



**Sure response to GCRA's Retail Broadband Market  
Review – Proposed Decision**

9 March 2026

# Table of Contents

<b>1</b>	<b>Executive Summary</b> .....	<b>1</b>
<b>2</b>	<b>Introduction and context</b> .....	<b>3</b>
2.1	Market background.....	4
<b>3</b>	<b>Concerns over the Market Review</b> .....	<b>6</b>
3.1	Comments on the Authority’s market definitions.....	6
3.2	Concerns relating to the Authority’s application of the three criteria test.....	7
3.3	Concerns relating to the Authority’s SMP analysis.....	7
3.4	The market review is not the appropriate place to address how to support pro-consumer outcomes.....	7
3.5	The Authority’s process.....	8
<b>4</b>	<b>Definition of the relevant market</b> .....	<b>10</b>
<b>5</b>	<b>Application of the three criteria test</b> .....	<b>11</b>
5.1	Is the market characterised by high and non-transitory structural, legal and regulatory barriers to market entry?.....	11
5.1.1	Reviewing the Guernsey market conditions against the two types of entry barriers identified by the EC.....	12
5.1.2	Addressing the arguments the Authority has raised against the first criteria.....	13
5.2	Does the market structure tend towards effective competition.....	17
5.2.1	Applying the criteria specified by the EC Recommendation to the Guernsey retail broadband market.....	17
5.2.2	Addressing the arguments the Authority has raised against the second criteria.....	18
5.3	Insufficiency of competition law.....	22
5.4	Conclusion on the application of the three criteria test.....	23
<b>6</b>	<b>SMP analysis</b> .....	<b>24</b>
6.1	The basis for the Authority’s SMP determination is flawed.....	25
6.1.1	A proper analysis would find that Sure does not have SMP in the retail broadband market.....	25
6.1.2	The Authority’s rationale for finding SMP in the Guernsey retail broadband market.....	27
6.1.3	The concerns expressed by the Authority are not caused by abuse of market power.....	28
<b>7</b>	<b>Addressing the Authority’s consumer protection concerns</b> .....	<b>30</b>
7.1	Removing the retail SMP obligation to provide 21 days’ notice period to industry of retail price reductions will be pro-competitive.....	30
7.2	Improved contract transparency could allow customers to make more informed decisions.....	31

7.3 We will continue to provide support to customers who most need it.....31

## 1 Executive Summary

- 1 This is the non-confidential version of Sure (Guernsey) Limited (“Sure”) response to the Guernsey Competition and Regulatory Authority’s (the “Authority”) retail broadband market review.
- 2 Sure welcomes the Authority’s attempt to apply the European Commission (EC) market analysis framework, including the application of the three criteria test. It is, however, disappointing to see that, in doing so, the Authority appears to have not understood how to do so technically. It has also misunderstood what evidence is required to perform those assessments to reach robust and defensible conclusions.
- 3 All three criteria must be satisfied for the market to be susceptible to ex-ante regulation. However, in its flawed analysis, the Authority fails completely to present the evidence required to be able to perform the three criteria test. Sure has carried out that analysis and, as demonstrated within our response, has proven that not one single criteria is satisfied.
- 4 The Authority has severely underestimated the level of competition in the Guernsey retail broadband market. That market has three current players (Sure, JT and Starlink), 3, and it is likely that there will be further market entry from a second satellite-based provider. 3
- 5 Sure is under competitive pressure to ensure that its offerings meet customer expectations and to provide value for money. We have lost 10% market share in last five years, despite providing fibre at no extra charge, providing faster broadband speeds and introducing the Home Tech team for additional targeted customer support. Additionally, we will shortly be introducing a lower price entry level broadband product as well as reducing prices for higher speed broadband offerings.
- 6 Sure’s commercial offerings typify a provider looking to maintain its position in an increasingly competitive market. We provide evidence of that in this document.
- 7 The Authority’s Significant Market Power (SMP) analysis (which should not have been performed as the three criteria test was not satisfied) is equally flawed. Sure, in contrast, presents the analysis the Authority should have performed (if the 3 criteria test was passed) – showing that Sure does not have SMP.
- 8 Sure disagrees with the Authority’s stated concerns that the reduction in regulated wholesale broadband pricing of 31% introduced in 2024 has not been fed through as corresponding retail price reductions. Such wholesale price changes take time to flow through to take full effect in the retail market. However, within this response Sure sets out how we have already passed value on to our customers through our fibre pricing, mobile bundles, and other pricing and benefits offered by Sure to its retail broadband customers.
- 9 The Authority states that it is satisfied that the wholesale regulation in place in the Guernsey broadband market is sufficient and effective. That being the case, the Authority has no remit to

apply additional retail regulation. If the Authority identifies retail market failures, then those should be addressed by modifications to wholesale remedies. European Commission (EC) guidance clearly requires that regulators should regulate upstream to create competitive downstream market conditions. There are no characteristics of the Guernsey retail broadband market that justify a departure from that approach.

- 10 Other concerns expressed by the Authority include potential lack of pricing and product transparency and low levels of digital literacy amongst Guernsey retail broadband customers. Whilst Sure does not agree that the Authority has adequately demonstrated that there are significant issues in these areas, Sure is committed to working with the Authority to improve consumer protection measures. However these would need to be applicable to all licensed retail broadband providers in Guernsey in order to be effective.
- 11 Guernsey's broadband customers will not be best served by imposing SMP on Sure. On the contrary, regulatory intervention at the retail level limits retail pricing agility and limits the way providers can meet customers' needs.
- 12 This consultation response demonstrates clearly both where the Authority has erred and what the Authority should have done. Based on that evidence, the Authority must revise its position. The current proposals would not withstand legal scrutiny, should Sure have no alternative but to appeal the Authority's final Decision.

## 2 Introduction and context

- 13 This retail broadband market review is being conducted separately from the most recent wholesale broadband market review which was completed in December 2023<sup>1</sup>. It is unhelpful and inappropriate to carry out these market reviews separately. Sure is concerned that this may be part of the reason why the Authority's analysis is not consistent with good practice and does not apply the relevant EC framework appropriately. Ultimately, the Authority's conclusion that Sure has SMP in the retail broadband market is not justified or defensible and cannot stand, based on the supporting analysis presented.
- 14 Despite being a small market, Guernsey has already seen the entry of four retail broadband competitors  $\times$ . Sure's retail broadband customer satisfaction levels are very high (as demonstrated below in paragraph 100) and customers are now able to enjoy the benefits of a new full-fibre service. This is offered at the same price as the legacy copper-based broadband service. These are characteristic of a commercially functioning market, not of a market in which an SMP provider is exercising profit-maximising behaviour and extracting monopoly rent.
- 15 Sure does not increase unbundled retail broadband pricing for customers that come out of contract, despite this being common practice in many markets, including the UK. Sure did not apply RPI price increases in 2025 and has consistently offered its customers increased speeds without increasing its prices. Again, these are not behaviours of an SMP provider seeking to exploit its market power.
- 16 Sure Wholesale recently approved a Statement of Requirements, submitted by Sure Retail. On the back of that approval, we will shortly be notifying the Authority of our intention to introduce a new lower speed wholesale product which will support a new lower priced entry-level retail broadband product. As a result of this, we are maximising the number of consumers who can benefit from the social and economic benefits of broadband connectivity.
- 17 This is supported by significant additional retail value that Sure has put into the market. Alongside speed increases at no extra cost, we have provided free routers to customers and the launch of our Home Tech team provides additional support for those most in need. We have also invested in our customer support channels to provide in person or over the phone help to educate and encourage customers. This enables them to get the best possible broadband service from their fibre connection.
- 18 The Authority has identified areas for improvement in relation to pricing and product transparency and supporting improvement in digital literacy. Sure is committed to working with the Authority to overcome those issues. These, however, need to be addressed by changes to

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<sup>1</sup> [final-decision-wholesale-broadband-pricing-non-confidential.pdf](#)

licence conditions for all providers – they cannot be effectively addressed through either asymmetrical SMP-based remedies, or by symmetric inter-operator agreements.

19 This document presents the flaws in the Authority’s analysis. It is Sure’s position that the Authority’s proposed Decision is fundamentally unsound. Sure considers that, if retail regulation were implemented, it would result in harm to consumers and increase Sure’s costs of regulatory compliance – costs that inevitably will be passed on to consumers. Sure further believes that the proposed Decision, if implemented, would not withstand legal scrutiny, should we have no alternative but to challenge the Authority’s final Decision.

## 2.1 Market background

20 Sure (previously Cable and Wireless (Guernsey) Limited) entered the Guernsey telecommunications market in 2002 following its acquisition of Guernsey Telecoms Limited from the States of Guernsey. For the following 10 years the retail broadband market was served by at least two providers; namely Sure and Jersey Telecom (JT). In 2022 a third competitor entered the market (Airtel) which successfully gained market share year on year. This was up until it was merged by Sure in 2025. Starlink (accepted as being part of the retail fixed broadband in the Guernsey and Jersey Telecommunications Statistics and Market Reports) entered the Guernsey market in 2023 having been licensed<sup>2</sup> by the Authority in 2022 to provide retail broadband services.

21 Market shares have changed significantly since 2020. This is demonstrated in Table 1 of the Statistics Jersey Market Report for 2024<sup>3</sup> showing changes in those percentage market shares.

Figure 1

	Guernsey		
	Sure	JT	Other
<b>2020</b>	79	21	0
<b>2021</b>	79	21	0
<b>2022</b>	76	22	1
<b>2023</b>	73	24	3
<b>2024</b>	72	23	5

Source: Statistics Jersey: Telecommunications and Market Report 2024

22 The Table shows that in the last 5-year period, Sure has lost 7 percentage points – or 10% – of its market share. This can only conceivably be as a result of competition and this continued erosion of Sure’s market share must be recognised by the Authority in its market analysis as an indicator

<sup>2</sup> [starlink\\_licence\\_final\\_22jun22\\_signed.pdf](#)

<sup>3</sup> [R-Telecommunications-Statistics-and-Market-Report-2024-SJ-20250626.pdf](#)

of reducing market power. When combined with other factors, Sure considers this to be evidence that we no longer hold SMP in the retail broadband market. This is discussed in more detail in the SMP section of this response.

- 23 Despite the market currently being served by three providers, 3K . In addition, Sure faces competitive constraints from potential new entrants such as Amazon Leo which was approved to provide satellite services across the UK by Ofcom in February 2025. It intends to roll out its services throughout 2026,<sup>4</sup> which may well include smaller islands such as Guernsey.
- 24 Guernsey represents a modest sized jurisdiction with a population of around 65,000<sup>5</sup> and just under 27,000 fixed broadband subscribers<sup>6</sup>. Having three fixed line broadband providers and one satellite provider competing in the same space demonstrates that the wholesale remedies that are currently in place are effective, as they have enabled entry on multiple occasions. This compares to Jersey with a population of around 104,500<sup>7</sup> and 44,000<sup>8</sup> broadband subscribers which has four fixed broadband providers and the Isle of Man with almost 82,000 residents and 38,900 broadband subscribers<sup>9</sup> which also has four fixed<sup>10</sup> broadband providers.
- 25 Whilst smaller than Jersey and the Isle of Man, Sure does not consider the size difference to be sufficient to suggest that the Guernsey retail broadband market could not also sustain four fixed broadband providers.

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<sup>4</sup> [Everything UK customers need to know about Amazon Leo, Amazon's satellite broadband network](#)

<sup>5</sup> [Electronic Census: Latest Population, Employment and Earnings – States of Guernsey](#)

<sup>6</sup> Table 3 – Number of subscribers excluding data only mobile in 2024, Statistics Jersey 2024 Telecommunications Report

<sup>7</sup> [Population | Statistics Jersey](#)

<sup>8</sup> Table 3 – Number of subscribers excluding data only mobile in 2024, Statistics Jersey 2024 Telecommunications Report

<sup>9</sup> Page 8 [q4-2025-market-statistics-report.pdf](#)

<sup>10</sup> Excluding fixed wireless access and satellite providers

### 3 Concerns over the Market Review

- 26 Although the Authority has sought to follow the Internationally recognised practice set out by the EC, the manner in which this has been done is inconsistent with the established EC framework. Those errors have caused the Authority to arrive at the wrong conclusions.
- 27 The market review is flawed at every stage of its assessment. As a result, it cannot stand in its current form. In this section we summarise where the proposed Decision has failed to carry out the review properly, used unsuitable evidence for its purpose and failed to draw conclusions that one would expect to see in a properly conducted three criteria test and SMP analysis (the latter of which, as noted below, should not have been conducted given the three criteria test was not met).

#### 3.1 Comments on the Authority's market definitions

- 28 The Authority's overall approach to market definition is consistent with the EC framework and international good regulatory practice.
- 29 One concern, however, relates to the Authority's assessment of the impact of satellite providers in the Guernsey retail broadband market. In Paragraph 1.5, the Authority states that *"Whether Fixed Wireless Access and satellite are part of the same market can be left open given that these services are, and are likely to continue to be, used by a small number of customers. At the current time their presence does not seem to act as a constraint on behaviour in relation to supply of retail broadband services over copper or fibre"*.
- 30 Sure disagrees with this assessment. Satellite service providers, such as Starlink (and, potentially, Amazon) are offering increasingly competitive retail packages for customers. These provide competitive constraints on fixed broadband operators. Satellite broadband can be particularly attractive to broadband providers in remote locations such as small islands or rural locations, where the deployment of fibre can be cost-prohibitive. The Guernsey and Jersey 2024 Telecommunications Statistics and Market Report<sup>11</sup> (published in June 2025) appears to accept the role played by such operators by including Starlink in its assessment of fixed broadband market share.
- 31 Sure urges the Authority to reassess the potential impact of satellite providers on the retail broadband market in a forward-looking assessment over the next five years.

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<sup>11</sup> [R-Telecommunications-Statistics-and-Market-Report-2024-SJ-20250626.pdf](#), see Figure 20, page 26

### **3.2 Concerns relating to the Authority’s application of the three criteria test**

- <sup>32</sup> We have very significant concerns on the application of the three criteria test as set out in this proposed Decision. The approach is leading to incorrect provisional conclusions. Our main concerns are:
- a. The Authority has largely set aside the European Commission Recommendation<sup>12</sup> (the EC Recommendation) as to what constitutes relevant evidence that the retail broadband market is susceptible to ex ante regulation; and
  - b. The assessment does not consider crucial evidence which undermines any case that the three criteria test has been met. ✗. Also of relevance is the impending introduction by Sure of a new entry-level unbundled<sup>13</sup> retail broadband product, which will soon be notified formally to the Authority<sup>14</sup>. This will be priced significantly lower than the current entry level product. This development should now be considered in the Authority’s final Decision.

### **3.3 Concerns relating to the Authority’s SMP analysis**

- <sup>33</sup> We similarly have concerns on the SMP analysis undertaken in this proposed Decision. In that, we emphasise that the Authority should not have carried out the SMP assessment, given that the three criteria test has not been met. In any case, our concerns are:
- a. Based on the 2018 European Commission Communication<sup>15</sup> on SMP (the EC SMP Communication), the proposed Decision is relying on inconclusive (market shares) or irrelevant (customer research) evidence to reach its conclusion that Sure has SMP; and:
  - b. The assessment does not explore or conclude what harms are being caused by the supposed SMP in the market – whether exclusionary, exploitative or structural.

### **3.4 The market review is not the appropriate place to address how to support pro-consumer outcomes**

- <sup>34</sup> Many of the concerns the Authority are raising are not relevant to either a three criteria test or an SMP assessment. They relate to general consumer protection, transparency and digital literacy. These are – as signalled in the proposed Decision itself and currently subject to a separate

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<sup>12</sup> [EUR-Lex - 32020H2245 - EN - EUR-Lex](#)

<sup>13</sup> We refer to the term “unbundled” in the context of this submission as not being sold with a mobile product. Broadband in Guernsey is sold with a landline.

<sup>14</sup> We sent an informal update to the GCRA on the impending notifications on 9 March 2026

<sup>15</sup> [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=49765](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=49765)

Authority consultation<sup>16</sup> on its draft Business Plan – resolved by consumer regulation<sup>17</sup> and need to be applicable to all providers in the market. The Authority highlights some concerns about possible customer inertia and lack of understanding by customers of the products and pricing available in the Guernsey retail broadband market. Those concerns do not arise due to market failures related to any party in the market holding a position of SMP. We have demonstrated above that this is not a feature of this market.

- 35 We believe, however, that the Authority is right to highlight the need for assisting consumers in making informed choices. This applies when determining who to buy broadband from and which services are most suited to their needs. We are pleased to play a full and constructive part in those discussions, but they must be held in the appropriate forum. These concerns can be addressed effectively, but not through an incorrect and inappropriate designation of SMP on Sure.
- 36 With  $\mathcal{K}$  our new entry-level broadband product, there will be more choice for consumers. To support this further, we set out below how consumers can enjoy ever more improved outcomes in the retail broadband market. In brief:
- a. A removal of the 21-day retail price change notification period – an existing SMP requirement – could enable more agile pricing;
  - b. Adopting best practice from the UK regarding customer contract transparency will help promote best outcomes for consumers; and
  - c. Continuing additional support from our Sure teams for those customers who we identify as having challenges in using the internet as well as engagement with bodies who can assist in helping with digital literacy.

37 We explore these in more detail below as part of our submission.

## 3.5 The Authority's process

- 38 The Authority has attempted to apply a framework which is set out in detail in the EC Recommendation and the EC SMP Communication. We welcome the Authority's transparency in attempting to apply the EC market review process. Transparency is critical for Sure and other stakeholders to be able to provide an informed response to the proposed Decision.
- 39 However, the Authority's analysis and approach is materially different to that set out in the EC Recommendation and the EC SMP Communication. The Authority has ignored evidence which demonstrates that the three criteria test is not met and has not attempted to identify the type of

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<sup>16</sup> Sent by email from GCRA to operators on 4 March 2026

<sup>17</sup> The proposed Decision mistakenly refers to this as "symmetrical regulation" in its section on remedies. Symmetric remedies are, however, operator-to-operator wholesale measures.

evidence that is clearly required by the EC framework documentation. As a result, the proposed Decision has reached different conclusions than if it had followed the EC's approach. The Authority's assessment in the proposed Decision relies on data and evidence which are not stipulated in the EC Recommendation as being suitable or relevant for assessing whether a market is susceptible to ex-ante regulation. The data that *has* been used, moreover, does not support the conclusions that the Authority has reached.

- 40 Where the EC Recommendation has set out what constitutes suitable evidence for a proper three criteria assessment, the Authority has not provided that evidence.
- 41 The analysis in the proposed Decision does not support the Authority's final conclusion, that Sure has SMP in the Guernsey retail broadband market. Indeed, it does not even support the conclusion that the Guernsey retail broadband market qualifies as a market susceptible to ex-ante regulation. Therefore, there was no requirement for the Authority to undertake the SMP analysis that it carried out.
- 42 This flawed assessment risks unnecessary and disproportionate regulatory intervention in a market that is already competitive ☒.

## 4 Definition of the relevant market

- 43 Sure agrees with the Authority's approach to how it assesses market definition for both product and geographic markets in terms of methodology. These are consistent with the approach taken, for example, by Ofcom in its recent Telecoms Access Review<sup>18</sup> into the equivalent broadband markets in the UK. We do not consider that there are any features of the market in this context that requires the Authority to deviate from that approach.
- 44 Sure is, however, concerned that the Authority does not recognise the material role satellite broadband providers can play in retail broadband markets such as Guernsey. Consistent with the market share analysis in Guernsey's and Jersey's most recent Telecommunications and Statistics Market Report, Sure considers that the Authority must recognise Starlink (and other LEOs) as a relevant market player in Guernsey.

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<sup>18</sup> [Telecoms Access Review 2026](#)

## 5 Application of the three criteria test

- 45 The three criteria test sets out the criteria that must each be satisfied to determine that a relevant market should be, or should continue to be, susceptible to ex ante regulation.
- 46 In this submission we set out how the proposed Decision has failed to apply the three criteria test in accordance with the EC Recommendation. That guidance sets out the parameters and evidence required for National Regulatory Authorities (NRAs) to conduct a proper three criteria test. All three criteria must be satisfied before a market can be determined as susceptible to ex-ante regulation (and only if that is the case, should the Authority conduct an SMP assessment). The criteria are:
- a. The presence of high and non-transitory barriers to entry. These may be of a structural, legal or regulatory nature;
  - b. A market structure which does not tend towards effective competition within the relevant time horizon; and
  - c. The insufficiency of competition law alone to adequately address the market failure(s) concerned.
- 47 Below, we outline the data and parameters set out by the EC Recommendation for each of the three criteria. We contrast these with the parameters used by the Authority, showing clearly that its analyses and conclusions are flawed and do not follow the intent of the test as designed.

### 5.1 Is the market characterised by high and non-transitory structural, legal and regulatory barriers to market entry?

- 48 The EC Recommendation sets out the process that should be undertaken by an NRA in assessing whether a market is characterised by high and non-transitory structural, legal and regulatory barriers to market entry. In doing so, it states that an NRA must establish when, and to what extent, market entry is likely to occur, and to identify the relevant factors for a successful entry<sup>19</sup>.
- 49 The EC Recommendation sets out two types of barriers to entry in electronic communications markets, namely:
- a. Structural: characterised by absolute cost advantages or substantial economies of scale and/or network effects, capacity constraints and/or high sunk costs. Also where a network component cannot be technically duplicated; and

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<sup>19</sup> See paragraph 8-12 of the Recommendation

b. Legal and/or regulatory: these could include authorisation procedures, territorial restrictions, safety and security standards, or other legal requirements

50 The proposed Decision does not consider any of the above parameters in its assessment of this criteria. Instead, it focusses on market share data and unspecific assertions of switching barriers to conclude that this criteria has been met.

51 Market shares are not a driver of competition in the market but a *consequence* of the level of competition in the market. Changes in market shares can be caused by any number of things, both pro-competitive and anti-competitive. A thorough assessment of all relevant factors needs to be undertaken to determine these factors. The Authority has not undertaken this analysis.

52 Barriers to switching *could* be a sign that a market is not tending toward effective competition and this parameter more properly belongs, therefore, in the second criteria of this assessment. In any case, the proposed Decision does not set out what those barriers to switching are.

53 The approach taken in the proposed Decision is, therefore, inadequate given the guidance set out in the EC Recommendation. The Authority cannot conclude that the first criteria has been met because it has provided no evidence that there are any structural, legal or regulatory barriers to entry.

## 5.1.1 Reviewing the Guernsey market conditions against the two types of entry barriers identified by the EC

54 Below we show why, when conducted in accordance with the EC framework, the Guernsey retail broadband market is not characterised by high and non-transitory structural, legal and regulatory barriers to market entry.

### 5.1.1.1 *Structural barriers*

55 The Guernsey retail broadband market is characterised by very low structural barriers to entry for the following reasons:

- a. Sure's wholesale access products are readily available and enable a new retail competitor to enter the market with limited investment. For example, Sure's Service Provider Broadband Interconnect product is available at low-capacity variants to enable a new competitor to enter without having to incur significant sunk costs;
- b. The retail market requires minimal<sup>20</sup> up-front capital investment and there are, at most very little sunk costs related to the retail market;
- c. The retail broadband market is not characterised by scale economies, such as would be the case, for example, in the upstream wholesale market. This is because only very limited up-

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<sup>20</sup> These costs would include, for example, billing, CRM and provisioning platforms.

front investment is required and the costs for a retail provider scale with the number of customers (the size of the interconnection link is scalable and wholesale broadband products are purchased on a per-customer basis);

- d. There are no elements of what a retail provider needs, that cannot be easily replicated by a new entrant either by creating it themselves (such as customer billing and customer service) or use of Sure wholesale access products, including the Service Provider Broadband Interconnect Broadband; and
- e. Whilst it could be argued that the size of the Guernsey market may be too small to sustain effective competition, the evidence of past and present retail broadband market entry clearly demonstrates that the market size does not constitute a structural barrier to market entry.

#### **5.1.1.2 Legal and regulatory barriers**

56 There are no legal or regulatory barriers to market entry in the Guernsey retail broadband market. It is possible for new market entrants to obtain a licence to operate in Guernsey from the Authority, as has been the case with the licensing of Airtel, Starlink ☒ in recent years.

#### **5.1.1.3 Conclusion on legal, regulatory and structural barriers to market entry**

57 As there are no such barriers in the Guernsey retail broadband market, this criterion cannot therefore be satisfied. Because this criterion is not satisfied, and all three criteria must be satisfied for a market to be identified as being susceptible to ex ante regulation, the Authority does not need to perform any further analysis of the other criteria.

### **5.1.2 Addressing the arguments the Authority has raised against the first criteria**

#### **5.1.2.1 The Authority has disregarded evidence of ☒ previous market entry**

58 In terms of the substance of those arguments that *have* been raised in the proposed Decision, the Authority's assessment does not consider the current presence of Starlink in the market; ☒, or the previous successful entry into the market of Airtel. ☒. This is a significant omission, as the Authority must (according to the guidance of the EC Recommendation) assess whether, when and how likely market entry is to occur.

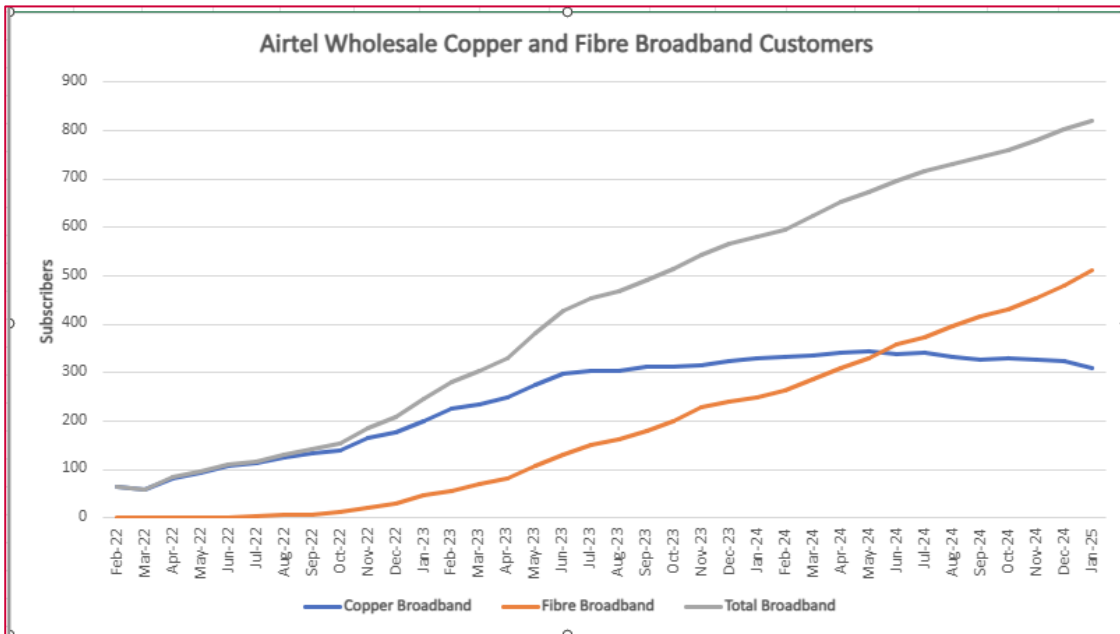
59 ☒ – as well as the presence of Starlink – is consistent with and proof that market entry is possible on reasonable commercial terms, as envisaged by the EC Recommendation.

60 We would further argue that the entrance of Airtel, Starlink ☒ into the retail broadband market provide further evidence that the market is not characterised by non-transitory structural legal and regulatory barriers to market entry. This demonstrates that there are no significant barriers to entry, despite the relatively small size of the market as we describe above in Section 3.

61 Before its merger with Sure, not only had Airtel managed to successfully enter the market for retail broadband in Guernsey, but its market share was steadily growing, with an eventual 843

customers (copper and fibre broadband) gained at the point of the merger taking place. The table below evidences that steady growth from the point of market entry.

Figure 2



Source: Internal Sure data

62 Starlink’s steadily growing market share further demonstrates the ability of new entrants to grow in the Guernsey retail broadband market. Since its market entrance in 2023, according to the most recent data from the Guernsey and Jersey Telecommunications and Statistics Market Report, Starlink had secured a 1.6% market share by 2024.

**5.1.2.2 The Guernsey market size is not a barrier to market entry**

63 The above evidence contrasts with the proposed Decision’s assertion that the small size of the market makes it difficult for new entry, given the lack of achievable scale. The proposed Decision appears to rely on market size to explain why the market can be treated as an exception to the principle that wholesale regulation should be sufficient to address potential competition problems at the retail level. We have demonstrated this is not the case. We are, in that respect, unaware of any other small-scale retail broadband market, with effective upstream remedies in place, which is subject to ex ante retail broadband regulation. Sure is aware of other small markets with multiple retail broadband providers, including Jersey, the isle of Man and Gibraltar. In none of these cases has regulation been applied at the retail level.

**5.1.2.3 Market shares are not relevant to assessment of barriers to market entry**

64 Stable market shares can occur for several reasons, and these should not be assumed to be because of a lack of competition. Market shares are not identified by the EC Recommendation as relevant to the presence of barriers to market and the Authority has provided no evidence that

the market shares are caused by any such non-transitory barriers to entry. Moreover, the proposed Decision's own evidence states that JT's customer base has risen by 15% between 2021 and 2024. This is significant by any standard and we are unclear why Sure having a higher but steadily declining total market share (79% reducing to 72%) makes this any less relevant. The Authority's view in paragraph 5.22 that JT's retail market share has increased "modestly" understates JT's progress if considering the absolute number of customers involved.

- 65 One important reason for Sure's high market share is likely to be the very high levels of satisfaction by Sure's retail broadband customers which we set out in paragraph 100 below.
- 66 A forward-looking approach to a market assessment, as stipulated by the EC Recommendation but regrettably not adopted in the proposed Decision, ✕ It would also have considered the potential growth in the market by Starlink and the likely entry into the market of other Low Earth Orbit (LEO) providers such as Amazon Leo. The latter intends to roll out services across the UK during 2026 and could conceivably follow the same path as Starlink by expanding its footprint to offer services to the Channel Islands.

#### ***5.1.2.4 The analysis ignores the possibility of further market entry and the role of satellite operators***

- 67 Similarly, a forward-looking assessment should have considered the path taken by the previous licensee Airtel, ✕. This could lead to a possible new entrant in the fixed market in the future or an enhanced fixed/mobile offering from our competitors. It is unclear whether this will emerge but, as noted by the EC, innovative markets can provide competitive constraints with the prospect of potential new market entrants.
- 68 Additionally, the Authority has severely underestimated the competitive impact of Starlink and the possible future entry of other satellite-based broadband providers.

#### ***5.1.2.5 Barriers to consumer switching are not barriers to competitive market entry***

- 69 As part of its assessment on the first criteria, the proposed Decision states that there are "concerns with the switching process" and that "there are significant challenges for a new entrant to encourage switching". This more properly sits in the second criterion assessment. Regardless, the analysis does not state what those concerns are and what specific challenges it refers to. It does not explain why there are no barriers to switching between copper and fibre products (as recognised by the Authority in the market definition section) but there are concerns over switching between providers.
- 70 This switching dynamic is particularly of note when one considers that customers being upgraded from copper to fibre in Guernsey were given the explicit right, without financial penalty, to change providers at the point when they received their upgrade. This right, agreed to by Sure, was unusual for a fibre upgrade programme when compared with international comparators. For

example, it does not exist in the UK. Sure's agreement to this approach is also not the behaviour of an operator abusing a position of dominance by frustrating any switching decisions by customers. For all the reasons set out above, Sure does not consider that there are any barriers to customers switching between providers.

#### ***5.1.2.6 Switching levels in Guernsey are healthy and consistent with the market size***

71 We do not agree with the claim in paragraph 5.6 that a churn level of 7-8% is low given international comparators. This is in the further context of no specific barriers to switching having been identified in the proposed Decision.

72 We were surprised that the proposed Decision cited 38% of satisfied customers being prepared to switch as evidence of switching problems. This is a self-selecting cohort that one could reasonably expect to be reluctant to switch provider, given they are satisfied with the service Sure is providing. The results further suggest that those customers not prepared to switch are satisfied customers. In that respect, 38% appears to us to be a rather high figure.

#### ***5.1.2.7 Pricing transparency and digital literacy are not barriers to market entry.***

73 Later paragraphs refer to digital literacy issues and the Authority implies that these knowledge gaps may be contributing to its perceived lack of switching. However, such issues are not unusual in other countries or specific to Guernsey<sup>21</sup>. Issues relating to lack of digital literacy are not structural, legal or regulatory barriers to market entry. Where identified, they are typically and more properly addressed through direct consumer action applicable to all providers, or Government information campaigns. It is not appropriate to address these challenges through SMP obligations which would apply only to a single operator.

74 In contrast with the proposed Decision's conclusion, we do not consider that the case for high and non-transitory barriers to market entry has been met.

#### ***5.1.2.8 Conclusion***

75 The data presented by the Authority is either not relevant to the test prescribed in the EC framework, or the analysis presented is incorrect and incomplete. Nothing in what the Authority has presented justifies a conclusion that the first criterion has been met.

76 As all three criteria must be met, the fact that the first criterion is not met means that the Authority would have no need to proceed to assess the remaining two criteria. Nevertheless, for completeness we continue to demonstrate why the other two criteria are also not met.

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<sup>21</sup> [Five reasons you're wrong about switching broadband provider - Which?](#)

## 5.2 Does the market structure tend towards effective competition

77 For this criterion to be met, the Authority must prove that the market structure does not tend towards effective competition.

78 The EC Recommendation sets out what process should be undertaken by an NRA in assessing whether a market structure is tending towards effective competition. In doing so, it states<sup>22</sup> that an NRA must consider a number of factors, namely:

- a. Whether wholesale access is available to any interested undertaking on reasonable commercial terms permitting sustainable competitive outcomes for end-users on the retail market;
- b. The presence of existing wholesale access agreements; or
- c. The presence of existing co-investment agreements and reciprocal access agreements between operators

79 If any of the above criteria is met, then the market is likely to tend towards effective competition.

80 The EC Recommendation goes on to state that NRAs must consider the impact of product and market convergence as these may give rise to competitive constraints being exercised between operators.

81 In contrast to the above, the proposed Decision relies on a different set of data and parameters to underpin its analysis for this criterion. It uses product pricing, market shares and levels of customer churn to reach its conclusion that the criterion has been met. In doing so, the Authority has reached a conclusion that has not been informed by the appropriate evidence. It cannot, therefore, conclude that the retail broadband market is not tending towards effective competition.

82 In reality, two of the three criteria referenced in paragraph 78 (a and b) above are indeed demonstrably present in the Guernsey wholesale broadband market. An analysis that observed the EC Recommendation would therefore likely conclude that this criterion cannot be met.

### 5.2.1 Applying the criteria specified by the EC Recommendation to the Guernsey retail broadband market

83 A correct application of the test as set out by the EC Recommendation would reach the following conclusion for retail broadband in Guernsey:

- a. Effective and reasonable wholesale access remedies – Sure offers both a very flexible and scalable Service Provider Broadband Interconnect Broadband product and wholesale broadband access products to enable a market entrant to replicate Sure’s entire retail broadband portfolio;

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<sup>22</sup> See paragraphs 15 and 16 of the EC Recommendation.

- b. Presence of wholesale access agreements – Sure has a wholesale reference offer that can be used by market entrants; and
- c. Co-investment or reciprocal access agreements – These are not present, but the satisfaction of the previous two parameters means that this is not necessary for the Authority to conclude that the market does, in fact tend towards effective competition.

84 More broadly, the market entry by JT, Airtel and Starlink, 3 are evidence that the market tends towards being effectively competitive.

## 5.2.2 Addressing the arguments the Authority has raised against the second criteria

### 5.2.2.1 Pricing data is not relevant to this criteria

85 With regards to the pricing data and analysis presented to the assessment of this criteria, we set out below our response to the Authority’s arguments.

86 In terms of pricing, the proposed Decision relies almost entirely on the price of entry level unbundled retail broadband. It does not assess the relevance of bundled products or the link between pricing and increased speed offerings. While it does refer to the increased speeds that are on offer, as part of these deals, it effectively dismisses them (in paragraph 5.16) as being irrelevant in its assessment. It does not explain why it takes this position.

87 The Authority’s analysis does not consider, for example, our innovative approach to promoting bundled services. We provide significant consumer value where customers can enjoy competitively priced bundles. These offer higher speed fixed broadband combined with a mobile contract saving £369 over a 36-month plan.<sup>23</sup>

88 The Authority should note, in this regard, a recent publication<sup>24</sup> by Ofcom that states “Buying communications services together in a bundle, rather than separately, remains cheaper for most households”. It goes on to state<sup>25</sup> that customers receiving a bundle “feel confident they are on the best deal for them and say **they would stay put even if savings were possible**” [our emphasis]. There is no reason to believe that consumer preferences in Guernsey differ markedly from those described by this Ofcom document. Given 31% of Sure broadband customers in Guernsey receive a bundle discount<sup>26</sup>, it may suggest one reason why switching is not happening at the level the Authority appears to expect.

89 As we set out above, we intend to introduce a new unbundled entry level product in Guernsey as part of a review of our portfolio and in response to prevailing market conditions. The Authority

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<sup>23</sup> [Mobile and broadband Bundle | Sure Guernsey](#)

<sup>24</sup> [Pricing and consumer engagement report](#), Executive summary, February 26 2026

<sup>25</sup> *ibid*

<sup>26</sup> Internal Sure data

will shortly be receiving a formal notification from us that we intend to introduce a new wholesale product to support the new retail product. The new product will be cheaper and more closely aligned with the equivalent entry-level product in Jersey. This product will offer a download speed of 30 Mbps and is being provisionally priced at £39 per month, including the landline.

- 90 We are also reducing retail prices for several of our higher speed broadband products and can share details of this with the Authority once these are in place.
- 91 Wholesale price reductions have been – and are continuing to be – translated into retail price reductions. Sure responds to market pressures by substantially improving our products in terms of speeds and service, while avoiding price increases that one might expect to come with those improvements. The regulated wholesale price reductions have helped to facilitate these improvements for our customers. In adopting our evolving approach, we need to be cognisant that there is competition from JT and Starlink, who have their own pricing strategies.
- 92 Consistent with the principles of the EC Recommendation, in response to a competitive market we are continually having to adapt our products and pricing in response not just to existing and long-established competition with JT, but also to the increasing presence of Starlink and to potential new entrants to the market. Accordingly, in terms of price per Mbps, our entry level broadband product is trending lower as a result of recent speed increases. In addition, Sure has sought innovative ways to improve our customer offering and add value, such as through the provision of free routers, upgrading broadband speed at no additional cost to the customer and the launch of our Home Tech team which provides specialist technical support.

#### **5.2.2.2 Pricing comparisons must be between equivalent operators**

- 93 In paragraph 5.18, the proposed Decision points to the difference in price between the Sure entry level unbundled broadband product in Guernsey (£48) and Jersey (£30) as *“an indicator that the retail market is not responding as well as it perhaps should to customer needs as well as elsewhere”*. This ignores a commercial reality that operators will adopt different pricing strategies depending on whether they are an incumbent in a market (defending market share) or acting as a market disruptor (pricing to acquire new customers from the incumbent).
- 94 A comparable example to this is the pricing strategy of JT in both Jersey and Guernsey. JT’s entry level price for unbundled retail broadband in Jersey is £62 (with very few product offerings for consumers) while in Guernsey it is £45. This demonstrates our responding to competitive pressures even earlier than with the new entry level product in Guernsey. JT’s pricing approach is analogous with Sure’s for entry level retail unbundled broadband taken by Sure across the two markets, reflecting the dynamics of being either an incumbent or disruptor. Indeed, with the imminent introduction of the new Sure entry level retail standalone broadband product in Guernsey the differential between our two entry level products between islands will be *greater* for JT (37%) than

for Sure (~23%), but importantly, Guernsey customers will be gaining additional choice as Sure increases its broadband product offerings from six to seven.

**5.2.2.3 Market shares are not relevant for this criteria**

95 In paragraph 5.2.2, the proposed Decision relies again on – what it perceives to be – stable market shares to demonstrate that the market is not tending towards effective competition. In response, we repeat the observation made above, that JT’s market presence *in terms of customers connected* has increased substantially in recent years with the proposed Decision’s own figures showing an increase in customers of 15% between 2021 and 2024. This is in the context of our own market share declining steadily, albeit from a higher level. There will likely be further impact on this ⌘ of market share growth by Starlink.

96 Market shares should also never be seen in isolation. There are many entirely legitimate reasons for a provider like Sure to have a high market share. This includes offering value for money which Sure does (particularly through its bundled offerings) and high levels of customer service. Indeed, Sure, as an incumbent provider, needs to offer value and high levels of customers services. The evidence shows that consumers are benefitting from that competitive pressure.

97 A forward-looking analysis, in any case, would likely note the prospect of an increase in churn and redistribution of market shares as the market moves ⌘.

**5.2.2.4 Customer inertia is not relevant to this criteria**

98 We have very considerable concerns on the propriety of using the principle of customer inertia as a basis for assessing whether market structures are tending toward competition over time. As we state above, customer inertia can happen for several reasons and those may not necessarily be negative. However, whatever those reasons, *it is not in the gift of any single operator* to influence customer inertia.

99 Our own data suggests that customers are generally happy with the products and services that they receive from Sure. This level of satisfaction has been measured recently as significantly above what could be expected from a broadband provider. The UK Regulators Network has published a Net Promoter Score (NPS) index across the different UK utilities. This metric sets out the proportion of consumers who are promoters of their suppliers/provider minus those who are detractors. Based on global NPS standards, any score above 0 is considered good, a score of 50 and above is considered excellent. The historic NPS score is mixed across utilities, for example:

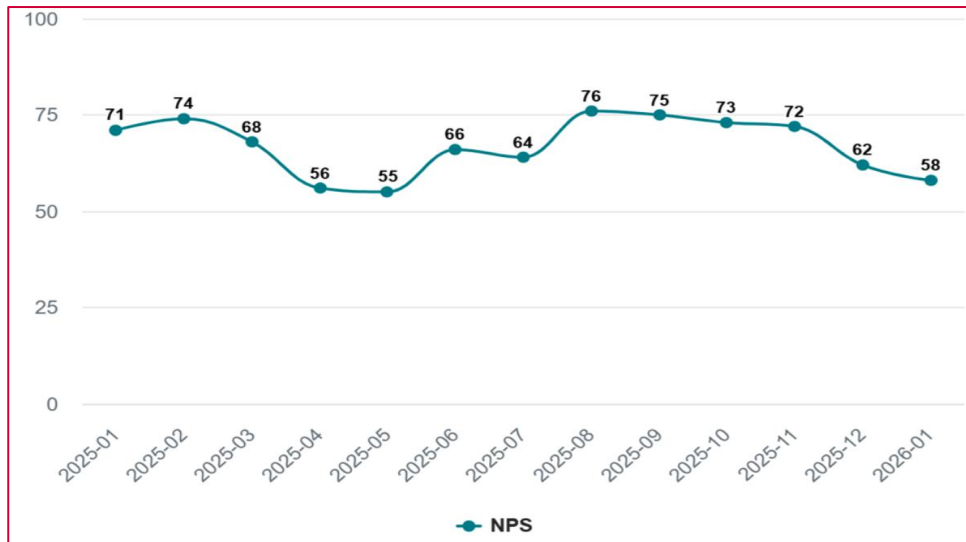
Figure 3

<i>Sector</i>	<b>Water</b>	<b>Energy (Large/Medium/Small)</b>	<b>Telecoms Landline</b>	<b>Telecoms Broadband</b>	<b>Telecoms Mobile</b>
<b>Average NPS score</b>	<b>17</b>	<b>-6</b>	<b>16</b>	<b>12</b>	<b>30</b>

Source: UK Regulators Network, "Moving Forward Together", January 2020

100 In contrast, the NPS score for Sure, calculated as part of its market research following fibre installation, far exceeds what would be expected on an industry basis. For example, the last 12 months have seen monthly scores of between 55 and 76% as set out below. The Sure NPS scores are, by any metric, outstanding.

Figure 4



Source: Internal Sure survey data from customers receiving fibre broadband upgrade

101 In this context, we are unclear why the proposed Decision asserts in paragraph 5.24 that (perceived) low levels of switching “should not be interpreted as evidence of effective competition or consumer satisfaction alone.” There is no explanation of why the Authority considers this to be the case and, as we state above, we do not concede that the levels of switching are low by international standards for markets of a similar size to Guernsey. However, in the proposed Decision’s Competition Assessment section – informed by customer research – several other possible impacts on switching levels are offered by the Authority. None of these can be caused by an abuse of dominance and none can be resolved by SMP obligations which would apply to only one operator.

102 They include:

- a. Complexity of retail offerings, especially in relation to bundled services
- b. Low levels of digital literacy and/or engagement
- c. Lack of knowledge of existing product
- d. A perception of significant effort when compared to limited gain, and
- e. Unclear descriptions of products

103 We remain unclear that there are any significant consumer protection issues with the retail broadband market in Guernsey. We certainly see no evidence that there are issues which can properly be resolved through SMP obligations. We address below in this submission, however, whether there are any additional consumer protection measures that the Authority could consider promoting better outcomes for consumers.

104 In contrast with the proposed Decision's conclusion, we do not consider that the case for the market structure not tending toward effective competition over time has been met.

105 It would seem that instead of assessing whether the structure of the Guernsey retail broadband market is tending towards effective competition, the Authority has somehow sought to prove that the market is not effectively competitive today. That is not the appropriate test and the data and arguments presented by the Authority do not succeed in proving that point.

#### **5.2.2.5 Conclusion**

106 None of the data presented by the Authority falls into the evidence categories specified in the EC Recommendation for this criterion. Even if attempting to look at the data provided to support a conclusion that the Guernsey retail broadband market structure does not tend toward effective competition, the Authority's data and analysis simply does not present arguments that this is not the case. This criterion is, therefore, not satisfied.

### **5.3 Insufficiency of competition law**

107 The EC Recommendation on the third criterion states<sup>27</sup> that an NRA must assess the adequacy of competition law to tackle identified persistent market failures. To meet this criterion, the Authority must prove that competition would be insufficient to address any potential competition concerns that may arise.

108 The analysis set out in the proposed Decision does not identify any potential market failures and, as a result, it is unclear where competition law is supposed to apply. It states in paragraph 7.5 that "no further remedies are required at the wholesale level." In that context, the Authority cannot conclude that this criterion has been met.

109 Additionally, given that any potential for abuse by Sure in the upstream wholesale market is addressed by effective and established wholesale remedies, Sure is of the view that any potential future competition issues that could conceivably arise in the retail broadband market level could be effectively addressed by the application of competition law.

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<sup>27</sup> See paragraph 17 of the Recommendation

### 5.3.1.1 Conclusion

110 Sure believes that retail market level competition concerns (in the presence of effective and established wholesale ex-ante remedies) can be effectively addressed under competition law and this criterion is, therefore, also not satisfied.

## 5.4 Conclusion on the application of the three criteria test

111 *All three criteria must be satisfied* for the market to be defined as a relevant market susceptible to ex-ante regulation. We have demonstrated that *none of the three tests are satisfied*.

112 The Authority must, therefore, conclude that the market is not susceptible to ex-ante regulation and there is no need to proceed to the assessment of whether Sure has SMP in this market.

## 6 SMP analysis

113 Because the proposed Decision has erroneously reached the conclusion that the three criteria test has been satisfied, it has continued to conduct an SMP assessment. Below, we set out our views on that assessment, whilst again noting that no such assessment is needed once it has been established that the three criteria test has not been met.

114 SMP is defined by the EC SMP Communication as where an operator enjoys “*a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.*” We agree with the Authority that this is analogous to the concept of dominance in competition law. However, the evidence presented throughout this response demonstrates that Sure cannot and is not behaving independently of its competitors, customers and consumers or else it would not have voluntarily launched its retail offerings which have provided additional consumer benefits. To establish whether an operator has SMP in a retail market, an assessment would be expected to consider several factors, including:

- a. Market shares, including persistently high market shares;
- b. Economies of scale;
- c. Economies of scope;
- d. Market entry barriers;
- e. Switching costs;
- f. Control of infrastructure not easily duplicated;
- g. Availability of new technology in an emerging market;
- h. Prospects for competition; and
- i. Countervailing buyer power

115 There are specific types of potential harm associated with dominance in a retail market<sup>28</sup> where that dominance is leading to abuse. Broadly speaking these types of harm can be categorised as follows:

- a. Exclusionary – where the dominant provider engages in behaviour designed to prevent competition (such as predatory pricing, refusal to supply or margin squeeze); or
- b. Exploitative – where the dominant provider engages in conduct which negatively impacts customers (such as excessive pricing, unfair contract terms, limiting innovation); or

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<sup>28</sup> TFEU Article 102

- c. Structural – where the dominant provider prevents long-term innovation (such as increasing barriers to entry or reducing choice.)

## 6.1 The basis for the Authority’s SMP determination is flawed

### 6.1.1 A proper analysis would find that Sure does not have SMP in the retail broadband market

<sup>116</sup> Using the criteria set out above in paragraph 114, the Authority could have undertaken an SMP analysis more consistent with regulatory best practice. Such an assessment would have concluded that Sure does not have SMP in the market for retail broadband. We set out below why this is the case, focussing on the most relevant criteria for this market:

- a. Market shares – including persistently high market shares – these *could* be consistent with a finding of SMP in a relevant market. However, the Authority has ignored the relevance of Sure’s market shares steadily declining over the past five years – with Sure having lost 10% of its market share in that period. This is in the context of JT’s market shares steadily increasing; the market entry of Starlink; the likely impact of 3<, and the potential for further market entry 3<. The Authority must not rely solely on market shares in finding SMP. Although a presumption of SMP may exist with high market shares. If there are no market entry barriers and no evidence of any kind of abuse of dominance then market shares alone cannot be seen as evidence of SMP. That is why regulators should not perform SMP analyses in markets where there are not structural, legal or regulatory barriers to entry. This parameter, therefore, does not support an SMP conclusion.
- b. Economies of scale – retail markets are characterised by low economies of scale, and we consider that this would apply to the retail broadband market in Guernsey. This parameter, therefore, does not support an SMP conclusion.
- c. Economies of scope – the retail broadband market is not characterised by economies of scope. This is because there are not material fixed up-front (sunk) network investments that could be spread over several different products. Additionally, retail broadband providers can purchase regulated wholesale access products from Sure to offer other telecommunications services, such as leased lines. As a result, they could achieve the same economies of scope as Sure. This parameter, therefore, does not support an SMP conclusion.
- d. Market entry barriers – As discussed extensively above in the three-criteria test section, there are no material barriers to market entry in the Guernsey retail broadband market. Even the small market size has been proven to not prevent successful market entry. This parameter, therefore, does not support an SMP conclusion.

- e. Switching costs – these are low in the retail broadband market in Guernsey. This parameter, therefore, does not support an SMP conclusion.
  - f. Control of infrastructure not easily duplicated – This is not applicable to the retail broadband market. This parameter, therefore, does not support an SMP conclusion.
  - g. Availability of new technology in an emerging market – This is also not applicable as retail broadband providers would access the same wholesale interfaces as Sure itself. This parameter, therefore, does not support an SMP conclusion.
  - h. Prospects for competition – as we set out above, there have been four operators in a relatively small market over the last four-year period. Starlink entered the market in 2023 ~~30~~. This parameter, therefore, does not support an SMP conclusion.
  - i. Countervailing buyer power – countervailing buyer power in the Guernsey retail broadband market is demonstrated by the ability of customers to switch between providers with ease. The fact that Sure’s customers have this ability means that Sure cannot act to an appreciable extent independently of customers.<sup>29</sup> This parameter, therefore, does not support an SMP conclusion.
- 117 Other criteria are used by the EC, but Sure believes that the above assessment of a subset of the relevant criteria is sufficient to show that Sure does not have SMP in the retail broadband market, providing that existing wholesale remedies remain in place.
- 118 Absent upstream regulation and using the modified greenfield approach<sup>30</sup>, it is possible that the Authority could find that Sure would have SMP in the retail broadband market. However, that is not the case once upstream regulatory remedies have been considered. This is consistent with the Authority’s own view in the proposed Decision that there is no requirement for further wholesale regulation to address any retail market failures.
- 119 Because this retail market review is being conducted separately from the corresponding wholesale market, the dynamic interactive relationship between retail and wholesale markets is lost. If the retail and wholesale markets had been reviewed together, any retail SMP would have been nullified by the imposition of relevant wholesale remedies.

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<sup>29</sup> Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services page 23 and footnote 79.

<sup>30</sup> Assuming that no upstream wholesale regulation is applied. This is intended to assess whether upstream wholesale regulation remains necessary. The final retail SMP finding should, however be done based on the existence of upstream remedies. The core principle of the EC being that regulation should be exercised at far upstream as possible and enable effective downstream competition.

## 6.1.2 The Authority's rationale for finding SMP in the Guernsey retail broadband market

120 The proposed Decision has relied on two factors only in reaching a finding of SMP on Sure in the retail broadband market. Those are:

- a. Changes in market shares; and
- b. The results of market research into customer attitudes and behaviour.

121 While market shares are an important part of any SMP assessment, research to establish consumer attitudes or preferences are not. Market research of the kind performed by the Authority can give useful insight into whether there are consumer issues that need to be addressed. However, it will not provide information relevant to performing an SMP assessment.

### 6.1.2.1 *The market share analysis is incomplete*

122 In terms of the market share data, the proposed Decision points to Sure's retail market share being above 70% but does not set out what type of harm this causes – whether that harm is exclusionary, exploitative or structural. Moreover, as this needs to be a forward-looking analysis, it fails to consider other key additional factors, namely:

- a. The 2023 market entry of Starlink and potential for market growth and expansion;
- b. 3<;
- c. The potential for future market entries of the new MVNO in Guernsey as well as further LEOs.

123 The proposed Decision then goes on to state that a new entrant "might struggle to become an effective competitor due to customer inertia" without providing evidence why this is the case, nor justify why the presence of customer inertia is evidence of SMP.

124 While Sure's market share remains high, it has been steadily declining over the past 5 years (reducing by 10%) while the market share of our main competitor in Guernsey, JT, has been steadily increasing (increased by 15% in terms of households). In addition, Starlink has entered the market and now holds around 1.6% of the market. A forward-looking assessment could see this trend continuing with the prospect of even more new entrants into the market.;

125 The proposed Decision also re-iterates the view that the 2024 wholesale price control reductions have not been passed on to customers. As we set out above, this does not factor in the imminent introduction to the market of an unbundled entry level broadband product, or the value bundled propositions that have been available in the market. It also does not include the impact of forthcoming retail price reductions for Sure's higher speed products.

126 The Authority presents no assessment of movements in other input costs which are part of the price charged to consumers. Other retail related costs, such as backhaul, will have increased significantly as a result of the move to fibre and the associated delivery of higher speeds to

customers. These will need to have been factored into any assessment of prices charged at the retail level, but that assessment has not taken place.

127 Additionally, Sure has effectively passed some of the wholesale reductions on to its fibre broadband customers by not charging a premium for this significantly improved product compared to the legacy copper-based broadband product. This is not the behaviour typical of a dominant provider seeking to profit maximise and exploit its power to extract monopoly rent.

### **6.1.2.2 Customer research data is not relevant for an SMP assessment**

128 The customer research evidence that the proposed Decision relies on, provides a good deal of useful insight into consumer preferences and market awareness. However, these are not useful for understanding the underlying structure of the relevant market and whether an operator has SMP. The EC SMP Communication is clear what type of evidence would be required to substantiate a finding of SMP in an electronic communications market, and it does not, at any point, refer to consumer behavioural research.

129 The only relevant evidence, therefore, provided to support the proposed Decision's conclusion that we have SMP relates to our market share. The Authority has, however, not adequately explored the changes in market shares. nor has it undertaken a forward-looking review of the impact of the confirmed new entrant 3<.

130 As a result, the Authority cannot conclude on the basis of the evidence provided in this assessment that Sure has SMP in the market for retail broadband.

### **6.1.3 The concerns expressed by the Authority are not caused by abuse of market power**

131 In contrast to the guidance set out in the EC Recommendation, the types of issues that have been raised in the customer research relate to consumer welfare, transparency and digital literacy. These are not areas that can be resolved through the imposition of SMP obligations, which would apply to only one operator. They do not justify an SMP finding.

132 We do support any initiative, nonetheless, that seeks to identify where customer outcomes can be improved. To that extent, we support the efforts to understand where perceptions in the market might be causing sub-optimal outcomes. We note that the proposed Decision refers, in paragraph 7.15 of its Remedies section, to considering "symmetrical regulatory measures" which we infer to mean consumer protection regulation. It is important to recognise, however, that consumer protection regulation cannot be considered as part of an SMP analysis and consumer protection measures should not be applied to a single SMP provider but to all providers licensed to operate in the relevant market. Such measures would typically be applied through general licence conditions applicable to all providers. An example of such a measure is number portability.

133 In addressing these issues, the Authority should have regard to international experiences in establishing consumer protection measures. Ofcom, for example, has been active in this space

over the past five years and there are likely precedents from its work that the Authority can draw upon. We set out below our own initial thoughts on where the Authority could direct its considerations.

## 7 Addressing the Authority's consumer protection concerns

134 Sure is unclear whether there are any serious consumer protection issues that require regulatory intervention and welcome the Authority's plans to investigate these matters in more detail, as set out in the Authority's draft Business Plan for 2026/27.

135 That being said, and with Sure's commitment to delivering ever-improving experiences for our customers, there are several additional observations that the Authority may wish to consider. These could signal enhancements to competition and mitigate any concerns that customers are insufficiently informed about their best options.

### 7.1 Removing the retail SMP obligation to provide 21 days' notice period to industry of retail price reductions will be pro-competitive

136 One of the positive consequences of removing SMP in the retail broadband market would be to remove the current requirement for Sure to provide 21 days price change notice to both the Authority and to competitors. This requirement, as it stands, provides some unwelcome challenges for competition in that market.

137 The notification requirement acts as a disincentive for retail price reductions. It sends a signal to competitors to respond or potentially even pre-empt the price reduction and risks undermining any creative pricing strategies. Conversely, competitors are under reduced pressure to proactively reduce their own prices. Instead, they can simply wait for notifications from Sure. The forced pre-notification can, therefore, lead to stagnant pricing that does not incentivise customers to switch and does not operate in the interest of consumers

138 We continue to believe that the existing wholesale remedies are sufficient to address any potential retail-level competition concerns. Even with the removal of the price change notification, the Authority retains the ability to intervene where it has any suspicion that retail broadband prices are being set at an anti-competitive level. Even without retail SMP, Sure would be unable to, for example, suddenly radically reduce its retail broadband prices, unless this could be accommodated without causing a margin squeeze against the regulated wholesale pricing.

139 ↯, we expect the retail broadband market to become more competitive and there will likely be a requirement for more agile pricing strategies. With that in mind, the requirement for a 21-day notice to industry on Sure's retail broadband price changes seems to us to be increasingly out of date, disproportionate and inappropriate.

## **7.2 Improved contract transparency could allow customers to make more informed decisions**

- <sup>140</sup> The IGR report, which accompanies the proposed Decision, outlines a possible action for the Authority to introduce prompts to customers when their initial contract periods are coming to an end. This measure broadly mirrors the end of contract notification (ECN) provisions introduced in the UK in 2021 and enshrined in its General Conditions.
- <sup>141</sup> In the UK, this transparency measure has reduced barriers for customers to choose the best deals available in the market. While we remain unclear that there are problematic levels of customer inertia in Guernsey, we would be prepared to support, in principle, a move toward this customer transparency approach as mandated by Ofcom.
- <sup>142</sup> Such a move could consider best practice and feedback from UK operators as to which parts of the ECN work well and which elements are less effective. For example, several UK operators have pointed to the overly prescriptive nature of the communications as set out in the UK General Conditions. This could be adapted to the circumstances of the Guernsey market.
- <sup>143</sup> We will also engage constructively with the Authority on other contract transparency measures that it wishes to propose to industry.

## **7.3 We will continue to provide support to customers who most need it**

- <sup>144</sup> Sure has introduced significant retail value into the market in terms of helping those customers who require additional assistance. Alongside the free speed increases we have referred to above we have introduced other measures to help customers to get the best experience from their broadband and assisted many who could be deemed as vulnerable,
- <sup>145</sup> This is supported by free routers to customers and the launch of our Home Tech team provides additional support for those most in need. We have also invested in our customer support channels to provide in person or over the phone help to educate and encourage customers. This enables them to get the best possible broadband service from their fibre connection. We have engaged constructively, for example, with Age Concern as part of our efforts to ensure that those most in need of support are receiving that support.
- <sup>146</sup> These efforts are where we consider most impact can be made in terms of improving digital literacy and will bear more fruit than those inappropriate approaches proposed by the Authority in its market review proposals.