publish "T1621 – Second Proposed Decision – Wholesale On-Island Leased Line Pricing" and "T1652 – Second |

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| | Proposed Decision – Wholesale Broadband Pricing" at 12:00 on 5th October 2023 (the Second Proposed Decisions). |
| 4 October 2023 | The GCRA and Sure have an online meeting where the GCRA outlines that Second Proposed Decisions are being issued as a result of various adjustments having been made to the cost models used for the original proposed decisions for Wholesale Leased Lines and Wholesale Broadband. The main adjustment being the inclusion of WLR revenues and the combination of the original two separate cost models into a new combined model.<br><br>This is the first time since the July exchange of e-mails between the GCRA and Sure that the GCRA has mentioned the inclusion of WLR. The GCRA states that the second proposed decisions will be subject to parallel consultation processes, running for a four-week period.<br><br>The Sure team express concerns that this time period seems too short given there are now three products involved (WLL, WBB and WLR), a new combined cost model, and the consultation period includes the half term week when key Sure personnel are on leave. The GCRA suggests that the Sure team review the documents when received and if it is felt there is insufficient time, Sure should submit an extension request. |
| 5 October 2023 | The GCRA publishes the Second Proposed Decisions. |
| 9 October 2023 | The GCRA emails Sure to offer a meeting in the week beginning 23rd October "to assist in formalising your written representations in advance of the 3rd November 2023 deadline." Sure responds requesting that the meeting is held the week of the 16th October given the short timeframe for response. Sure also requests copy of the recording of 4th October meeting |
| 10 October 2023 | Sure asks GCRA to grant an extension to the response deadline to 30th November, given the materiality of the changes included within the second proposed decisions and the need to consider then fully. |
| 11 October 2023 | The GCRA responds to Sure's request to bring forward the GCRA meeting to week of 16th October, stating no availability, meeting is optional and can only be facilitated the week of the 23rd October. |
| 12 October 2023 | Sure asks GCRA to respond to its extension request. GCRA responds by email, rejecting the request on the basis that Sure has already had considerable level of engagement throughout the price control process. It also states that the input |

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| | data in the costing model has largely remained the same except for adjustments applied due to Sure's representations and the inclusion of WLR revenue. It also states that consultation and engagement with Sure on the cost model has continued since the publication of the First Proposed Decisions on WLL (in March 2023) and WBB (in May 2023) until late August.<br><br>The GCRA concludes the date for written representations must remain as 3rd November unless Sure can give more details of the elements of the Second Proposed Decisions that require more than four weeks to respond to. |
| 13 October 2023 | Sure confirms receipt of GCRA's rejection to its extension request. Sure again asks GCRA to provide the recording of the 4th October call, which it subsequently provides. |
| 17 October 2023 | Sure submits, via its external legal advisers, Carey Olsen, a further request for an extension, which sets out the detailed reasons why it is required.<br><br>In summary, it explain<br><br>ed that the late inclusion of WLR revenues was not just a change to the cost model; it also suggested a change to the GCRA's approach to the market review that fell outside standard regulatory approach and which Sure require external consultancy support to advise on. The materiality of the financial impact of including WLR revenues also required Sure to engage separate external economic and costing advisers to investigate why this was the case.<br><br>Sure noted that, despite the need to involve external advisers, it could reduce the extension request by one week to the 23rd November 2023. |
| 19 October 2023 | Sure informs GCRA it has engaged external consultants (GOS Consulting and Oxera) and that it would like to have the meeting offered by the GCRA on either 26th October or 27th October. Sure requests that the GCRA's economic advisers, Frontier Economics, also join the call so that questions of clarification can be asked about the changes to the cost model. |
| 20 October 2023 | GCRA confirms meeting for 26 October and includes agenda for meeting, phrased in terms of the meeting being for Sure's view/comments on the second Proposed Decisions. GCRA attendees for the meeting do not include its economic advisers, Frontier Economics. |

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| 24 October 2023 | Sure requests that Fronter Economics attend the meeting to enable Sure to verify its understanding of the model and to better understand why WLR revenues were included in the model. |
| 25 October 2023 | GCRA rejects Sure's request for Frontier to attend the meeting, stating that the sole purpose of the meeting was for Sure to make comments on the Second Proposed Decisions. The GCRA would respond as best as possible to any queries raised by Sure during the meeting, or else take queries away for subsequent response. Sure requests a response to its 17th October extension request.<br><br>The GCRA also requests delay to the meeting until 10am on the 27th October to accommodate travel disruption for a case officer. |
| 26 October 2023 | Sure emails GCRA asking it to reconsider its decision not to invite Frontier Economics to meeting given that Sure had queries about the cost model that would be more efficiently addressed by Frontier being on the call, especially given the time constraints of the response deadline. Sure emphasises it wishes to have as full an understanding of the GCRA's proposals as possible to enable it to provide substantive and informed comments in its written representations.<br><br>GCRA responds that Frontier would not be on call and that any specific points on the model should be expressed in meeting or in writing and they would then be answered in writing.<br><br>Meeting takes place at 15:00 that day with GCRA stating at outset it would not be expanding an any aspects of its decisions. Sure asks 8 questions on the call and GCRA requests that Sure puts them in writing for it to respond to subsequently. Sure provides a list of 19 written questions of clarification after the call and asks that the GCRA respond in a timely and informative fashion.<br><br>At 17:15 that day the GCRA again rejects Sure's request for an extension to the deadline for written representations. It states<br><br>that this is because:<br><br>• the Second Proposed Decision had not been substantively modified from the First Proposed Decisions;<br><br>• Sure had had 14 weeks of engagement with GCRA since the First Proposed Decisions; and |

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| | any extension would delay the GCRA's proposed commencement date for Final Decision of 1st January 2024. |
| 27 October 2023 | GCRA provides responses to some but not all of Sure's questions, The responses were very brief and in most cases referred back to the Second Proposed Decisions without providing the clarification requested.<br><br>Carey Olsen responds to GCRA's refusal of extension, asking it to reconsider. |
| 30 October 2023 | GCRA responds to Carey Olsen letter of 27 October, again rejecting request for extension. |
| 31 October 2023 | GCRA provides brief responses to the remaining questions raised by Sure on the cost model. |
| 2 November 2023 | Sure emails the GCRA to inform them that, given the brevity of GCRA's other responses to its clarification questions, Sure has conducted its own audit and analysis of the pasted values in certain cells of the spreadsheet, so this information is no longer needed from GCRA. |

## Annex 2 – GCRA reply to Sure & Oxera Consulting's written representations in response to the Second Proposed Decision

GCRA EMBEDDED RESPONSES TO SURE & OXERA SUBMISSION

# Sure's & Oxera's material concerns with the combined WLL and WBB pricing model

10 November 2023

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## Executive Summary

1 This document should be read in conjunction with Sure's responses to the GCRA's Second Proposed Pricing Decision for Wholesale On-Island Leased Lines and the GCRA's Second Proposed Pricing Decision for Wholesale Broadband[1].

2 In this document, Sure has focused on the material concerns that its advisors, Oxera Consulting LLP, have identified in relation to the model that the GCRA and its external consultants (Frontier Economics) built and used for calculation of Sure's unit costs in the WLL and WBB markets and based on which the GCRA has proposed what it considers to be cost-based charges for those services. This response is confidential and **must not be published or shared, nor have its content divulged, without the express permission of Sure**. Sure has highlighted in this document any information that it considers to be confidential and thus must not to be included in the published version of this response.

3 Sure would be pleased to provide the GCRA with a redacted version of this response for publication. In this instance, there may be a particular benefit, as the contents of Annex A (The Oxera Report) have been pasted into this document as a set of images.

4 Both Sure and Oxera set out evidence within this document of material failings in relation to the model. Collectively, we view the following as being those of greatest consequence:

a) The GCRA's model applies WLR revenues to the associated (but distinctly separate) WBB product. The resultant inflated revenue not only distorts the way in which an unsuitably large proportion of costs are driven, based on that revenue, but it materially (and unnecessarily) impacts the unrelated WLL product charges. Sure proposes an alternative mechanism, one that takes only minutes to apply, but which has an altogether fairer and more appropriate outcome. The GCRA simply needs to follow the logic used in the model that was designed for its counterpart, the JCRA, in Jersey. In that model, which was also created by Frontier Economics, the WBB cost is calculated first and then the WLR charge is deducted. That instantly removes the erroneous impact of WLR revenue on the unrelated WLL product.

[1] GCRA document references: T1621G and T1652G, respectively.

b) Were the GCRA not to acknowledge the benefit of the above simple change, another WLR related issue would prevail. Whilst the GCRA has included WLR revenues in the model, as a late addition, it has not revisited any of the cost drivers or the underlying cost based data to seek to establish what WLR-specific costs should also be recognised.

c) Regarding revenues, more generally, the GCRA's model has an over-reliance on its use for the allocation of costs to WLL and WBB. [redacted]% of WLL costs and [redacted]% of WBB costs are driven in such a way. These proportions are way in excess of the 10% cap that the GCRA applied to Sure's separated accounts, during the periods that it was required to submit them (2002-14). Unfortunately, it appears that the GCRA's excessive reliance on revenue as a cost driver has caused unintended detrimental consequences to the validity of the model's results.

d) The GCRA's model does not allow Sure to earn a return, or recover its investments in certain instances, prior to 2022. Oxera has identified £[redacted]m of FTTP roll-out related costs and £[redacted]m of WLL related assets that have not been allowed for within the period of the GCRA's review (2024 – 2028). In addition, there is a need to earn a return on shared assets – those which cannot readily be attributed to WLL or WBB, but are required to support their provision.

**GCRA Reply: The GCRA provides it responses on these points where these are raised in the main body of the document.**

5 Sure concludes that were the GCRA to apply Sure's proposed change (as summarised in 4a, above) regarding the recognition of WLR (albeit that we assert that no association with WBB is appropriate), the GCRA's proposed outcomes for WLL and WBB would be materially fairer. However, Sure considers that more fundamental changes are required to bring about the long-term improvements necessary to make the GCRA's proposals for WLL and WBB fit for purpose. Proposals to achieve that are provided in Section 9 of this document.



## Introduction and background

6 On 6th November 2023, Sure submitted its separate responses to the GCRA's two Second Proposed Decisions ("PDs"): Wholesale Leased Lines ("WLL") pricing and Wholesale Broadband ("WBB")

pricing.

7 As set out extensively in those two documents, due to the very compressed response window allowed by the GCRA (just four weeks) Sure was unable to complete its analyses to submit comprehensive responses and, as a direct consequence, some of its responses are incomplete.

8 Sure repeatedly sought an extension to the GCRA's four-week deadline but, in relation to the responses referred to above, none was forthcoming[2]. However, the GCRA did allow Sure an additional week, from the original 3rd November date to the 10th November, for the further review of the cost model by Sure's advisors, Oxera Consulting LLP ("Oxera").

9 This document, and the enclosed report from Oxera ("the Oxera Report"), constitute that additional submission.

10 Sure re-emphasises that this additional response is not comprehensive and is the result of rushed and incomplete analysis. The additional four days allowed by the GCRA simply did not permit a comprehensive analysis and, in particular, for the full development of detailed proposals for how the GCRA could potentially overcome some of the material issues identified herein.

11 In Annex A to this document, we enclose the Oxera Report, which describes the analysis that it has undertaken and the conclusions that it has reached.

**GCRA Reply: the GCRA has addressed Sure representations on process and timescales in its substantive representations to Appendix 1 and does not repeat those comments in this paper.**

## Sure's process to review the GCRA's model

12 As this document should be read alongside the two response documents submitted by Sure on 6th November, we do not repeat all model-related matters and concerns here, as that would be inefficient and there simply isn't time for us to do so and then comment on each, in the context of the subsequent Oxera Report.

13 As background to the provision of the Oxera Report, once Sure received the two PDs from the GCRA, on 5th October, it first set about reviewing the two 130-page documents explaining the GCRA's analyses and proposals. The radical changes to the proposed 'cost-based' charges, which it became apparent were primarily as a result of the GCRA's late inclusion of Wholesale Line Rental

2 It is noted that the GCRA did provide one extra working day following a request from Guernsey Airtel Limited.

("WLR") revenues, were such that Sure initially thought that some kind of error must have occurred and perhaps the wrong output values had been inserted into the PDs. This was due to the significant disparity between the values shown in the GCRA's first and second proposed decisions for both WLL and WBB charges. Sure turned its attention to the accompanying model to seek clarification.

14 The GCRA had originally provided Sure with separate discounted cashflow (DCF) models for the setting of proposed 'cost-based' WLL and WBB charges (that is, the same DCF model, inappropriately split into two). Due to concerns that it was not possible to see how any appropriate changes in one model impacted the values in the other, Sure suggested to the GCRA that an updated version of the original combined DCF model be provided instead.

15 Despite having sought to work closely with the GCRA and its advisors (Frontier Economics) in the modelling process, and Sure on several occasions offering (and even specifically requesting) that Sure be given the opportunity to review the assumptions made in the new combined model[33], the GCRA did not allow this to happen, so Sure had no detailed understanding of the underlying methodologies employed in the combined model.

**GCRA Reply: See Section 5, 'Overview and modelling', in the Final Decision, for the GCRA's comprehensive response on the extensive opportunities that Sure was given to comment on and provide its input on the allocation keys and assumptions made in the cost model. Sure's description of the process is not fair or accurate.**

## 1.1 Sure's comments on the separate models

16 In response to the GCRA's First Proposed Decisions (both WLL and WBB), Sure submitted a set of detailed model related corrections and updates, most of which were subsequently accepted by the GCRA and implemented into the new combined model. This proved the value of Sure's sense-checking of the GCRA's models and heightened our frustration that the GCRA refused our repeated offers of further assistance and requests for sight of the model.

17 The changes that the GCRA accepted covered the following areas:



3 Most recently in an email on 6th July 2023, from Sure's Regulatory Manager to the GCRA, in which he stated 'Not to sound like a stuck record on the matter, but… hopefully the benefits of information checking with Sure are being recognised. So as to minimise the chances of any misunderstandings regarding the data we're providing in this phase of the review, I'd like to reiterate our offer – indeed, our request – for us to assist in the review of the proposed GCRA version of the model, when that stage is reached. As I've mentioned, there's no criticism of Frontier's work. Certain assumptions need to be made; it's just that we'd like to help sense-check them'.

1. The correction of the treatment of Sure's recurring fee discount which it provided to retailers in instances where their customers upgraded to a faster fibre speed at the time of their service migration from copper to fibre. The GCRA's WBB model had originally treated this as additional revenue to Sure, rather than a reduction of it.

2. The correction of the GCRA's significant overstatement of revenue relating to the charges applied by Sure when a fibre service is installed. In all cases where customers are migrating a service from copper to fibre, no charge is made (and hence no revenue is earned), however the model had erroneously calculated that Sure received wholesale revenue in all such instances.

3. The GCRA's recognition of the lifespan of each Optical Network Terminal (ONT) – the active equipment placed inside every premises served by fibre – which the GCRA had estimated had a lifespan of 20 year, when in fact a maximum of 12 years was appropriate. More recent and detailed analysis on Sure's part has led to a further reduction, to 8 years.

4. Updating of the model to recognise that the States of Guernsey inflation related data (actuals and forecasts) had become out of date, between the time of creation of the original models and that of the combined model.

5. The necessary value adjustments, due to the GCRA's incorrect recognition of Sure's WBB charges during the years 2016 to 2021.

## 1.2 The scope of the model

18 Until the 4th October 2023, Sure had expected to be issued with a combined model for the two focal products (WLL and WBB), however, during a call with the GCRA on that day, the GCRA briefly explained that its revised cost model (and the associated PDs) would reflect its addition of Wholesale Line Rental (WLR) revenues, which the GCRA asserted related to WBB[4].

19 As far back as 24th July 2023, Sure had explicitly stated that, should the GCRA decide to include WLR in its calculations, then the GCRA should engage with Sure as this would be a material impact on the GCRA's proposals[5]. The GCRA never responded to Sure's request.

20 Therefore, to find that the GCRA had included WLR revenues in the model was entirely unexpected.

4 Although the model also materially impacts WLL profitability, which we believe is a material modelling deficiency.

5 Email from Sure's Regulatory Manager to the GCRA: 'Should the above confirmation [re the concept of WLR] have any material impact on the GCRA's proposals then we would expect you to engage with us and other stakeholders as a matter of priority'.

Sure carefully reviewed the PDs for the GCRA's justification for this change and found none, other than a mention that WLR is a product that Sure's wholesale customers must purchase together with the WBB product. In its WBB PD response, Sure sets out in some detail why this is not the case. The GCRA has offered no objective justification for the sudden inclusion of WLR revenues, and neither Sure nor its advisors (Oxera and GOS Consulting) are aware of any precedent that would support this approach.[6]

**GCRA Reply: Please section 3 of the Final Decision and section 4 of Second Proposed Decision.**

21 However, of even greater surprise and alarm was the realisation that the GCRA's inclusion of the WLR revenues had an inappropriately material impact on the (supposedly) cost-based charges for the WLL product. The inclusion of the WLR revenues into the combined WLL and WBB model resulted in a 14% reduction in the WLL unit costs produced by the model. The WLL product and the WLR product are in no way related. Customers do not need to purchase one to use the other, nor are customers even able to use the two products together in any meaningful way.

22 This entirely counterintuitive and unexplained outcome alerted Sure to the possibility to there being major structural and design flaws in the model and this caused Sure to engage Oxera to review the GCRA's model.

**GCRA Reply: Regarding paragraphs 21 and 22, the GCRA refers Sure to its response under paragraph 113 of "Appendix 1", where the GCRA explains why the impact of the introduction of WLR revenues for wholesale broadband customers on the costs allocated to wholesale leased lines services is a reasonable and expected outcome. It also explains, the consideration of WLR for wholesale broadband customers means that more costs should be recovered from wholesale broadband customers, and given a large share of relevant Sure costs are "shared" between wholesale broadband customers, wholesale leased lines, and other services, this necessarily requires a lower share of those costs to be recovered from other services including wholesale leased lines in order to avoid over-recovery of costs by Sure.**

23 As part of the engagement and on-boarding process, Sure asked how much time Oxera would need for its review, and it became clear that it would not be possible to complete a meaningful review in the fewer than three weeks remaining of the four-week response period allowed by the GCRA. With Sure having already voiced concerns to the GCRA about the compressed response window,

6 In this document, we do not address issues relating to the relevant market definition. That analysis is, however, critical to the full picture and Sure refers the GCRA to its WBB PD response for that analysis.

the GCRA responded to its (the GCRA's) suggestion that Sure provide a reasoned request for an extended response period. The ensuing correspondence between Sure and the GCRA is fully documented in both the WBB PD response and the WLL PD response. Regrettably, the GCRA did not grant an overall extension, instead providing Sure a mere five additional working days [7]with which to document any material modelling concerns that were found by Oxera.

## Oxera's review of the GCRA's model

24 Despite the very short time allowed for the review of the model, Oxera has identified a number of **material errors** in both the GCRA's approach and detailed implementation. Those errors can be summarised as follows:

- Of greatest consequence, from Sure's perspective, is that the Frontier Economics (the same consultants as that used by the JCRA) have <u>applied a different treatment of WLR within the model it created for the GCRA, compared to that which it had created previously for the JCRA's equivalent review of wholesale broadband services</u>. In Guernsey, the model adds WLR revenues to those of Sure's WBB products, whereas in Jersey, the model calculated WBB costs and then deducted the WLR charge – a fundamental and unexplained difference in approach. Worse still, the methodology used in Guernsey amplifies uncertainty over WLR costs and creates unnecessary problems with cost allocations, an unusually significant proportion of which are based on revenue. Using this flawed methodology has created a deficiency in the GCRA's proposed WLL charges, which are 14% lower than they should be. This has occurred despite there being no causal link between the WLR and WLL products. Sure cannot accept that such an impactful shortcoming is appropriate and now that it has identified this error, it considers that <u>**the GCRA must take corrective action to ensure that its Final Decision is not deficient**</u> in this regard.

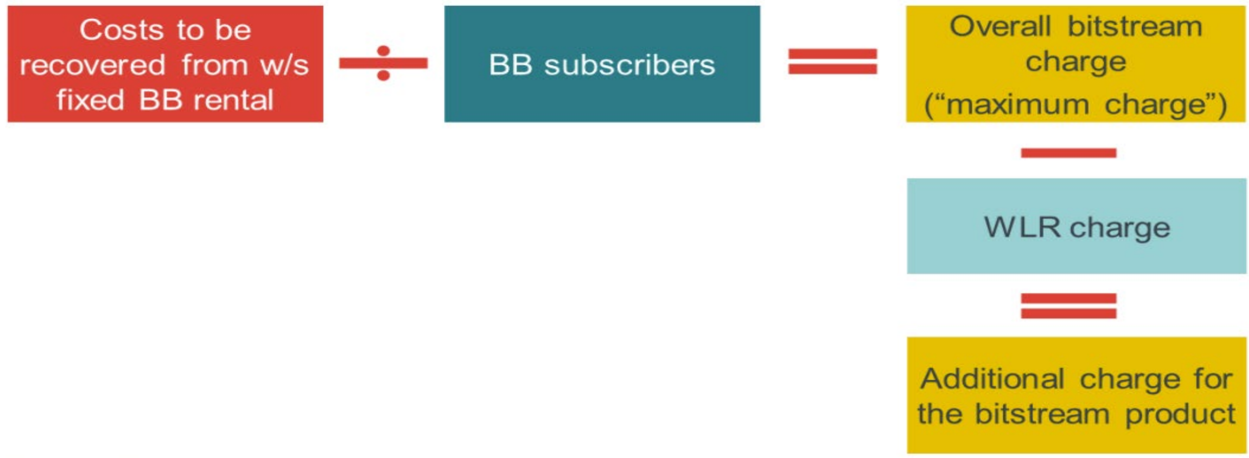
  **GCRA Reply: Sure and Oxera incorrectly concluded that the GCRA has taken a different approach to the JCRA. As the GCRA has explained in its response to paragraph 64 in "Appendix 1", the GCRA's approach is in fact equivalent to the approach taken by the JCRA. The JCRA applied a price control that included the two key elements required to deliver broadband, a wholesale bitstream charge and a WLR charge, which it described as a**

[7] Which more recently became four days, as a result of the one day extension granted at Airtel's request.

"maximum price"[8].

The GCRA is working closely with the Frontier Economics team that developed the models used in Guernsey and Jersey, and the "maximum price" [9] in Jersey, is the same pricing structure used in the Final Decision (and the previous proposed decision). Essentially, JCRA's <u>bitstream charge</u> is equivalent to the wholesale broadband access charge in Guernsey. Figure 13, of the Frontier Economics report accompanying the JCRA's Final Decision[10], demonstrates the approach taken in Jersey.

**Figure 13 Overview of the overall bitstream charge and additional charge for the bitstream product**




*Source: Frontier*

The GCRA modelling approach in accounting for WLR in its combined model is equivalent:

- The GCRA has estimated the <u>total costs to be recovered from wholesale broadband rental services</u>, including the costs to be recovered from wholesale broadband product charges and the WLR charges for wholesale broadband customers.
- This has then been used to determine the cost-based price level for the average combined charge for wholesale broadband product rental and WLR: this is the level of the combined charge which would mean Sure's wholesale broadband revenues (i.e. combined revenues for its wholesale broadband product rental and WLR from



[8] https://www.jcra.je/media/598347/t-011-wholesale-broadband-access-services-price-review-final-decision.pdf . See paragraph 7.6-77 and Figure 9.
[9] https://www.jcra.je/media/598347/t-011-wholesale-broadband-access-services-price-review-final-decision.pdf . See paragraph 5.87
[10] https://www.jcra.je/media/598354/final-decision-frontier-economics-report.pdf

wholesale broadband customers) cover these costs plus a reasonable rate of return.**

**Regarding the impact of considering WLR for wholesale broadband customers on wholesale leased lines charges, see the response to paragraph 22 above and the GCRA response to paragraph 113 in "Appendix 1".**

- Were the GCRA not to take the above corrective action, a further WLR related issue would continue to exist – that being the GCRA's late addition of WLR revenues in its model, but with no recognition of the costs associated with providing that service. This matter will be of no consequence, should the GCRA carry out Sure's proposed change from the recognition of WLR revenue as additional revenue associated with WBB and instead apply the WLR charge as a reduction to the calculated WBB charge.

**GCRA Reply: The GCRA has included all material relevant costs that are appropriate to be recovered from wholesale broadband customers via its charges for wholesale broadband product rental and WLR charges.**

**The cost model considers all relevant costs for which at least a share should be recovered from Sure's provision of wholesale products, including WLR. This is because the objective of the data gathering process conducted by the GCRA at the outset of the model development process (and therefore the data requested) aimed to gather costs relevant to the provision of ALL access and core-related Sure wholesale services, to ensure the GCRA had a full picture of Sure's costs. In particular, the cost model includes:**

- **All of Sure's core and access network capital costs;**
- **All of Sure's network and non-network operating costs. The raw operating cost data in the model is the direct "Report output" from Sure's financial accounts, and the GCRA understood from engagement with Sure during the model development process that this reflects all of Sure's operating costs.**

**In addition, the GCRA considered whether adjustments to its allocation keys were needed in order to ensure any additional costs that should be recovered from wholesale broadband customers when taking account of WLR charges for these customers. As a result of that consideration, the GCRA made adjustments to the revenue-based allocation keys in the model such that the relevant wholesale broadband customer revenues included both wholesale broadband product rental revenues and the WLR charges to these customers. This resulted in a greater share of Sure's costs being allocated to wholesale broadband customers. As outlined in the GCRA's response to paragraph 113 "Appendix 1", allocating more costs to take account of**

**WLR for wholesale broadband customers is a reasonable approach.**

**Prices, and in-turn, revenues for a given service provide a reasonable and proportionate proxy for the efficient allocation of costs between services, with higher prices or revenues for a given service suggesting that it is efficient for more costs to be recovered from that service. Having become aware that a customer required a WLR in order for an OLO to be able to provide broadband services using Sure's network to that customer, the GCRA has had to adjust the effective "total price" for wholesale broadband accordingly. It follows that it is reasonable to recover a greater share of costs from wholesale broadband customers than previously envisaged to reflect the existence of WLR within the defined wholesale broadband market. The GCRA concluded that the other allocation keys used in the model did not need to be adjusted.**

**Taken together, the GCRA considers that it has included all material relevant costs that are appropriate to be recovered from wholesale broadband customers via wholesale broadband product rental and WLR charges.**

- <u>The GCRA's model does not allow Sure to earn a suitable return—or recover its investments.</u> This is a material flaw, as the GCRA's model identifies £[redacted]m of CAPEX incurred by Sure, relating to its FTTP roll-out, prior to 2022, but it is excluded from the model's NPV calculation. Similarly, pre-existing capital investments relating to WLL, where £[redacted]m of assets related to the period 2016-2021, have not been allowed for. Clearly, these omissions relate to sizeable values, which the GCRA needs to recognise, before it finalises its proposed WLL and WBB charges. Furthermore, as Oxera has identified, there is a need to earn a return on shared assets – those that cannot readily be attributed to WLL or WBB, but are required to support their provision.

  **GCRA Reply: The GCRA chose 2022 as the starting year on the basis that the vast majority (97%) of Sure's forecasted £38.7M build CAPEX for its FTTP network occurred from 2022 onwards and all the model calculations were based on that timeline. This was a reasonable approach for the GCRA to take. Sure has now sought to include certain elements of cost it incurred prior to the period the GCRA considered reasonable for this price control. It is disappointing that Sure did not raise this matter far earlier in the process as it knew as early as May 2023 that the period for which income and costs would be assessed was from 2022. In setting this control, the GCRA considers that a start point needs to be decided upon and there will always be prior year costs incurred by a party subject to a such a control. There will however also be revenues in prior years, so costs, such as the ones identified by Sure, cannot be considered alone. The GCRA does not believe that using an earlier starting date is likely to lead to any material changes to this decision, since the evidence we have suggests it is highly likely Sure earned income well above**

**its costs for an extended period and any historic costs it now wants to include would have been paid for already from the income received. Accounting for them in the period we have assessed is very likely to lead to double recovery.**

- The inappropriate use of revenue as a cost allocation key. Sure has identified that the inclusion of the WLR revenues in the model was having material counterintuitive effects of the model outputs. Oxera has investigated this specific issue and identified that, of the costs for WLL and WBB that were identified as common and shared costs (which represented unacceptably high portions of the total costs for each product), [redacted]% for WBB and [redacted]% for WLL were allocated using revenues as a cost allocation key. As Oxera explains, this creates a circularity issue. Modelling professionals are well aware that the use of revenues for cost allocation should be an option of last resort. Oxera notes that, in its requirements for Sure's separated accounting models, the GCRA had set an upper limit of 10% for the portion of common and shared costs that could be allocated using revenues as the allocation key. Despite this background of internationally recognised problems with the over-use of revenues for cost allocation and the GCRA's own restriction on that approach when applied to Sure, the GCRA's model allocated [redacted]% and [redacted]% using revenues for the WBB and WLL products respectively. Oxera also expresses relevant concerns about how, when used in a forward-looking regulatory context (as is the case here), the use of revenue has the potential to cause circularity. In Sure's view, such circulatory is evident within the GCRA's model.

**GCRA Reply: The GCRA refers to its responses under paragraphs 99 and 110 in "Appendix 1". The GCRA restates its position that:**

- **The GCRA considers that the use of revenue-based cost drivers is reasonable and proportionate given the size of the Guernsey jurisdiction and is consistent with the approach in Jersey which Sure did not raise concerns with.**
- **The 10% limit did not specifically relate to the proportion of costs that could be allocated using revenues, but instead relates to the share of costs for which there is no easily established means of appropriate allocation across the relevant markets (i.e. "non-attributable").**
- **In any case, the GCRA does not consider that this 10% limit is reasonable to apply going forward, and therefore considers that making a comparison of the share of costs that are considered non-attributable to a 10% threshold does not represent a reasonable test of whether a cost model is fit-for-purpose. This is because (i) the nature of telecoms networks and businesses means a large proportion of network costs support**

**multiple services, and (ii) Sure will incur "common costs" (such as corporate overheads) which are by definition not related directly to the provision of particular services, but for which it is reasonable to include an allocation of these to individual services to ensure Sure is able to recover these costs. It is therefore reasonable to expect that the share of Sure's costs to be recovered from a given service that are "non-attributable" is greater than 10%.**



## Conclusion

25 Despite the very limited time afforded to review the GCRA's new combined model, there can be no doubt that the flaws identified are of a magnitude, in terms of the integrity of the model, and of a materiality, in terms of the outputs of the model, that renders it not fit for purpose.

26 Whilst the GCRA is likely to remain eager to press on with its next and final stage of its market reviews – leading to the publication of Final Decisions for the setting of charges for WLL and WBB products – Sure cannot see any feasible way forward for the GCRA, other than to amend the methodology within its model. As a minimum, and regardless of the GCRA's stance regarding the general views expressed by Sure and Oxera, it must recognise that it is being gifted information that would materially and beneficially influence the WLL and WBB markets[11], based on a simple change in recognition of WLR charges (from being treated as a revenue, to being treated as a reduction of cost). Sure undertook this change within a copy of the GCRA's model within a matter of minutes. On the basis that the GCRA has 'nothing to lose' from considering Sure's recommendation, it would surely make sense for the GCRA to set aside time for a call or meeting with Sure so that our findings can be shared.

27 Whilst the above action, in itself, will provide a material correction, it will not directly resolve the other issues that Sure concluded are necessary to be actioned to enable a long-term suitable and fair outcome. Therefore, in addition to Sure's proposal in Section 26, it is also necessary to take account of the conclusions drawn within its WLL and WBB related responses, which it submitted to the GCRA on 6th November 2023. For ease of reference, those conclusions are restated here:

1. **WLL:**

   "… the GCRA needs to recognise that its combined WLL and WBB model is not fit for purpose, due to its significant overreliance on the use of revenues as a cost allocation key

[11] Through a material improvement in the cost causality principle, with minimum additional effort to achieve that.

and the inappropriately material impact that the GCRA's inclusion of WLR has on WLL. In addition, the proportion of WLL costs driven by revenue is excessive. Based on these deficiencies, we believe that the following steps should be undertaken:

a. The GCRA should revert to the use of its separate WLL cost model (relating to its First PD) – where no WLR costs could inappropriately materially influence the proposed WLL charges.

b. On a temporary basis (if necessary), the GCRA could align the regulated WLL charges with those shown in the First PD.

c. A revised WLL specific model should be created, alongside a Third Proposed Decision and Sure would assist the GCRA (and its consultants) to design and create additional relevant cost drivers to limit the erroneous exposure to the use of revenue as a driver."

2. WBB:

"… Sure would be amenable to the GCRA retracing its steps to the approach in the First Proposed Decision, including the use of a separate cost model. Whilst this also suffered from some fundamental weaknesses, as previously identified, the more limited scope of the approach at least had the effect of limiting the harm resulting from those weaknesses. This temporary solution would be used only until such time as the GCRA's revised review of WBB has been completed. This approach would avoid the potential harm from the lack of reliable data and undue reliance on inappropriate assumptions and proxies and enable the GCRA to move forward quickly, both on an interim basis and during its revised market review."

**Given the GCRA's responses within the document and in "Appendix 1", the GCRA does not consider the suggestions made under points 1a, 1b, and 2 are appropriate. Instead, GCRA considers that the Final Decision, reflects the model updates that the GCRA has outlined within this document and "Appendix 1", and results in an appropriate estimate of cost-based prices for wholesale broadband and wholesale leased lines. For the avoidance of doubt, the GCRA has not provided specific responses to the content of the Oxera report, as the key points in that report are summarised by Sure in the section "Oxera's review of the GCRA's model" above, and the GCRA has provided responses to those within that section.**

## Annex A – The Oxera Report

# Contents

# Introduction

The Guernsey Competition and Regulation Authority (GCRA) engaged consultants to build a cost model to aid the setting of prices for two regulated services: Wholesale Broadband (WBB) and Wholesale Leased Lines (WLL).

The tariffs resulting from the model were initially broadly acceptable to Sure (Guernsey) Ltd (Sure). GCRA then invited Sure to comment on parameters within the model, to further refine it.

However, a further, radical change was made, namely to bundle the revenue of Wholesale Line Rental (WLR)—a product outside of the market defined for this review—into the WBB category. This led to material counterintuitive effects. Oxera was commissioned by Sure to examine the model and its underlying assumptions.

# Evolution of the model

Oxera understands that the current GCRA model has evolved in the following steps.

- The first was the creation of separate models for WBB and WLL. Sure then suggested some specific parameter changes, the majority of which were accepted by the GCRA.
- It is understood that the GCRA then decided that it preferred to use one consolidated model (a structural change).
- For transparency purposes, best practice would be to (i) apply the suggested parameter changes in the separate model and provide this for review at an interim stage; and then (ii) create a combined model for both WBB and WLL.
- The final stage was the publication of a combined model, using revised parameters, but with WLR bundled into the WBB category.

In the absence of sight of the model at an interim stage, Sure built an estimate of this, in order that it could be compared with the third to isolate the effects of the bundling of WLR into WBB.

**Sure estimated that the effect of this bundling was to reduce the WLL allowed revenues by 14%, even though there was no causal link between WLL costs and WLR.** This reduction could only be due to cost allocation principles, and led to Oxera examining these further (see slide 12).

# Material issues

The GCRA has attempted to implement a cost-based approach to price regulation.[1] However, our review has indicated a number of material errors and issues with the modelling undertaken.

- There is a fundamental flaw in that the GCRA's model does not allow Sure to earn a return—or recover its investments, in particular assets constructed prior to the control period (slides 6 to 9).
- Notwithstanding the issue of whether it is appropriate to include (and regulate) WLR revenues in this process, if these are to be included, so should corresponding WLR costs. The GCRA has not undertaken a process to capture these, and this has led to the omission of at least some costs associated with the provision of WLR (slide 10).
- Frontier Economics, the consultant to the GCRA, has applied a different treatment of WLR to that in a similar model recently constructed by it for the Jersey Competition Regulatory Authority.[2] The updated method used in Guernsey amplifies uncertainty over WLR costs and problems with cost allocation (see below), and is a backwards step (slide 11).
- The GCRA allocates a high proportion of joint and common costs ([redacted]) based on revenue in cases where there is no causal link with revenue. Oxera understands that, in previous regulatory accounting cycles, this proportion has been much lower (<10%). This leads to an unnecessarily high degree of imprecision in the modelled cost estimate (slide 12).

**Notes**

1 GCRA (2023), 'Second Proposed Pricing Decision – Wholesale Broadband Pricing', 5 October, para. 4.8.

2 Frontier Economics (2021), 'Wholesale Broadband Access Services in Jersey: Price Review', A.3.

# No return allowed on invested capital (I)

**The GCRA's model makes no allowance for Sure to earn a return on fibre or WLL assets constructed prior to 2022; nor on common assets that Sure currently holds.**

The absence of such a recovery mechanism appears to be confirmed in the GCRA's response to two questions raised by Oxera, where it stated, in response to a question on why the value of operating assets is not included in the model:[1]

> This question would only be relevant if the model was a Regulatory Asset Base model, which is not the case here.

Further, in response to a question on why depreciation was not included as part of the NPV (Net Present Value) calculation:

> Non-cash assets do not form part of the model as it is a cashflow model, and it models the actual capital costs expected to be incurred in each year. Depreciation is an annualised cost, so therefore isn't included in the model.

**Notes**

1 GCRA's response to Sure's questions, 27 October 2023.

# No return allowed on invested capital (II)

**However, the GCRA's reasoning appears to be flawed, and this results in a fundamental error in modelling an appropriate regulatory tariff.**

It is not correct to state that the use of a Discounted Cash Flow (DCF) modelling approach removes the need to consider the recovery of—and the return upon—capital already invested.

The need to allow companies to earn a return on capital invested is a longstanding regulatory principle. For instance, the Europe Electronic Communications Code states that:[1]

> When a national regulatory authority calculates costs incurred in establishing a service [...], it is appropriate to allow a reasonable return on the capital employed including appropriate labour and building costs, with the value of capital adjusted where necessary to reflect the current valuation of assets [...]

Furthermore, the need to earn a return on assets is not confined to those assets specific to the services. It should also logically include a proportion of shared assets (there is a direct parallel with shared operational costs being apportioned across service lines). The model also does not allow for this.

**Notes**

1 European Commission, Directive 2018/1972 establishing the European Electronic Communications Code, para. 192.

# No return allowed on invested capital (III)

To illustrate this, we note that, for example, the GCRA's model itself identifies £[redacted]m of CAPEX incurred by Sure relating to FTTP (Fibre to the Premises) roll-out, incurred in 2021.[1] However, the GCRA's model gives no further consideration of this expenditure—it is not included in the model's NPV calculation.

**There is therefore an implicit assumption that this expenditure has already been recovered by Sure.**

However, the associated assets will be (at most) three years old at the start of the Control Period. As the GCRA itself notes, these infrastructure assets are likely to have a significant economic life—of 20–25 years for the majority of these costs.[2]

It would therefore appear to be impossible that Sure has yet recovered and earned a return on these investments, which are directly related to—and necessary to the provision of—the WBB/WLR product.[3] **The GCRA's approach effectively assumes that these assets have come into existence with no cost being incurred in creating them.** This will result in an underestimate of the wholesale revenues that should be allowable to Sure.

A similar issue afflicts pre-existing capital investments relating to WLL, where £[redacted]m of assets constructed between 2016 and 2021 are not allowed for.[4]

Finally, Sure currently employs some degree of common assets, used across its business lines. **There appears to be no allowance for the return on these common asset investments, a proportion of which should be allocated to the regulated products under consideration.**

**Notes**

1 GCRA Cost Model, 'Capex forecasts' tab, cell K18.

2 The same tab shows a range of lifetimes from 12 to 25 years for various FTTH-related assets. Further, the GCRA itself notes that some assets under consideration have a lifespan of up to 40 years—see GCRA (2023), 'Second Proposed Pricing Decision', 5 October, para. 5.4.

3 Notwithstanding the issue of whether it is appropriate for WLR to be included within this model. See slide 13.

4 GCRA Cost Model, 'Capex forecasts' tab, cells F40:K40.

# No return allowed on invested capital (IV)

As a further example, consider the ***next*** control period. The GCRA's model currently suggests a negative NPV of [redacted]m for the period 2024–28, which is offset by a positive £[redacted]m over the period 2029–61.

However, when setting prices for the 2029–33 control period, following the same approach would disregard the £[redacted]m of FTTP CAPEX incurred between 2021 and 2026. The approach would result in only £[redacted] of fibre-related CAPEX being recognised by the GCRA.[1] This would be expected to result in a dramatic reduction in tariffs suggested from 2029. This raises concerns over the viability of this regulatory approach going forward.

**Notes**

1 GCRA Cost Model, 'Capex forecasts' tab, cells S18 to W18.

# Failure to capture WLR-related costs

Notwithstanding the issue of whether it is appropriate to include WLR revenues within the model (see observations in slide 13), if WLR is to be included as a revenue option, then WLR-related costs should also be included.

Oxera understands that the original model used by the GCRA was based on a request made to Sure, at a stage in the process when WBB and WLL were the only products under consideration. Given this, it is natural that the original cost-gathering exercise would not have been conducted with a view to gathering a comprehensive view of all costs relating to the provision of WLR. We understand that no further cost-gathering information requests were made of Sure prior to the Second Proposed Decision.

This leads to the material risk that not all costs associated with WLR have been captured by the GCRA's model. We observe that there is at least one example of this: the electrical consumption of concentrators.

If the GCRA proposes to continue to include WLR revenues, we consider that a separate cost-gathering exercise—with appropriate timescales to ensure that a reasonable estimate can be made—would be required, in order to ensure an accurate outcome.

**Proceeding without this exercise runs the risk of further material errors. However, the next slide indicates that there is a way to partially mitigate uncertainty over WLR-related costs.**

# Inconsistent and problematic treatment of WLR revenue

In the GCRA model, WLR is treated as revenue to be added to WBB revenue, requiring the subtraction of WLR-related costs. Apart form the uncertainty over WLR costs referred to on the previous slide, this has the effect of inflating revenues and affecting allocations of joint and common costs, where revenue is used as a driver.

These difficulties are avoided in the approach adopted in Jersey, where WLR revenue is treated as a cost to be deducted from WBA revenue.[1] This approach:

- avoids the increase of revenue by the inclusion of WLR in the revenues of WBB, leading to distortions on other services, such as WLL; and
- avoids the informational deficit on WLR costs that has led to cost omissions.

There is no explanation for the deviation from recent Channel Islands precedent by the GCRA and its consultants.

If the GCRA had undertaken a robust analysis of WLR costs, there might be no clear economic rationale for preferring one approach over the other. However, as the GCRA has not undertaken such an exercise, the 'cost deduction' approach proposed would be preferable, as a way of avoiding this issue.

**Notes**

1 Frontier Economics (2021), 'Wholesale Broadband Access Services in Jersey: Price Review', July 2021, A.3.

# Cost-allocation principles

Given the updated model's unexpected effect of generating a 14% reduction in allowable WLL prices based on the inclusion of WLR—despite there being no causal link between the two products—Oxera has investigated the cost-allocation principles applied by the GCRA.

The GCRA's model allocates a high proportion of costs based on revenue. Specifically, [redacted]% of WBB and [redacted]% of WLL shared costs were allocated on this basis in 2022 (see right). In two small cases, involving regulatory fees, there is a causal link between cost and revenue, and the use of the driver is appropriate. Once these items are removed, we observe that [redacted]% and [redacted]% of shared costs are allocated on revenue, where there is no causal basis.

When used in a forward-looking regulatory context, the use of revenue has the potential to cause circularity, as revenues are used to determine the cost, which then determines allowable revenues for a given product.

Oxera understands that, when producing regulatory accounts (as previously), Sure was required by the GCRA (then as part of CICRA) to perform activity-based costing (ABC), and ensure that no more than 10% of costs were allocated on the basis of revenue; and that accounts would be considered non-compliant with regulation if this threshold were exceeded.

This suggests that there may be significant further scope to better understand (or estimate) the causality of these costs. Best practice would be to investigate this further. **It is uncertain whether this would yield similar results to the GCRA's current analysis—indeed there is scope for the outcome to be materially different.**

| | WBB | WLL |
|---|---|---|
| **Shared costs allocated to product, 2022** | £[redacted] | [redacted] |
| IT OPEX | [redacted] | [redacted] |
| General OPEX | [redacted] | [redacted] |
| Local regulatory licence fee | [redacted] | [redacted] |
| Passive infrastructure, shared buildings | £[redacted] | [redacted] |
| Professional consultancy | [redacted] | [redacted] |
| Corporate overheads | [redacted] | [redacted] |
| Fixed network licence fees | [redacted] | [redacted] |
| **Allocated on revenue** | £[redacted] | [redacted] |

Source: Oxera analysis based on the GCRA's Cost Model.

# Other observations

The GCRA has proposed an approach of regulating the total combined price of WBB and WLR, while allowing Sure freedom to vary the exact structure of prices between the two products providing that the total cost is the same.[1]

The nature of the tariff control proposed effectively results in the WLR product being indirectly regulated, as, if Sure were to increase the price of this product, it would be required to implement a corresponding reduction in the price of another product (WBB).

Oxera understands that the GCRA's market definition and finding of SMP (Significant Market Power) was, however, related specifically to the WBB product. While Oxera does not comment on procedural and legal aspects of the GCRA's decision, it is noted that standard practice would be to define a relevant market and assess SMP before implementing price controls in relation to that product.

It is also noted that this is a significant change in approach that has been made in an accelerated manner, first arising in the GCRA's Second Proposed Decision, which was published on 5 October and provided only a four-week consultation period.[2]

**Notes**

1 GCRA (2023), 'Second Proposed Pricing Decision – Wholesale Broadband Pricing', 5 October, section 7.

2 For instance, we note that the JCRA recently undertook a similar exercise in Jersey. The JCRA's first draft decision was published on 27 January 2021, appeared to include its proposals in relation to WLR from this point, and included an eight-week consultation to 24 March.

# Conclusions

The current model put forward by the GCRA for the purpose of tariff-setting contains a number of serious flaws. In particular, we have noted the following.

1. The model fails to allow Sure to recover its investment on fibre-specific CAPEX made in 2021.

2. The inclusion of WLR revenues necessitates that WLR costs should also be included, although a thorough process has not been undertaken in relation to these.

3. There is a high degree of imprecision in relation to cost allocation, as a result of the extensive use of revenue (as compared with historic precedent in Guernsey).

4. There has been a deviation from recent regulatory precedent in Jersey that has compounded the flaws listed in points (2) and (3).

We have also observed that there are other potential issues that fall short of best practice, including the substantial change in scope of the products and services that the model seeks to regulate relative to the market definition and SMP exercise.

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## Annex 3 – GCRA reply to Airtel written representations in response to the Second Proposed Decision

**Guernsey Airtel Limited's (GAL) response to Guernsey Competition & Regulatory Authority (GCRA) regarding '*Case T1652G – Second Proposed Pricing Decision – Wholesale Broadband Pricing*', published 5 October 2023.**

1.0 At the outset, GAL would like to thank GCRA for extending the response submission deadline until 1700 6 November 2023 on GAL's request.

2.0 Despite GAL responding to GCRA's 'Case T1652G' on 14 July 2023, followed by meeting on 25 July 2023 and on 27 October 2023 respectively, GAL is disappointed to note that GCRA's proposed second decision for 'Wholesale Broadband Pricing' published 05/10/2023 will not address any of the GAL's concerns.

3.0 GAL requests GCRA to judiciously reconsider and respond to each of the concerns set out below in this response document before the final decision on 'Wholesale Broadband Pricing' is made. These points re-emphasise the extreme challenges posing a barrier to GAL competing 'effectively and efficiently'.

4.0 This response is structured in two sections:

4.1 Section A: sets out GAL's concerns regarding lack of objective engagement on the part of the GCRA to consider the concerns and evidence provided by GAL throughout the current 'Wholesale Broadband Pricing Control' exercise, as none of GAL's concerns shared via 'previous response to 'Case-T1652G' have been addressed.

4.2 Section B: sets out GAL's concerns regarding GCRA's cost modelling approach in '*Case - T1652G' - Second Proposed Decision - Wholesale Broadband Pricing*'.

***Section A GAL's concerns regarding lack of objective engagement on the part of the GCRA.***

5.0 GAL buys various types of wholesale access such as 'fibre, on-island & inter-island leased line connectivity, SP interconnect, internet feed i.e., ISP' etc., in Guernsey to compete in mobile and fixed market against its two competitors i.e., JT and Sure who unlike GAL, own 'fibre, on-island & inter-island leased line connectivity, SP interconnect, internet feed i.e., ISP' etc.

6.0 GAL expects GCRA, like any OLO (Other Licensed Operator) would expect any telecom regulatory body in any jurisdiction, to address any kind of barrier to 'effective and efficient competition' by 'regulation and intervention' upon being made aware about any 'lack of level playing field' concerns. Thus, GAL has been sharing its commercial and competition challenges regarding the 'cost of doing business' with GCRA regularly since 2017-2018 so that GCRA can prioritise formulation of their action plan to address barriers to the 'effective and efficient competition'.

7.0 GAL is writing with reference to the above and to express its growing frustration with GCRA's lack of objectivity and sincerity in handling of all the concerns with evidence explained by GAL during current GCRA's 'T1652G - Wholesale Broadband Pricing' review exercise.

8.0 After analysing GCRA's latest '*Case - T1652G' - Second Proposed Decision - Wholesale Broadband Pricing*', it's becoming increasingly clear to GAL that GCRA has no intention to acknowledge and resolve the underlying issues posing barrier to GAL to compete effectively and efficiently. Further, the efficacy of GAL's response is limited by the lack of action since 25 July 2023 by GCRA to organise the promised action to clarify GCRA's proposed price cap and weighted average price model in detail.

9.0 GAL analysed its mobile customer market share and its mobile revenue share in Guernsey, as per the GCRA's '*Telecommunications Statistics and Market report 2022*'.[1] The table below shows that GAL's both 'customer market share' and 'mobile revenue share' have materially declined between 2018 and 2023. The table also confirms that GAL is not able to 'compete effectively and efficiently' due to prohibitive pricing of all types of wholesale access in Guernsey despite the various GCRA's interventions, as GAL is struggling to achieve revenue equal to its market share.

| **Mobile Base in '000** | | | | | |
|---|---|---|---|---|---|
| **Guernsey** | 2018 | 2019 | 2020 | 2021 | 2022 |
| Industry (JT, Sure, GAL) | 71,278 | 72,006 | 71,622 | 71,485 | 75,129 |
| GAL | 17,107 | 16,909 | 17,195 | 15,580 | 16,513 |
| **GAL CMS%** | **24.0%** | **23.5%** | **24.0%** | **21.8%** | **22.0%** |
| CMS - Customer Market Share | | | | | |
| **Mobile Revenue in GBP** | | | | | |
| **Guernsey** | 2018 | 2019 | 2020 | 2021 | 2022 |
| Industry (JT, Sure, GAL) | 22,446,490 | 22,793,027 | 21,290,818 | 21,509,509 | 23,362,981 |
| GAL | 4,003,699 | 4,104,082 | 3,879,367 | 4,048,019 | 3,924,569 |
| **GAL RMS%** | **17.8%** | **18.0%** | **18.2%** | **18.8%** | **16.8%** |
| RMS - Revenue Market Share | | | | | |

10.0 GAL would like to remind GCRA that basis the emerging strong trend of customers looking for combined deals for 'mobile and fibre' post Covid, combined with the compulsion to remain relevant to its own customer base and market competitive, GAL was compelled to invest in 2021 to roll out copper / fibre broadband and landline services using various wholesale products access. The trend of customers looking for combined deals for 'mobile and fibre' is also confirmed by GCRA's '*Telecommunications Statistics and Market report 2022'* in footnote 1.

11.0 As explained via bullet points 9.0 and 10.0 above, to remain relevant to customers and market competitive, and to increase customer market and revenue share which has declined considerably between 2018-2023, GAL decided to invest in fibre broadband and landline services little knowing that it will result in more losses for GAL.

12.0 Further to points made above, refer to the table below which confirms that despite GAL launching the cheapest tariff for both 'fibre broadband' and 'combined deals for mobile, landline, and fibre broadband', GAL is struggling to acquire customers in Guernsey and increase its revenue.

| Amount in GBP | 2021 | 2022 | Customers in Nos | 2021 | 2022 |
|---|---|---|---|---|---|
| Guernsey Fixed Retail Revenue (Sure+JT+GAL) | 21,873,347 | 21,999,841 | Guernsey Fixed Retail Customers (Sure+JT+GAL) | 25,855 | 26,338 |
| Airtel (GAL) revenue | 3,884 | 86,597 | Airtel (GAL) Customers | 12 | 264 |
| RMS% | 0.02% | 0.39% | CMS% | 0.05% | 1.00% |
| RMS - Revenue Market Share | | | CMS - Customer Market Share | | |

[1] https://www.gcra.gg/media/598566/telecoms-stats-report-to-be-published.pdf





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13.0 Particularly, following are latest events which confirms GCRA's 'tokenistic' approach towards GAL:

13.1 Out of GAL's 37 bullet points explaining GAL's concerns regarding fibre broadband pricing in its letter of 14 July 2023, GCRA responded partially to only 1 bullet point regarding WLR and ignored 36 bullet points raised by GAL in its draft 'second proposed broadband pricing decision - Case T1652' published on 5 October 2023.

13.2 Despite GAL responding to GCRA's 'Case T1652G' on 14 July 2023, followed by meeting on 25 July 2023 and on 27 October 2023 respectively, followed by GAL's email of 27 October 2023 summarising all of GAL's concerns from the meeting, neither GCRA ever acknowledged, nor GCRA responded to any of GAL's concerns despite GCRA promising response to GAL in meeting of 25 July 2023 and on 27 October 2023 respectively. Therefore, GAL is very disappointed and frustrated with GCRA's apathetic approach.

13.3 GAL requested granular pricing of full 'Sure's wholesale product set' considering new fibre product launched on 1 November 2023 via an email to GCRA on 2 August 2023, to which GCRA responded saying that request is noted, confirming that: '*You requested that the GCRA illustrate the average weighted prices for Wholesale Broadband Access (graphically) on a bandwidth-by-bandwidth basis so that the Proposed Decision is clearer in the pricing it was proposing. And we have asked Frontier to produce that table and will share that once we have it.*' GAL followed again via emails dated 5 September 2023 and 18 September 2023 which has not been responded.

13.4 In meeting of 27 October 2023, the GCRA officials admitted in meeting that they have not read and analysed GAL's response of 14 July 2023 during the last 3.5 months.

13.5 In meeting of 27 October 2023, GCRA officials said they are in listening mode, and they will note down all of GAL's concerns as they are not economists. They also mentioned that they do not have any understanding of how the weighted average broadband pricing has been worked out. They promised to write to GAL regarding each of the raised issue including a workshop to be organised by GCRA to explain the second proposed broadband pricing to GAL in detail with all the assumptions factored in.

14.0 Therefore, GAL is disappointed to note that not only GCRA ignored, GCRA did not respond to the following key issues which were consistently highlighted to GCRA by GAL via all the 'Broadband Pricing Review' meetings and responses:

14.1 Assuming Sure's future price revision results in same GCRA's predicted weighted wholesale broadband price i.e., £12.97 for GAL, then GAL still remains in a position of negative margin to offer this product. To understand please refer to bullet point 10.0 – table 1 in our T1652G response of 14 July 2023, our input figures remain the same, except item H which changes to £12.97, making our negative margin per customer figure at £7.51.

14.2 It is worth noting that given GCRA has revised the weighted wholesale broadband price as per 7.1.5 (Table A) to £12.97 in the latest second proposed broadband pricing, however, at this stage GAL doesn't know what exact price will be set by Sure for each bandwidth, and therefore, Sure's future price revision for each bandwidth could result in GAL's weighted wholesale broadband price higher than GCRA's predicted weighted wholesale broadband price at £12.97. As a result, GAL's negative margin could be much higher than £7.51.

14.3 GAL would like to remind GCRA to refer to evidence supplied by GAL regarding 'negative margin' in its response of 14 July 2023 (explained by GAL in meeting of 25 July 2023 and 27 October 2023 respectively as well) which proves that GAL's 'negative margin problem' has nothing to do with '*new entry to market*' or '*time required to build up scale*' or '*lack of volume*'. Rather, acquisition of more customers will increase the 'negative margin' for GAL which confirms that the 'negative margin' issue is a result of prohibitive pricing of wholesale access services such as 'fibre/copper broadband access', 'inter-island leased line connectivity', 'SP interconnect', 'on-island leases lines', and 'ISP (internet feed)'.

14.4 As evident from bullet points 14.1 to 14.3, GCRA needs to clarify how weighted average price modelling is derived, how price cap works, detailed explanation of all calculations is required including the clarity regarding source of the 'customer base figures' for the calculation of 'weighted average price control'. Plus, how these figures will be validated, and how customers migrating from copper to fibre will affect the 'weighted average price' control in due course.

14.5 GCRA also needs to understand GAL's point here that it would be detrimental for any business to operate at a constant loss on a specific product segment, which is currently the case for GAL's 'fibre broadband' product basis the evidence shared with GCRA, therefore, GCRA's intervention is required to reduce the costs of wholesale fibre broadband access considerably further so that GAL can compete effectively and efficiently, ultimately benefitting the Guernsey public.

15.0 Following are the WLR related concerns of GAL which have not been responded to by the GCRA:

15.1 Given that fibre broadband uses optical fibres to transmit data, and it doesn't rely on the traditional copper telephone infrastructure. Thus, WLR is not required for fibre broadband services, as it's specific to the use of copper telephone lines. If that is the case, and given that only 10-15% customers use WLR (evident to GAL from its experience over last 2 years), therefore, request GCRA to clarify why they have secured WLR revenues for Sure despite customer demand for WLR services being under 10-15%.

15.2 Despite GCRA including the WLR in the revised 'weighted wholesale fibre broadband price', request GCRA to clarify why GCRA decided to keep WLR at same level as before which will increase in coming years i.e., starting at £11.50. Since WLR is a legacy copper-based technology, GCRA needs to clarify why they did not reduce the price of WLR.

16.0 Request GCRA to clarify the following observations in Section 7.1.5 in the second proposed decision:

16.1 In 2025, £11.75 for WLR + £13.53 for Broadband = £25.28, but the published total is £25.29.

16.2 In 2028, £12.54 for WLR + £15.02 for Broadband = £27.56, but the published total is £27.57.

17.0 GAL has serious concerns over the compliance process as explained in the meeting of 27 October 2023. Sure will supply GCRA a compliance statement 14 months after the year in question, therefore, please clarify the following:

17.1 What is the timescale for GCRA to verify the information provided? Why is it being done with such delay leading to risk that there could be no compliance for over 14 months? How the OLOs will be compensated in case of non-compliance by the wholesale service provider?

17.2 It appears to GAL that there is a mismatch between Sure and GCRA regarding the effective date of proposed second broadband wholesale access price control, as GCRA's document 'Case-T1652G' states that new pricing is applicable from 1 January 2024, however, Sure suggests otherwise that Sure will implement sometime later in 2024 but not with effect from 01.01.2024.

18.0 In meeting of 25 July 2023 and 27 October 2023, GAL reminded that GCRA's intended proposal as per T1652G for 'price control for wholesale broadband access' will only be a 'hollow exercise' if GCRA fails to take on board GAL's issues to find proper and effective remedial measures aimed at enabling more competition and choice for consumers in Guernsey.

***Section B Response to GCRA's cost modelling in 'Case - T1652G' - Second Proposed Decision.***

19.0 As Guernsey is amongst few rare, regulated jurisdictions where the incumbent service provider is not required to publish their complete financials with full transparency, and GCRA being a member of Small Nations Regulators Forum[2] (SNRF) where many fellow SNRF member countries follow practice of publishing separated accounts of 'respective incumbents providing wholesale and retail services in those small nations' to increase the transparency of their financial reporting including any cost efficiencies achieved to avoid any cost misallocation or cross subsidisation.

20.0 GCRA has proposed 'Discounted Cash Flow' (DCF) cost modelling approach to set the price control for wholesale broadband access as Sure's FTTP (fibre to the premises) network is currently in the process of being built.

21.0 Therefore, given the lack of transparency of Sure's financials as explained in bullet point 19.0, and given Sure's basis for DCF cost modelling approach as explained via bullet point 20.0, GAL requests GCRA to clarify the following:

21.1 GAL's understanding is that FTTC (fibre to the cabinet) and 'business FTTP' was already available before the commencement of current FTTP project, therefore, what due diligence has been done by GCRA to account costs and return made for existing FTTC and business FTTP in certain pockets. Plus, GCRA needs to clarify if the GCRA has considered the returns Sure has made so far on the respective historical costs, and accordingly if the future costing is adjusted for same.

21.2 GAL is particularly interested in understanding how GCRA determines the capital expenditure and profit margins for Sure's provision of Fibre broadband and WLR services in Guernsey including how one-time costs are optimised by £12.5 million funding[3] provided by the States of Guernsey.

2 https://www.iicom.org/become-a-member/small-nations-regulators-forum/

3 https://www.gov.gg/CHttpHandler.ashx?id=144068&p=0

21.3 GAL's understanding is that FTTP project is aimed to make 'fibre-based broadband' available but GCRA's stance implies that fibre infrastructure is shared between 'Sure retail' and 'Sure broadband wholesale' and 'Sure on-island leased line wholesale', therefore, request GCRA to clarify what due diligence has been done by GCRA to avoid any cross subsidisation or cost misallocation including steps taken to ensure shared costs are accounted as per actuals including any cost efficiencies achieved.

22.0 Given that fibre broadband uses optical fibres to transmit data as it doesn't rely on the traditional copper telephone infrastructure, and given that only 10-15% of customers use the WLR (evident from GAL's experience in last 2 years), as a result, GCRA's proposed second broadband pricing decision as per 'Case-T1652G' will keep Sure's WLR revenues protected until 2028 as there is no reduction proposed in WLR price. Therefore, request GCRA to clarify that what historical returns made on costs associated with WLR being a legacy network and future revenues has been considered to optimise DCF cost modelling.

23.0 When using DCF modeling to set regulatory prices for wholesale fibre broadband access provided by Sure whose infrastructure is shared between wholesale and retail services, and between products too i.e., on-island leased lines and fibre broadband, therefore, request GCRA to clarify what due diligence was done to address the following drawbacks and challenges:

23.1 If the incumbent service provider shares complex infrastructure between wholesale and retail services, and between products too i.e., on-island leased lines and fibre broadband, thus, it can be difficult to accurately allocate costs between these categories. The shared infrastructure can create opportunities for cross-subsidisation, where costs incurred for wholesale services may be inappropriately allocated to retail services, or from on-island leased line product to broadband product to justify higher wholesale prices which may not always be detected or prevented.

23.2 If any financial and operational data for the shared infrastructure may be considered proprietary or confidential, this could lead to challenges in accessing and using this data for DCF modeling, potentially hindering transparency and accuracy.

23.3 Determining the appropriate discount rate (the cost of capital) is critical in DCF modeling including any assumptions used in the DCF model. The incumbent provider may argue for higher discount rates to justify higher wholesale prices. There is a possibility of risk of GCRA's decision aligning more with the interests of the incumbent rather than fostering effective and efficient competition given the subjectivity involved in Discount Rates. Ultimately selecting an appropriate discount rate for DCF analysis is a subjective decision which can be influenced by various factors as different discount rates can yield significantly different price outcomes.

23.4 GAL is concerned that DCF modeling may not fully account for the dynamic nature of the broadband market, where technology and demand change rapidly. Predicting future cash flows and demand for fibre broadband access services may not be accurate, especially in an evolving landscape.

23.5 In a shared infrastructure scenario, there is a risk that DCF modeling may result in regulatory prices that are higher than competitive market prices. This could harm competition and limit consumer choices. GAL has already shared enough analysis /examples with GCRA in this regard as GCRA's proposed second broadband pricing is still higher than other jurisdictions.

23.6 DCF models rely on a wide range of input data, such as revenue projections, discount rates, and cost estimates. Small changes in these inputs can lead to significant variations in the calculated price, making the model sensitive to the accuracy of the data. DCF models often require long-term forecasts, and predicting variables like future demand and technology advancements is challenging. Errors in these estimates can result in inaccurate pricing, leading to ineffective and inefficient competition.

23.7 The complex nature of shared infrastructure and DCF modeling can lead to a lack of transparency in the pricing process. Stakeholders, including competing providers and consumers, may find it challenging to understand and trust the calculations. Therefore, GAL being a challenger OLO has been demanding GCRA to clarify their cost modelling and explain the rationale behind various assumptions factored in their cost modelling to GAL which GCRA has not obliged despite promising in meeting of 27 October 2023.

**Guernsey Airtel Limited**
**06 November 2023.**

**GCRA Response**

**The GCRA appreciates GAL's feedback and recognize the importance of constructive dialogue in these matters. While the GCRA does not fully agree with some of the criticisms presented, it acknowledges the need for ongoing engagement to ensure a fair and competitive market environment.**

**In response to paragraph 13, the GCRA considers that the Second Proposed Decision addressed some of the key matters raised in GAL's representations, in particular the treatment of WLR. Whilst the GCRA does not agree with GAL's account of its meeting with Officers, it recognises that GAL has raised several issues regarding its approach and the decisions taken in this matter. In this spirit, the GCRA is open to scheduling a meeting with GAL representatives to discuss the particular concerns related to price control modelling and how the price cap may affect prices in the relevant wholesale broadband market over the review period. We also refer GAL to section 5 of the Final Decision which outlines in detail the modelling process it conducted with Sure and how it used data to populate the cost modelling. It is relevant that GAL is unsighted on specifics in the price control models given the commercial sensitivity of those inputs which may have led it to conclusions that might be addressed through further dialogue.**

**GAL's assertions about the challenges in competing effectively due to the pricing of wholesale broadband and the perceived lack of objective engagement with the**

**GCRA are noted. The GCRA wants to assure GAL that its decisions are made with a commitment to fair and effective market regulation and the Final Decision imposes a 31% reduction in the charge for wholesale broadband which will contribute to the promotion of competition at the retail level based on justified pricing.**

**Regarding concerns about DCF cost modelling approach and the transparency of the financials involved, the GCRA reaffirm its commitment to an evidence-based regulatory framework. And the GCRA outlines in section 4.9 of the Final Decision why it considered the DCF cost modelling approach as appropriate of this pricing review.**

**The GCRA acknowledges the complexities involved in monitoring price control compliance, particularly in a market with shared infrastructure between wholesale and retail services. And it recognises that the effectiveness of the regulatory mechanisms heavily relies on the incumbent operator's proper conduct and transparent operations. Whilst this can be challenging and the GCRA is currently working to improve its oversight and regulatory processes given assumptions about proactive compliance by the incumbent are not being borne out by experience. The GCRA remains dedicated to fostering a competitive and fair market environment in Guernsey.**

## Annex 4 – GCRA reply to JT’s written representations in response to the Second Proposed Decision

# JT's Non-Confidential Response to GCRA Second Proposed Decision – Wholesale Broadband Pricing (T1652G)

6th November 2023

## 1. Introduction and Response

1.1 JT (Guernsey) Limited ("**JT**") welcomes the opportunity to respond the Second Proposed decision on Wholesale Broadband Access Pricing (the **"Consultation**"). This is a non-confidential response and can be published in full.

## 2. JT Comments

2.1 JT supports the approach taken by the GCRA to set the price control for wholesale broadband access to align with the cost of providing the service. We very much support the amended approach to ensure that the revenues for wholesale line rental (WLR) and wholesale broadband, both products that ulitise the fibre infrastructure, are included in the model to calculate the whole price. The new wholesale price control will benefit Guernsey citizens with wholesale pricing reductions flowing through to retail pricing.

2.2 Sure has specific licence conditions which require it to record its costs in it accounting records to demonstrate that there is no unfair cross subsidisation. Sure's response, included at page 41 of the Second Proposed Pricing Decision (the "2nd Decision") states "We remain concerned about the GCRA's further reliance on Sure's 2014 cost driver data, but in the absence of separated accounts, we feel compelled to accept its inclusion with the GCRA model."

In response the GCRA state "As a licensee designated as having a position of market power and as the only investor in a fibre broadband network that was assisted by a significant subsidy towards that investment by the States of Guernsey, it should have been foreseeable by Sure that it would be required to justify its charges through a regulatory review of its costs and made adequate preparations for that".

It is concerning that Sure do not appear to have sufficient cost data to demonstrate compliance with its licence. We therefore submit that the GCRA should consider the appropriate level of cost allocation data to be collected by Sure and its provision to the GCRA outside of this 2nd Decision. The GCRA may be interested in a recent consultation conducted by the JCRA on a regulated financial reporting framework and template[1] for JT in Jersey. We believe that the GCRA should consider adopting a similar approach and schedule this work as part of its 2024 annual plan.

[1] Regulatory Financial Reporting - Draft Decision | JCRA