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THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* ECONOMIC DEVELOPMENT

TEMPORARY AND LIMITED EXEMPTION TO THE COMPETITION LAW TO ENABLE GUERNSEY AIRTEL LIMITED TO EXIT THE MARKET BY WAY OF ACQUISITION BY SURE (GUERNSEY) LIMITED

The States are asked to decide: -

Whether, after consideration of the policy letter entitled 'Temporary and limited exemption to the Competition Law to enable Guernsey Airtel Limited to exit the market by way of acquisition by Sure (Guernsey) Limited' dated 19th June 2023 they are of the opinion: -

1. To agree that given the broader benefits that can be secured for the jurisdiction, there are good public policy reasons to enact an Ordinance to create a temporary and limited exemption from the Competition (Guernsey) Ordinance, 2012 in order to enable Guernsey Airtel Limited to exit the market by way of acquisition by Sure (Guernsey) Limited.

2. To approve the draft Ordinance entitled "The Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023" as set out in Appendix 2 to the Policy Letter, and to direct that the same shall have effect as an Ordinance of the States, and

3. If proposition 2 is agreed, pursuant to section 2 of the Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023, to direct the Guernsey Competition and Regulatory Authority to impose the conditions listed in Appendix 1 to the Policy Letter on Sure (Guernsey) Limited by way of licence modification, if the Authority is notified of an agreement between Sure (Guernsey) Limited and Guernsey Airtel Limited pursuant to section 1 of that Ordinance.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

19th June 2023

Dear Sir

1 Executive Summary

1.1 This Policy Letter seeks the approval of the States for a temporary and limited exemption to the Competition Law which would enable Guernsey Airtel Limited **("GAL")** to exit the local telecoms market by way of acquisition by Sure (Guernsey) Ltd **("Sure").**

1.2 Under the Island's competition law, applications for company mergers and acquisitions are ordinarily dealt with by the Guernsey Competition and Regulatory Authority (the **"GCRA"**). However, in the case of this proposed transaction, the GCRA informed the Committee *for* Economic Development **("the Committee")** that it was unlikely to approve the transaction as it would have the potential to result in a substantial lessening of competition in the telecoms market.

1.3 However, the competition law recognises that there may be occasions when, for reasons of good public policy, it may be expedient and beneficial to permit a transaction to take place. This is provided for in Section 14(1) of the law, where it is considered there are exceptional and compelling reasons to do so and is also possible by way of the States agreeing to make specific and time limited exemptions to the law.

1.4 In discharging its role *"to secure prosperity through the generation of wealth and the creation of the greatest number and widest range of employment opportunities possible by promoting and developing business, commerce and industry in all sectors of the economy"* the Committee is required to take into account a broad range of factors which go beyond those that the GCRA is established to consider (i.e. matters which extend beyond competition matters).

1.5 The Committee has therefore considered in some depth the public policy benefits that this transaction will bring to the island. In doing so, it has also considered the potential impacts on consumer outcomes and has worked closely with both the GCRA, the Jersey Competition and Regulatory Authority (from a wider Channel Island perspective), Jersey Telecom (as the other telecoms provider) and the merging parties to determine what safeguards should be put in place to protect the interests of consumers. The Committee is grateful for the input of all of these stakeholders.

1.6 The Committee has concluded, by a majority, with Deputy S Falla dissenting, that there are good reasons of public policy to enable the transaction to take place. The Committee has identified beneficial outcomes in terms of improvements in network quality (including a binding commitment to establish a 5G-enabled network[1]), enhanced network security, reduced environmental impact and positive impacts on the economy in terms of further and sustained investment by Sure in Guernsey.

1.7 To address any potential impacts on consumer outcomes and choice, it has also secured binding commitments from Sure which address the potential for a substantial lessening of competition when the number of operators decreases. The Committee has proposed these binding commitments based on the advice it has received in the appended correspondence with the GCRA. These commitments are recorded as draft licence conditions in **Appendix 1** to this policy letter, in respect of which this policy letter also asks the States by Resolution to direct that these conditions be imposed upon Sure's licence if the acquisition proceeds (see paragraph 6.12 below).

1.8 A critical point that the Committee wishes to emphasise is that in the scenario where an exemption is not recommended to enable the proposed acquisition and given GAL's stated intention to exit the market, there will not be an opportunity to put in place controls or binding competition conditions to control what happens next. Recommending an exemption for Sure to acquire the business means that consumer and competition conditions can be put in place, and that it will be the role of the regulator to ensure those conditions are met. Effectively, this will put in place an orderly exit from the market for consumers while securing the benefits from the proposed acquisition. The commitments from Sure also secure the best possible outcomes for consumers if such an exemption is applied. Should the transaction not proceed there are no guarantees that these beneficial outcomes will be met.

[1] The establishment of a framework for delivery of 5G will be subject to agreement of the States through a forthcoming States Policy Letter and a subsequent licencing process through the GCRA.

1.9 The Committee, by a majority, is therefore recommending the States to approve a temporary and limited exemption to the Competition Law which would enable this transaction to take place, which exemption is contained in the draft Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023, which is also appended to this policy letter for approval.

2 Background

2.1 On 21st June 2022, the Committee *for* Economic Development was advised by a confidential memorandum of the proposed acquisition by Sure (Guernsey) Limited of 100% of Airtel-Vodafone in the Channel Islands. The Guernsey business is registered as Guernsey Airtel Limited.

2.2 Telecoms services in the Bailiwick, including the provision of fixed line, mobile and broadband services are presently provided by three operators – Sure, JT and GAL – although GAL's main presence is in the mobile market. Sure currently accounts for approximately 60% of the mobile market, with JT and GAL accounting for a further 20% each. The acquisition of GAL by Sure could result in Sure accounting for approximately 80% of the Guernsey mobile market.

2.3 Ordinarily, approval for mergers and acquisitions are dealt with through the GCRA, with the Authority determining whether the transaction can take place under the provisions of the existing law and whether these would be subject to any conditions. Competition law seeks to protect free, open and fair competition. In most circumstances, competition is good for consumers because it results in lower prices, new products of a better quality and more choice. It is also good for fair-dealing businesses, which flourish when markets are competitive.

2.4 In the case of this proposed transaction, the GCRA informed the Committee that it was unlikely to be able to approve the transaction as it presented the potential for a substantial lessening of competition by the reduction in mobile network operators from three to two, with Sure likely to account for approximately 80% of the mobile market following the acquisition. In view of the position from the GCRA, Sure wrote to the Committee on 18th October 2022 formally requesting an exemption under Section 14(1) of the Competition (Guernsey) Ordinance, 2012 ("**the Ordinance**").

2.5 The Ordinance recognises that there may be occasions when, due to reasons of public policy resulting in other benefits to consumers and/or the jurisdiction, it may be expedient to exempt a transaction which might otherwise not be capable of approval under the Ordinance. In particular, Section 14(1) of the Ordinance allows the Committee, after consultation with the Guernsey Competition and Regulatory Authority ('GCRA'), to exempt, *inter alia*, any acquisition specified by resolution of the States. Pursuant to section 14(2) of the Ordinance, the States may only by resolution so specify an acquisition if it is satisfied that there are '*exceptional and compelling reasons of public policy making it desirable to do so*'.

2.6 In practical terms, this would mean that the Committee would first have to put a policy letter to the States making the case for an exemption on the basis of exceptional and compelling reasons of public policy, and subject to the States making such a Resolution, the Committee would then consult with the GCRA on the same and publish the advice and the Committee must then publish its reasons. In order to simplify the process, the Committee has chosen to first consult with the GCRA so that the recommendations in this policy letter, and the States' decision in relation to the same, can be fully informed by the Committee's reasons for, and the GCRA's views on, the proposed exemption.

2.7 Accordingly, appended to this paper are the GCRA's views on the proposed transaction, from which it can be seen that the GCRA is not persuaded that, from a competition perspective, there are exceptional or compelling reasons of public policy such that the proposed acquisition should be exempted. (**Appendix 3**)

3 The case for an exemption

3.1 The Committee has carefully considered the views of the GCRA and has met with the GCRA and Sure. After this careful consideration, whilst acknowledging the expertise of the GCRA on competition matters, to whom the Committee are very grateful for their detailed analysis, the Committee considers that there are broader reasons of public policy that go beyond pure competition considerations, that are exceptional and compelling and that do mandate that this transaction be exempted from the requirements of the Ordinance, as further set out below.

3.2 That said, the Committee appreciates that it may not be easy to reach a consensus on whether or not there are exceptional and compelling reasons of public policy such that the acquisition should be exempted from the requirements of the Ordinance by resolution of the States. Instead, the Committee proposes that the States create a time limited exemption by Ordinance made under the Competition (Enabling Provisions) (Guernsey) Law, 2009 on the basis that there are very good public policy reasons to do so. These are further set out below.

3.3 In coming to the view that there are very good grounds of public policy to enable the transaction to take place, the Committee has identified beneficial outcomes in terms of improvements in network quality (including a binding commitment to establish a 5G-enabled network[2]), enhanced network security, reduced environmental impact and positive impacts on the economy in terms of further

[2] Subject to approval of a 5G implementation framework by the States and subsequent licensing requirements

and sustained investment by Sure in Guernsey. It has also secured binding commitments (enforced by the regulator through licence conditions) from Sure which address the lessening of competition when the number of operators decreases. The Committee has proposed these binding commitments based on the advice it has received in the appended correspondence with the GCRA.

3.4 A critical factor under consideration by the Committee is the stated intention of GAL to exit the Channel Islands, due to financial and strategic reasons. In these circumstances the Committee considers that from a public policy perspective it is very beneficial for the jurisdiction to secure binding conditions and commitments to protect consumers, at least in the short term. These would be a condition of the transaction taking place, and the binding nature of the commitments places a legal obligation on Sure to enact those commitments and ensure they are delivered by the time specified. This ensures that the stated benefits are delivered as and when intended. The Committee consider, by a majority, that this is a critical public policy benefit.

3.5 The policy letter sets out the Committee's reasons for seeking States approval of this temporary exemption which is contained in the draft Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023, appended **(Appendix 2)**, which the States is also asked to make. Permission has been sought and provided by the Bailiff for the Policy Letter and Ordinance to be considered at the same meeting.

3.6 The Policy Letter is structured as follows:

- **Section 4** sets out the current landscape of the telecoms market in Guernsey and the benefits of the transaction
- **Section 5** sets out the respective positions of the merging parties and provides an analysis of the potential risks of the acquisition taking place.
- **Section 6** sets out the binding commitments which will be put in place to address any lessening of competition, address the stated risks and deliver other benefits for Guernsey.
- **Section 7** sets out the Committee's conclusions following further consultation and its rationale for recommending an exemption to allow the transaction to take place

4 Benefits of the transaction

The Guernsey telecoms market

4.1 Three telecoms operators currently provide telecoms services to residents and businesses in Guernsey. These are Sure, Jersey Telecom (JT) and Guernsey Airtel Limited (GAL). Of these Sure is the largest operator, accounting for approximately 60% of the mobile market. JT and GAL each account for 20% of the mobile market. [3]

4.2 Whilst Sure and JT have provided mobile, fixed line and broadband services, GAL has until recently concentrated on mobile services. It has lately entered the broadband market using wholesale arrangements provided by Sure

4.3 Much of the fixed line and fibre infrastructure is owned by Sure, and to a lesser extent JT, but in terms of the mobile market, the three operators each provide their own radio access network via mobile phone masts. This leads to a degree of duplication.

4.4 The Guernsey mobile market is small in comparison to even the smallest of EU states. For this reason, it must be regarded as a sub-scale market. This is an important factor when future investments in emerging technology are considered. The pace of change in technology is high, and is increasing, such that investments in new equipment require payback over shorter timescales. Sure expresses the view that an organisation of a certain scale is required in order to unlock the investment needed to enable full deployment of next generation networks (both broadband and mobile). In addition, telecommunications providers face the challenge of meeting more stringent network security requirements through the application of Telecoms Security Requirements (TSRs). GAL expresses the view that, in a very small and stagnant market with limited customer bases, small revenues, profitability, and accelerating capital investment cycles, a three-operator market is inefficient and unviable.

4.5 In addition to this, it is apparent from the evidence submitted by GAL that any new operators will find the market conditions and small market in Guernsey challenging from an investment perspective. The pressures on Guernsey telecommunications operators are similar to those globally with increasing requirements to make investments coupled with shortening time frames to generate returns. It is for this reason that consolidation of operators has been an industry trend in the UK, EU and worldwide[4]. Notwithstanding, the Committee would welcome new or innovative services from new market entrants in the future, and will do all it can to encourage potential new market entrants to consider Guernsey.

4.6 The Committee considers that when looking at the provision of telecoms services in the island, three key factors need to be considered. These are:

- Consumer protection (including network security)

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[3] A full report on the Telecommunications Market was prepared by Statistics Jersey on behalf of the GCRA and JCRA in 2021. Please see this link for the full report: [telecommunications-statistics-and-market-report-2021.pdf (gcra.gg)]

[4] By way of example, a proposed merger between Vodafone and Three has recently been announced in the UK.

- Industry viability (including the ability to deliver sustained investment)
- Quality of service (including the quality and standard of networks)

4.7 These three factors should be borne in mind when considering the benefits of the transaction.

The economic benefits

4.8 The acquisition will mean a significant further investment by Sure's parent company Batelco in the business across Guernsey and Jersey. A significant proportion of this will be in Guernsey, where Sure is headquartered. Together with the £25m committed to the Fibre to the Premises project, a further direct investment of up to £37m will be made, with £30m being invested in a new core network[5] serving the Channel Islands and up to £7m on Guernsey specific radio network infrastructure. This represents a direct investment of up to £62m, of which a significant proportion will be spent in improving Guernsey's network infrastructure. This is significant and positive for the jurisdiction, not least in the current economic climate. Conversely, if the investment does not take place, there is a risk that it will create a sense that Guernsey is not encouraging such investment in its digital infrastructure. Moreover, there will be limited further opportunities to secure such investment, particularly from an established partner.

4.9 Airtel Channel Islands would be merged into the business and brand of Sure, and its headquarters moved from Jersey to integrate into Sure's headquarters in Guernsey. The outcome will see Sure becoming a committed long-term employer in Guernsey.

4.10 The ownership of Airtel's assets and the employment of their staff will increase the business and digital economy opportunities on and off-island for Sure, leading to greater revenue for the States through taxation and greater investment in Guernsey's wider economy.

4.11 As a direct result of the proposed transaction, Sure will build a completely new mobile network that offers the latest generation of technology and services to greatly enhance data speeds, improve coverage and call quality. The network will be 5G-enabled, such that there will be minimum delay in introducing innovative services should Sure be successful in the future licensing process for 5G[6] that will be undertaken by the GCRA. It will be fully compliant with the forthcoming telecoms security requirements.

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[5] The core network is a shared central network function which will drive the new network across Sure's jurisdictions and is therefore not solely dedicated to Guernsey.
[6] Once this is approved by the States and the regulatory process which will follow.

4.12 This meets the objective of the Telecoms Strategy of delivering a next generation telecommunications network. The new high speed mobile network will complement the current fibre rollout, funded in a partnership between Sure and the States of Guernsey, by offering an up to 10 times increase in capacity, increasing speeds and vastly improving the services provided to customers.

Telecommunications security benefits

4.13 The commitments and challenges for Guernsey and for Sure in relation to telecommunications security deadlines that the jurisdiction needs to meet will become more achievable and subject to a binding commitment from Sure. Sure will be able to meet their high-risk vendor obligations in both its Core and RAN (Radio Access Network) within 30 months of the Completion Date[7] and in its RAN (radio access network) by the end of 2025[8]

Environmental benefits

4.14 The new network configuration will provide the capacity needed to serve the combined customer base using a more energy-efficient network with a lower power consumption, reduced carbon emissions and less visual impact on the island compared with operating two separate networks.

4.15 There will be a reduction in the number of mobile network sites currently used on the Sure and GAL independent networks from 88 in 2023 to 62 by 2027, whilst the quality of the network will improve and be ready for the introduction of next generation, 5G mobile services.

5 Respective positions of the merging parties, and analysis of the potential risks of the acquisition taking place.

Sure's position

5.1 Sure has made it clear to the Committee that the acquisition would ensure that the level of investment proposed would be made certain. Without this investment, further benefits of the development of a new 5G capable mobile network would not be accelerated, and advantages of a consolidated and more efficient mobile network would be lost.

5.2 If the acquisition takes place, Sure's commitment is that 50% of mobile sites

[7] The Completion Date is the date when Sure (Guernsey) Limited completes the acquisition of GAL, which the parties have agreed should be by 31st July 2023. Any delay in granting the exemption would impact the timescales for Sure's commitments (and would be reliant on the parties being prepared to agree a new Completion Date).

[8] These timescales are dependent on the exemption being given by July 2023 so the transaction can close and complete by end of July.

would be 5G-enabled within 30 months of the Completion Date, [9], compared to 20% of sites, achieved only by 2026 absent the acquisition.

5.3 Sure's view is that the acquisition represents a unique opportunity to provide the scale necessary to unlock committed investment from the business to deliver high speed next generation, security compliant, mobile network infrastructure to the Channel Islands. As a small, subscale island telecommunications market, there are limited opportunities to secure the investments necessary in Guernsey, particularly in light of upcoming telecommunications security requirements (TSRs).

5.4 A further claimed benefit from Sure is the early replacement of the High Risk Vendor equipment (HRV equipment) in their network. This will be required by end of 2026 for the Channel Islands. As a result of the acquisition, Sure will be replacing their core network in 2024, with the Radio Access Network (RAN) following in 2025[10].

5.5 The binding legal commitments set by the Committee, which Sure will need to agree to for the acquisition to complete, and which will be enforced by the GCRA, mean that Guernsey has secured a definitive and binding commitment for significant further investment in its telecoms infrastructure, essential for economic growth and an enabler to the transformation of public services.

GAL's position

5.6 GAL has, in confidence, presented figures to the Committee which showed that their investment in telecoms services in the Channel Islands had resulted in a net loss to the company. Even with the proposed sale to Sure, the investors would still be making a loss from their investment in the Channel Islands. In their view, this demonstrated the difficulty of a new operator competing in what was effectively a sub-optimal market. GAL state *"GAL firmly believes that this transaction will offer significant sustainability benefits to the Bailiwick of Guernsey, where the size of the telecoms market inhibits the viability of substantial multi-million-pound investment into network modernisation, 5G launch and the TSR obligations."*.

5.7 GAL contend that investment (for itself or indeed any stand-alone operator) in the Channel Islands market will remain challenging. They believe that investment in 5G services will be necessary to remain relevant to consumers, but that there is little prospect of earning the required rate of return on the investment. Having assessed their strategic options, GAL believe that this explains its decision to exit

[9] This would be the end of January 2026 based on a completion date of the transaction of the end July 2023, and subject to States agreement of a 5G framework and subsequent licencing.

[10] Subject to the Completion Date of 31st July 2023 being met.

its investments in the Channel Islands market.

Economic analysis of the impact of the acquisition

5.8 Frontier Economics was commissioned by the Committee to provide further research on the economic consequences of the acquisition. Frontier Economics was already advising the Jersey Competition and Regulatory Authority (JCRA) on the proposed acquisition in Jersey and has also advised the GCRA in the past on telecoms matters.

5.9 Frontier Economics was asked to review Sure's application and to produce analysis summarising the benefits of the transaction and the risks to competition, and to identify whether there are any remedies that could be used to mitigate these risks. The full report has been shared with the Committee and the GCRA, but as it contains sensitive and confidential commercial information it will not be published in the public domain, and as such has not been appended to this policy letter.

5.10 Frontier examined the potential risks of clearing the transaction. They identified four risks:

- Incentives to increase prices due to the market being more concentrated (so called "horizontal effects");
- Increased ability for Operators to tacitly coordinate their behaviour ("coordinated effects");
- Spectrum asymmetries; and
- Other potential risks - staff redundancies.

5.11 As a result of these potential impacts of the acquisition Frontier concluded that in the absence of any mitigating actions, there is likely to be an increase in prices and/or a reduction in the quality of services. Frontier estimated that without suitable mitigations these could be as great as an increase in prices of 10%. The Frontier report concluded by suggesting some potential remedies that could be considered to mitigate the risks identified.

5.12 Following the review by Frontier Economics, the Committee worked with Sure to provide further binding commitments from Sure that seek to address these concerns.

5.13 **Section 6** provides details of the Commitments put forward by Sure to address these risks.

6 Commitments put forward by Sure to mitigate potential risks of the transaction

6.1 Sure has proposed the following binding commitments (remedies) to address the concerns and risks set out in **Section 5**. These remedies are:

- two structural remedies: a spectrum divestment remedy and an MVNO-enabling remedy.
- four behavioural remedies addressing pricing and value.
- a commitment to build a new high speed 5G-enabled mobile network with enhanced security which addresses wider public benefits.

Structural remedies

6.2 **Remedy 1**: A structural commitment to work with the GCRA to refarm and reallocate Sure (and JT's) existing spectrum within 36 months of the Completion Date. This Remedy is aimed at ensuring that a two-player Mobile Network Operator (MNO) market would be able to operate as efficiently and competitively as possible by ensuring that both Sure and JT have access to similar amounts of capacity and in larger contiguous blocks, in turn unlocking capacity and speed benefits to customers. The extent of this obligation is set out in requirement 1 of the conditions to be imposed upon Sure in the event the acquisition proceeds (see Appendix 1).

6.3 **Remedy 2**: Upon completion of Sure's new mobile network and the refarming in Remedy 1, Sure will commit to negotiate in good faith with any credible potential Mobile Virtual Network Operator (MVNO)[11] entrant and to ensure that the GCRA is the final arbiter of any disputes that arise from such negotiations. This commitment ensures that where an MVNO entrant has identified a credible business case to enter, it will be able to obtain access to Sure's new mobile network on reasonable terms. The extent of this obligation is set out in requirement 2 of the conditions to be imposed upon Sure in the event the acquisition proceeds (see Appendix 1).

Behavioural remedies addressing pricing and value

6.4 **Remedy 3:** A commitment not to withdraw legacy Sure and Airtel tariffs for existing customers for up to 36 months from the Completion Date. These tariffs will therefore remain at no more than current prices (subject to the right to increase in line with RPI). This will be supported by a commitment to ensure that existing Sure and Airtel customers currently on those tariffs are informed of their

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[11] A mobile virtual network operator (MVNO) is a reseller of wireless communications services. An MVNO in the Guernsey market would lease, on a wholesale basis, capacity from Sure's network and re-sell these to consumers. This enables competition at the retail level without the need to duplicate physical networks. Tesco and Sky are examples of MVNO's that operate in the UK.

right to remain on these tariffs upon expiry of their contracts for up to 36 months from the Completion Date. This commitment will not prevent Sure from offering enhanced terms on these tariffs (e.g., lower prices, increased bundles, higher speed caps etc). The extent of this obligation is set out in requirement 3 of the conditions to be imposed upon Sure in the event the acquisition proceeds (see **Appendix 1**).

6.5 **Remedy 4:** A commitment to ensure that Airtel's Basic Plan tariff will remain available to existing Airtel and new customers for up to 36 months from the Completion Date (subject to the right to increase in line with RPI). As with Remedy 3, this commitment will not prevent Sure from offering enhanced terms (e.g., more inclusive minutes or texts, or more data as part of the data add on). Sure will also commit to ensuring that this tariff remains marketed online and in-store with the same prominence as all available plans. The extent of this obligation is set out in requirement 4 of the conditions to be imposed upon Sure in the event the acquisition proceeds (see Appendix 1).

6.6 **Remedy 5:** A commitment to ensure that Sure's 4G Unlimited tariff will remain available to existing Sure and new customers for at least 36 months from the Completion Date (subject to the right to increase in line with RPI). Sure will also commit to ensuring that this tariff remains marketed online and in-store with the same prominence as all available plans. The extent of this obligation is set out in requirement 5 of the conditions to be imposed upon Sure in the event the acquisition proceeds (see Appendix 1).

6.7 **Remedy 6:** A commitment within 12 months from the Completion Date to notify all eligible existing Airtel customers who also take a fixed line broadband service from Sure of their eligibility to access Sure's "Big Bundle" discounts. This commitment will ensure that Sure completes the migration of Airtel customers onto its network in a timely fashion to enable Sure to identify eligible customers. New Sure and Airtel mobile customers beyond that date who also take Sure fixed line broadband products (and existing Sure and Airtel mobile customers who move their fixed line broadband to Sure) will also be eligible for these discounts. The extent of this obligation is set out in requirement 6 of the conditions to be imposed upon Sure in the event the acquisition proceeds (see **Appendix 1**).

6.8 Remedies 3, 4, 5 and 6 provide customers of GAL who have contracts of various types at the time of the completion of the transaction with the assurance that their existing tariffs will continue on the same basis for a period of three years from the date of the transaction. Sure will be legally bound to continue to provide those services on the same terms as their existing contracts.

6.9 It should be noted that some customers will hold pay monthly contracts, some will hold bundled contracts which might be subject to completion of a certain time period, and some customers will be Pay as You Go (PAYG) customers. All customers will be free to exercise their choice of provider when their contract expires. For PAYG customers this will be immediate, and those on a monthly contract would be able to change after 1 month. Those customers on longer contract commitments will be able to change on expiration of their contract but can be assured that the terms they signed up to will not change.

6.10 This is facilitated by the existence of number portability which enables consumers to quickly change provider whilst keeping the same number. For these reasons it will be in the interests of Sure to remain competitive in terms of pricing.

New network and enhanced network security

6.11 **Remedy 7:** Sure will within 18 months of the Completion Date build a new 5G enabled network to support customers of the merged entity in both Jersey and Guernsey, which will offer voice and high speed data services explained further below in Remedy 8, will be fully HRV compliant. This new network will provide both quality and speed advantages to customers of both Airtel and Sure due to greater network capacity, increased site density and resilience as well as offering environment benefits from fewer total sites than across both existing networks. The economics of building a new network are such that there are synergies available in choosing to build a 5G enabled core at the same time as building Sure's new HRV-compliant 2G and 4G network, with the capability to substantially launch 5G services once the regulatory and licensing process has been determined[12].

6.12 **Remedy 8:** Sure's new mobile network as described in Remedy 7 will be built to a higher security specification than any of the existing networks on Guernsey. This will not only ensure that no HRV vendors are present on the core and RAN (Radio Access Network) but will also ensure that the new network is well-placed to meet anticipated TSRs in Guernsey from the outset. Such a focus on increased security will drive investor confidence in Guernsey generally, whilst ensuring that Guernsey consumers benefit from enhanced security as part of the new network significantly ahead of likely legislative deadlines. Sure is committing in Guernsey to have a new HRV compliant core network and RAN operational within 30 months from the Completion Date. HRV compliance will be achieved at least one year earlier than the current proposed Guernsey deadline. The extent of this obligation is set out in requirement 8 of the conditions to be imposed upon Sure in the event the acquisition proceeds (see Appendix 1).

6.13 Remedies 3-6 inclusive (to the extent that they have not already expired) will cease to apply within 3 months of the launch of any new MVNO or MNO in

[12] The licensing framework for 5G services will be subject to approval of resolutions in a further States policy letter to be submitted in late 2023 or early 2024.

Guernsey, given that such new entry would remove the competition concerns that required these consumer protection remedies.

6.14 All of the above remedies are recorded as conditions to be imposed upon Sure's licence. Thus, if the States resolves to approve the Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023, section 2 of this Ordinance provides a power for the States by Resolution to direct the GCRA to impose conditions on licences, where an exempted transaction is about to take place. Accordingly, these conditions have been compiled in Appendix 1 and the States is asked to resolve that these conditions be imposed as requirements of Sure's telecommunications licence. The way the Ordinance is drafted, the GCRA will only impose the conditions following one month's notice of the completion date being provided by Sure and Airtel, so the Resolution will only take effect if the acquisition proceeds.

7 Further consultation, and the Committee's rationale for recommending an exemption to allow the transaction to take place

7.1 Following its assessment of the potential risks of allowing the transaction to proceed, and having secured the further commitments from Sure, the Committee then further consulted with both the GCRA and with JT. Copies of the letters to and the responses from the GCRA are attached in **Appendix 3**.

GCRA consultation response

7.2 A key view expressed by the GCRA is that (leaving aside any public policy benefits), the acquisition could represent a more adverse outcome for consumers relative to other alternatives. With a virtual monopoly resulting, the likelihood of increased profit, potential for significant price rises, and potentially lower quality for consumers and business is a real concern. The importance of a comprehensive, ready-for-use MVNO access arrangement is a minimum prerequisite for either an exemption by the States or approval by the GCRA through the standard merger/acquisition route.

7.3 As a result of this advice, a further commitment has been secured from Sure to develop a ready for use MVNO access arrangement. Sure have agreed that this will be completed within six months of the Completion Date of the transaction, and this deadline will be a licence condition enforced by the regulator. The MVNO access arrangement (Reference Offer) will be based on relevant EU precedent, proportionate to the Guernsey market and subject to prior approval by the GCRA.

7.4 The GCRA also suggested that Sure could make a positive commitment to set all international roaming rates at levels that better compare with mobile provider customers in other jurisdictions. Airtel has been particularly competitive in this area and the issue of roaming charges has been a long running challenge for Islanders travelling for business or leisure.

7.5 In response to this Sure has provided information that shows that its roaming offering is already competitive with Airtel's to an extent not reflected in GCRA's comments. Nonetheless it has committed to keeping existing Airtel (and Sure tariffs) in the market for the three years following completion of the proposed acquisition. This includes Airtel's roaming prices and as such the GCRA's concern that customers will see higher roaming prices as a result of this proposed acquisition can be allayed through a licence condition being applied on the basis set out above.

7.6 Finally, the GCRA put forward the view that the evidence for a public policy exemption route for this transaction remains unclear based on evidence available to the GCRA to date. The Committee do believe that there are good public policy reasons for granting an exemption. These have been set out in Section 4 of this policy letter. In addition, it has secured further commitments from Sure which will protect consumers against the potential risks identified by the GCRA. The GCRA has advised the Committee that it is only able to look through the lens of the current competition law, and that it cannot consider the other matters that Committees of the States need to consider when securing the best outcomes for the jurisdiction. Notwithstanding, the Committee is grateful for the guidance and advice offered by the GCRA, and for their confirmation that this is a policy decision for the Committee *for* Economic Development and the States.

Other responses

7.7 The Committee consulted with the wider telecoms sector as part of the process. In summary, general concerns are:

- Mobile spectrum should be shared between the two remaining telcos;
- Other telcos should have fair access to the Sure network access and fair access to masts;
- Other telcos should have fair access to customers that will otherwise be tied to Sure in the event that this transaction is given the go-ahead; and
- Equal access to numbers.

7.8 The Committee's position is that it wishes to maintain a competitive market post-acquisition. To do this, it considers that the role of the GCRA as regulator is critical and the most appropriate way to ensure fair competition. To address the matters raised, the Committee will take the following steps:

7.9 *Mobile spectrum:* The first is to secure a binding commitment from Sure to work with the GCRA and JT to reallocate Sure's existing spectrum allocation post the acquisition (See Paragraph 4.2 “Remedy 1”. This Remedy is aimed at ensuring that a two-player Mobile Network Operator (MNO) market would be able to operate as efficiently and competitively as possible by ensuring that both Sure and JT have access to similar amounts of capacity and in larger contiguous blocks, in turn unlocking capacity and speed benefits to customers.

7.10 *Fair network access and fair access to masts*: This relates to the need to ensure that other telcos now and in the future are able to connect their mast sites to their core network. This is done by using microwave and fibre links. Some of these links use Sure network infrastructure. Sure is obliged under its Licence to ensure that other licensed operators have fair and non-discriminatory access to its network, and to consider requests for any new forms of network access that may be required. The GCRA, as the regulator, has the necessary powers to intervene should these licence obligations not be met. The GCRA is also currently undertaking a market review of business connectivity, which includes consideration of whether there are any issues relating to network access that need to be addressed through regulation.

7.11 The Committee considers that access to any redundant mast sites is primarily a commercial matter between telcos and not one for Government or regulation. However, the Committee is keen to ensure that there are no barriers to enable other network operators accessing suitable network infrastructure and is reassured to understand that Sure would be willing to enter into discussion with any other provider about taking over redundant mast sites. It should also be noted that there is already a common practice of sharing mast infrastructure for which established arrangements and agreements are already in place.

7.12 *Fair access to customers*: The Committee considers that there will be opportunity for JT and any future market entrant to offer existing Sure and Airtel customers the incentive to swap to JT products and services. The use of bundles as a means of attracting and retaining customers is used by all operators as a means of attracting customers.

7.13 *Numbers:* The allocation of number ranges is primarily a matter for OFCOM in liaison with the GCRA. The Committee understands that these number ranges are currently appropriately allocated and understands that it will be the role of the GCRA/OFCOM to reallocate number ranges to other operators if needed.

Conclusions and recommendation

7.14 The Committee’s view, by a majority, from the evidence it has gathered is that there are very good grounds of public policy to enable the transaction to take place. It has come to this conclusion given the sub-optimal scale of the market in Guernsey, and bearing in mind the following three key policy objectives:

- Consumer protection (including network security)
- Industry viability (including the ability to deliver sustained investment)
- Quality of service (including the quality and standard of networks)

7.15 Furthermore, the Committee has identified beneficial outcomes in terms of improvements in network quality (including a commitment to establish a 5G network), enhanced network security, reduced environmental impact and positive impacts on the economy in terms of further and sustained investment by Sure in Guernsey. It has also secured binding commitments from Sure which address the lessening of competition when the number of operators decreases.

7.16 A key factor under consideration by the Committee is the stated intention of GAL to exit the Channel Island market, due to financial and strategic reasons. In these circumstances the Committee considers that it is beneficial to secure conditions and commitments to protect consumers, at least in the short term. These would be a condition of the transaction taking place.

7.17 Sure is keen to evidence its commitment to the remedies above by suggesting that these be legally enforceable conditions. To facilitate this, the draft Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023 includes minor amendments to the Telecommunications (Bailiwick of Guernsey) Law, 2001: (a) to allow licence conditions to be imposed with a minimal formal process where such an exempted transaction occurs and (b) to provide a truncated method of enforcing conditions imposed as a result of an exempted transaction.

7.18 The Committee is grateful for the help and advice received from the GCRA and other stakeholders in determining the case for making an exemption to allow the transaction to proceed. It is mindful of the delicate line that needs to be trodden between the effects of a potential substantial lessening of competition against the positive public policy benefits that will accrue from the transaction.

7.19 A critical point that the Committee wishes to emphasise is that if an exemption is not recommended to enable the proposed acquisition, GAL’s stated intention is to exit the market, but in this case no or very limited consumer or competition conditions can be put in place on that exit or to control what happens next. Recommending an exemption for Sure to acquire the business means that consumer and competition conditions can be put in place, and that it will be the role of the regulator to ensure those conditions are met. Effectively, this will put in place an orderly exit from the market for consumers while securing the benefits from the proposed acquisition. The commitments from Sure also secure the best possible outcomes for consumers if such an exemption is applied. Should the transaction not proceed there are no guarantees that these beneficial outcomes will be met.

7.20 The Committee *for* Economic Development, working with the Policy & Resources Committee leads on the negotiation of trade agreements on behalf of the States of Guernsey and work with all principal committees to ensure that the agreements are implemented, and compliance is maintained is wholly cognisant of the need to have a proportionate, transparent and internationally aligned competition regulation framework in place that meet these trade obligations. Trade agreements are not aimed to be constrictive allowing for domestic markets to function efficiently and effectively in the interests of consumers and user industries. Making a temporary and limited exemption to the competition law in a sub-scale market and in such exceptional circumstances is an explicit power in the Competition regime. Exercising this exemption does not in any way undermine that position because of sound policy reasons and the safeguards described in this paper. Further, the need for the islands to secure investment by this acquisition enhances our international trade position. The conditions set out in this paper also keep open options for new global trading partners to enter into the market either as a new MNO or MVNO. This balances the need to protect the interests of local consumers, meets our international obligations and keeps open the telecoms marketplace for external investment.

7.21 Taking all the arguments into account, the Committee, by a majority, has reached the view that there are therefore very good public policy grounds to allow the transaction to take place, and it is therefore recommending that the States agree a temporary and limited amendment to the Ordinance. The proposed exemption Ordinance is appended to this paper in **Appendix 2.**

7.22 The proposition relates to a commercial transaction that needs to be concluded during July, and any later date for consideration will potentially not enable the commercial transaction to be concluded. The Committee has therefore written to the Presiding Officer seeking permission for both the policy letter and the draft ordinance to be considered concurrently at the States of Deliberation's meeting commencing on 19th July 2023 and permission has been granted.

8 Compliance with Rule 4

8.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

8.2 In accordance with Rule 4(1):

a) The Propositions contribute to the States' objectives to grow economic competitiveness, which is one of the general principles in the recently published reset of the Government Work Plan.

b) In preparing the Propositions, consultation has been undertaken with Sure (Guernsey) Limited, JT and the Guernsey Competition and Regulatory Authority.

c) The Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

d) There are no financial implications for the States of Guernsey.

8.3 In accordance with Rule 4(2):

a) the Propositions relate to the duties of the Committee *for* Economic Development to advise the States and to develop and implement policies on matters relating to its purpose, which is to secure prosperity through the generation of wealth and the creation of the greatest number and widest range of employment opportunities possible by promoting and developing business, commerce and industry in all sectors of the economy.

b) It is confirmed that the Propositions have the majority support of the Committee *for* Economic Development, with Deputy SJ Falla dissenting to all three propositions.

8.4 Mr Mancini is a Non States Member of the Committee and recused himself from this matter, due to his role at KPMG and, as a result, has not commented on, nor had sight of, this policy letter in advance of its publication.

Yours faithfully

NR Inder
President

SJ Falla
Vice President

A Kazantseva-Miller
N G Moakes
S P J Vermeulen

A Niles
A Mancini
Non-States Members

APPENDIX 1

Conditions to be imposed on Sure in the event the exempt transaction proceeds

The Licensee shall comply with the additional Requirements as set out in Schedule 4 of this licence that were a condition of the exemption granted by the States' approval of the Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023. The Requirements are effective from the completion by the Licensee of the acquisition of Guernsey Airtel Limited (GAL) ("**the Completion Date**".]

REQUIREMENT 1: The Licensee will co-operate with the GCRA and Ofcom to relinquish the following spectrum of the allocation that the Licensee will have after the Completion Date:

(a) 800MHz band: 2x5MHz of the allocation,
(b) 900MHz band: 2x5MHz of the allocation,
(c) 1800MHz band: none
(d) 2100MHz band: 2x9.6MHz of the allocation,
(e) 2600MHz band: 2x20MHz of the allocation,

as soon as practicable and in any event no later than 36 months after the Completion Date.

REQUIREMENT 2: The Licensee shall within 6 months of the Completion Date publish an MVNO Reference Offer. This will be subject to prior approval by the GCRA and according to such terms and amendments as may reasonably be determined by the GCRA. The launch of any MVNO services under this MVNO Reference Offer will b~~e~~ within 24 months of publication of the Reference Offer.

REQUIREMENT 3: The Licensee will not withdraw any Sure and Airtel tariffs that are active as at the Completion Date for existing customers for up to 36 months from the Completion Date. These tariffs will remain at no more than current prices (subject to the existing contractual right to increase in line with the Guernsey Retail Price Index (RPI)). The Licensee will inform existing Sure and Airtel customers who were on those tariffs at the Completion Date of their right to remain on these tariffs upon expiry of their contracts for up to 36 months from the Completion Date. This does not prevent the Licensee from offering enhanced terms on these tariffs

REQUIREMENT 4: The Licensee will ensure that the Airtel's Basic Plan tariff that was in place at the Completion Date remains available to existing Airtel and new customers for up to 36 months from the Completion Date (subject to the existing contractual right to increase prices in line with RPI). This does not prevent the Licensee from offering enhanced terms. The Licensee will ensure that this tariff remains marketed online and in-store with the same prominence as all available plans.

REQUIREMENT 5: The Licensee will keep its 4G Unlimited tariff available to existing Sure and new customers for at least 36 months from the Completion Date (subject to the right to increase the price in line with RPI). The Licensee will ensure this tariff remains marketed online and in-store with the same prominence as all available plans.

REQUIREMENT 6: The Licensee will, within 12 months from the Completion Date, notify all eligible existing Airtel customers who also take a fixed line broadband service from Sure of their eligibility to access Sure's "Big Bundle" discounts.

REQUIREMENT 7: The Licensee will within 18 months of the Completion Date have a new mobile network operational, offering voice and high speed data services that meets the commitments made by the Licensee in the current Schedule 2 and 3 of its mobile licence as a requirement for 4G spectrum awards. The Licensee will have removed all High Risk Vendors from the Core and RAN within a further 12 months (i.e. 30 months from the Completion Date).

REQUIREMENT 8: Subject to being successful in the GCRA 5G licensing process, the Licensee will launch a new 5G service on its new network in full compliance with all network rollout conditions existing at the time of launch, rolled out to 50% of mobile sites within 30 months of the Completion Date.

(Requirements 3-6 inclusive will cease to apply within 3 months of the commercial launch of any new MVNO or MNO in Guernsey.)

APPENDIX 2

Draft Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023

The Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023

THE STATES, in pursuance of their Resolution of the ** day of July, 2023[13], and in exercise of the powers conferred on them by sections 1 and 5 of the Competition (Enabling Provisions) (Guernsey) Law, 2009[14] and all other powers enabling them in that behalf, hereby order:-

<u>Time limited exemption.</u>

1. Any agreement between entities licensed under the Telecommunications (Bailiwick of Guernsey) Law, 2001[15] ("**the Telecommunications Law**"), is exempt from section 13 of the Competition (Guernsey) Ordinance, 2012[16], provided the following conditions are met –

(a) such agreement is concluded in 2023, and

(b) the licensees give the Authority one month's written notice in advance of the completion date of such agreement ("**the Completion Date**").

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13 Article * of Billet d'État No. ** of 2023.
14 Order in Council No. XV of 2009; this enactment has been amended.
15 Order in Council No. XIV of 2001; this enactment has been amended.
16 Order in Council No. XXXI of 2012; this enactment has been amended.

Imposition of licence conditions where there is an exempted agreement.

2. (1) Where the Authority is likely to be notified of an agreement between entities pursuant to section 1, the States may by Resolution direct that after such notification the Authority shall impose conditions on the relevant licence, by making modifications to that licence.

(2) Where the States by Resolution directs that the Authority shall impose conditions in accordance with subsection (1) –

(a) the Authority shall do so within 14 days of being notified in accordance with section 1(b),

(b) the conditions imposed shall take effect from the Completion Date and in accordance with section 8 of the Telecommunications Law, and

(c) section 8(2) of that Law does not apply to such conditions.

Enforcement of licence conditions where there is an exempted agreement.

3. Where the Authority has imposed conditions on a licence pursuant to section 2, subsection 27(3) of the Telecommunications Law does not apply to any such conditions imposed and the Authority may instead give directions under section 27 relating to those conditions upon 14 days' notice.

Interpretation.

4. In this Ordinance, "**Authority**" means the Guernsey Competition and Regulatory Authority.

Citation.

5. This Ordinance may be cited as the Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023.

Commencement.

6. This Ordinance shall come into force on the day on which it is made by the States.

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9th November 2022

By E-mail: Michael.Byrne@gcra.gg

Dear Mr Byrne,

PROPOSED ACQUISITION OF AIRTEL-VODAFONE BY SURE

On 21 June 2022 the Committee was advised by a confidential memorandum of the proposed acquisition by Sure of 100% of Airtel-Vodafone in the Channel Islands.

The Committee understands from your letter to Deputies Ferbrache, Helyar and Inder dated 17 May 2022 that it is the GCRA's view that the existing competition legislation does not enable any regulatory competition decision to balance the strategic and/or public interest aspects of any such acquisition, regardless of how significant. Your recommendation was for the States of Guernsey – through the Committee *for* Economic Development – to agree an exemption under section 14(1) of the Competition (Guernsey) Ordinance 2012.

The Committee has now received a formal submission from Sure requesting an exemption under section 14(1) of the ordinance. A copy of this letter is attached for your information. In addition, a summary of the proposed benefits of the transaction has been commissioned by SURE from OXERA and is attached.

Having considered this submission on 8th November 2022, the Committee is of the view that, in principle, there are grounds to consider an exemption. In reaching this position, the Committee agreed that there are **exceptional and compelling reasons of public policy** making it desirable to grant a regulatory exemption.

In accordance with section 14 of the Ordinance, the Committee would be grateful for any further comments or advice that the GCRA may have on this proposed transaction. It would be appreciated if you could reply by 25th November 2022.

Yours sincerely,

Deputy Neil Inder
President

Enc

24 November 2022

Our ref: M1626G

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Dear Deputy Inder

Proposed acquisition of Airtel-Vodafone by Sure

Thank you for your letter of 9 November 2022, stating that Sure intends to acquire Airtel-Vodafone (**Airtel**) in the Channel Islands (the **Transaction**).

This is the first time the Committee for Economic Development (**CfED** or the **Committee**) has invoked section 14 of the 2012 Ordinance and there is therefore no Guernsey precedent that might assist CfED or the Guernsey Competition and Regulatory Authority (the **GCRA**; the **Authority**) in approaching such a consideration. The Transaction would, under normal circumstances, require the approval of the GCRA[1] which is only able to approve a transaction if it is satisfied that that transaction would not substantially lessen competition in Guernsey.[2] It is, however, open to CfED to exempt, by Resolution of the States, a merger if there are exceptional and compelling reasons of public policy making it desirable to do so.[3]

I understand that, in principle, the Committee considers that there are exceptional and compelling reasons of public policy making it desirable to exempt the Transaction from the normal merger notification and clearance requirements in this case. In accordance with section 14 of the 2012 Ordinance, the Committee is seeking any comments or advice that the GCRA may have on the Transaction.

[1] Sections 13 and 17 of the Competition (Guernsey) Ordinance, 2012 (the **2012 Ordinance**).
[2] Section 13(2)(a), 2012 Ordinance.
[3] Section 14(1)(c), (2), 2012 Ordinance.

Executive summary

Whether or not a Transaction achieves exceptional and compelling public policy grounds is a political judgment that falls outside of the competence of the GCRA. However, we would make the following high level comments:

a. Public interest exemptions from merger control rules are generally permitted only on narrowly defined grounds (e.g., national security; media plurality). On the basis of the information provided to us, it is not clear either why the Transaction is necessary to achieve the benefits identified or why it is considered that those benefits amount to exceptional and compelling public policy grounds.
b. An unusual and exceptional decision of this nature is likely to come to the attention of an international audience and other institutions in the competition law field.[4] We would therefore suggest that, should the Committee consider that there are exceptional and compelling public policy grounds for clearing this Transaction, that these are clearly and explicitly set out in the clearance documents and that robust evidence is provided to justify why those grounds are met.

Although the information that has been provided to the GCRA is not sufficient to enable it to carry out a full competition analysis, on its face, the Transaction has features that risk generating a substantial lessening of competition, with Sure gaining a market share of 70 – 80% on at least two markets in Guernsey. It is very likely that, were the GCRA to be assessing this Transaction in the usual way, it would proceed to a second detailed review (Phase 2) and that substantial commitments would need to be offered to offset the expected lessening of competition before a potential clearance could be considered.

Sure has offered commitments to address the presumed anti-competitive effects of this Transaction but it appears, on the basis of the information provided, that these would be achieved whether or not the Transaction goes ahead. The commitments therefore do not deliver benefits to consumers that they would not otherwise obtain. Furthermore, because the commitments are behavioural (i.e. things that Sure commits to do in the future) rather than structural (e.g. divestment of an asset or a part of its business), they are likely in any event to be less effective and more difficult to monitor and enforce. Consideration of more significant commitments may well be merited in the circumstances.

Detailed comments

The GCRA's detailed comments are set out below.

Public policy

The GCRA is mindful that the assessment of whether, or not, an exemption achieves exceptional and compelling public policy goals is a matter that falls within the competence of the Committee and of the States of Guernsey. As such, the GCRA does not consider it appropriate to comment on whether the matters identified in the Oxera Report (the **Report**), as a matter of fact, are exceptional and compelling public policy justifications or not.

[4] We understand that the Transaction has been notified to the JCRA in normal way and that a full competition law assessment will be carried out by them.

However, as a general point, the GCRA notes that the Oxera Report and the accompanying Sure submission does not in every case make clear why the Transaction is necessary to generate the public policy goals identified or how the benefits claimed will in fact be achieved by the Transaction. It is also not apparent from the material put to the Authority how such claimed benefits would be appropriately monitored, measured and enforced. The table below sets out the benefits claimed and comments on those.

Benefit claimed	Benefit achievable / Link to proposed Transaction
Enhanced network capacity and reduced congestion achieved by the combination of Sure's and Airtel's networks.	It is unclear to what extent the networks of Sure and Airtel can be combined, aside from sharing hardware such as masts. This is because the Sure network uses Huawei technology whereas the Airtel network uses Nokia technology. We understand that, following the proposed Transaction, rather than being combined, the two networks would instead run alongside each other for a period, after which one or both networks would be removed and/or replaced. The extent of this claimed exceptional and compelling public interest benefit is therefore unclear.
Delivery of 5G more quickly than Sure would otherwise roll out this technology.	The link between the proposed Transaction and a faster roll out of 5G is not clear. The report does not explain why the Transaction is required to achieve a faster roll out of 5G and is a matter of exceptional and compelling public interest.
Airtel's customers will benefit from the superior speed and quality of Sure's network.	The basis for the claim that Sure's network is superior to that of Airtel appears to be a report commissioned by CICRA in 2017. We note that this report is now somewhat out of date. It is not clear why the Transaction is required to achieve this benefit as an exceptional and compelling public interest. Airtel customers are already able to switch to Sure if they consider that Sure's network offers superior speed and quality. The benefit of competition is that consumers already have that choice.
Airtel's customers will benefit from the enhanced resilience of Sure's network.	The basis for the claim that Airtel's customers will benefit from the enhanced resilience of Sure's network is not apparent. This is because, as set out above, the extent to which Sure's network and Airtel's network can physically be combined is unclear and the exceptional and compelling public policy reason justifying clearance on this ground is not set out in the Report. As noted, Airtel customers are already able to switch to Sure if they consider that Sure's network offers superior resilience. The benefit of competition is that consumers already have that choice.

More efficient, environmentally friendly network	As the Report does not contain any detailed evidence on this point, we are unable to comment on whether, or to what extent, this benefit will be achieved post Transaction. Assuming that this is an exceptional and compelling public interest benefit that can be achieved, the Report does not set out why the Transaction is necessary to achieve this benefit and/or why it could not be achieved through some other means, such as increased network sharing between Sure and Airtel.
Faster removal of High Risk Vendor (**HRV**) equipment from the mobile network and more cost-effective compliance with the forthcoming Telecoms Security Regulations (the **TSRs**)	The Report does not explain why the Transaction would allow Sure to implement the TSRs more rapidly. In any event, we understand that compliance with the TSRs will be mandatory (legal requirement) and, as such, it is not immediately obvious how compliance with mandatory legal requirements can be said to be an exceptional and compelling public interest benefit that is achieved by the Transaction or how the deadline could not be achieved in the absence of the Transaction. JT will for example have to comply with the regulations without the benefit of the Transaction.

In order to assist the Committee, the GCRA below provides some high level comments, in particular with reference to other jurisdictions that allow exemptions of mergers for public policy reasons.

First, it is imperative that a decision of such significance as an exemption from the merger review process of a transaction of this nature by the States is based on objective and specific criteria. The materials from the Party that have been made available to the GCRA appear to fall some way short of that standard since they do not clearly and objectively articulate the public policy goals that the Transaction is designed to achieve.

Second, as to the public interest exemptions available in other jurisdictions where the government seeks to intervene in the standard merger regime notification and scrutiny process, the GCRA notes that issues of political salience such as risks to financial stability, media plurality, defence, and foreign investment in strategic industries feature. Furthermore, public interest interventions that are at odds with an economics-based competition assessment are generally limited to a small number of cases characterised by exceptional circumstances. Assurances about services being made available sooner, that they will be of a higher technical standard, that prices would be lower than they might otherwise be or that less expensive offers would remain in the market for longer would not generally be considered to amount to exceptional and compelling reasons of public policy in jurisdictions that apply this, or a similar, test.

Third, such a decision by the States is likely to come to the attention of an international audience and institutions in the competition law field; decisions such as these can invoke considerable interest not least because they are unusual and exceptional. It would therefore benefit the reputation of Guernsey if the application of the public interest test to a proposed market concentration is based on objective and specific criteria that rigorously seeks and secures the benefits that meet the exceptional and compelling reasons of public policy.

Competition assessment

The Report states that it has not performed a detailed competitive assessment of the impact of the Transaction. The GCRA's comments are therefore, necessarily, at a high level.

The Report states that the proposed Transaction will result in a reduction in the number of competitors from three to two in two markets – the "retail mobile" market and the "wholesale roaming" market. The merged entity would have a market share of 77% by value (80% by volume) in the retail mobile market and 73% by value in the wholesale roaming market, based on 2021 figures. In the identified markets, the Transaction amounts to a significant increase in market concentration. There is also a question as to whether these are in fact the only markets relevant to this transaction. The market for the provision of wholesale mobile networks that for example Mobile Virtual Network Operators might in future rely on, appears to be another market relevant to this Transaction not covered in the material provided.

In general terms, the larger a merged entity's market share, the more likely it is to be able to act independently of both its customers and its competitors in those markets. It is this lack of competitive and customer constraint that would otherwise be present in a competitive market which allows a company that enjoys a position of market power to act in ways that are harmful to competition and to consumers. Where a merged entity holds a share in excess of 50% on a market, it is presumed to hold a dominant position, meaning that these risks are likely - which is more the case when market shares are approaching 80% as in this Transaction. If the GCRA were to review this Transaction in the usual way, these concerns would be significant and would need to be assessed in detail.

The GCRA notes that Sure has offered commitments to deal with the above concern, insofar as they apply to the retail mobile market. These are:

- Allowing existing customers of Sure and Airtel to maintain their existing terms and prices for 36 months following clearance of the Transaction.
- Continuing to offer Airtel's "Basic" plan (in the value area of the market)
- Continuing to offer Sure's "Unlimited" plan.

In respect of these commitments, the GCRA has the following high level comments.

First, it is unusual for behavioural, rather than structural commitments to be accepted to address potential competition concerns of the type likely to be generated by the Transaction. It would be more usual to expect the merging parties to offer a structural remedy (such as divestment). There are for example no commitments to divest spectrum or number ranges which might be minimum requirements in these circumstances. Structural remedies are more likely to counterbalance the anti-competitive effects created by a merger that would otherwise create such a degree of market concentration and market power. As well as generally less effective, behavioural remedies also require ongoing monitoring to ensure that they are complied with which can be problematic as circumstances and technologies in markets change.

Second, the GCRA notes that the Report does not explain why these commitments deliver benefits beyond those that could be expected if the Transaction did not proceed. These are usually examined by reference to the counterfactual and below we examine two.

- If the Transaction did not proceed and Airtel left the market (**Counterfactual One**), the remaining competitors (JT and Sure) would need to compete to win Airtel's customers by offering products and prices that were attractive to those consumers. We also assume that

Sure would continue to offer its Unlimited plan in a Counterfactual One scenario. In other words, it is reasonable to assume that, in a Counterfactual One scenario, consumers would enjoy the benefits to which the commitments relate. The Report does not explain, by reference to Counterfactual One, why the commitments offered protect competition and consumers to an extent that would outweigh the negative effects (market concentration and creation of a dominant position) of the Transaction.

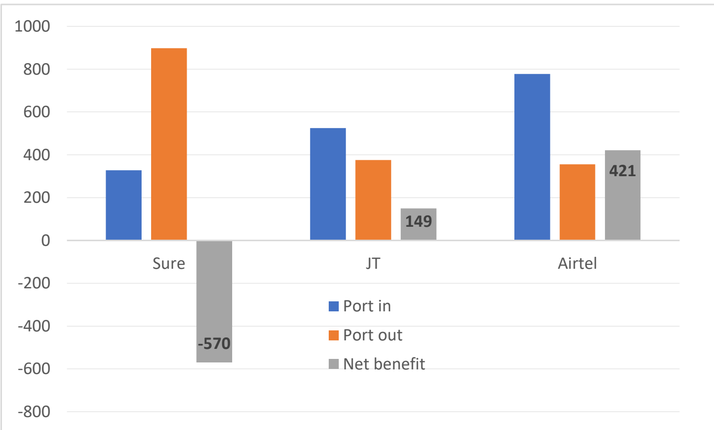
- If the Transaction did not proceed and Airtel remained in the market (**Counterfactual Two**), it is reasonable to assume that both Airtel's "Basic" plan and Sure's "Unlimited" plan would continue to be available to customers. In other words, it is reasonable to assume that, in a Counterfactual Two scenario, consumers would enjoy the benefits to which the commitments relate. The Report does not explain, by reference to Counterfactual Two, why the commitments offered protect competition and consumers to an extent that would outweigh the negative effects (market concentration and creation of a dominant position) of the Transaction.

In respect of the concern identified in the wholesale roaming market, the Report states that countervailing buyer power would ensure that the Transaction did not give rise to anti-competitive effects on that market. It does not, however, provide the empirical evidence on which that conclusion is based and the GCRA is therefore unable to comment further on the assertion.

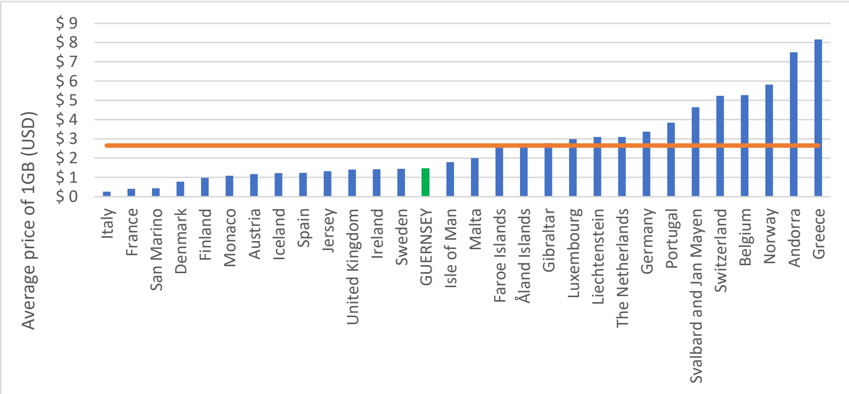
Regulatory impact

The retail mobile market in Guernsey is currently characterised by competition on the merits between the three mobile operators (Sure, JT and Airtel) with incumbency advantage a factor of less importance than in other telecom markets because mobile technology awards were made on a competitive basis in contrast to much of the fixed network infrastructure where legacy advantages continue to prevail. This has undoubtedly delivered benefits to Guernsey mobile consumers in the form of increased choice and lower prices. It has also substantially reduced the extent of regulatory oversight required. The Authority has not been in a position to update the analysis that informed its priorities over 2022 in the time available so draws on its previous analysis below.

The Figure below illustrates the number of consumers switching mobile service provider in 2020. It is evident that Airtel's offering led to the majority of switching customers doing so to take its services.

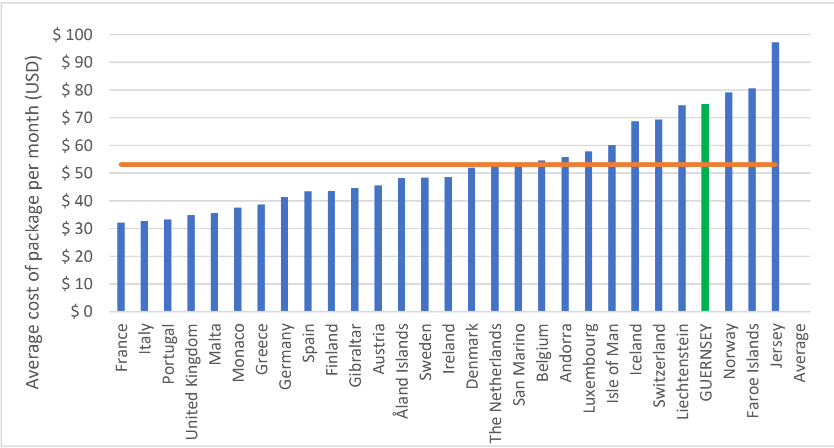


The Figure below illustrates the rank order by average cost per GB for mobile broadband in Western European countries in 2020. Guernsey is well placed in terms of international competitiveness in respect of mobile service. This position is almost certainly the consequence of a more competitive market where competition is on its merits.

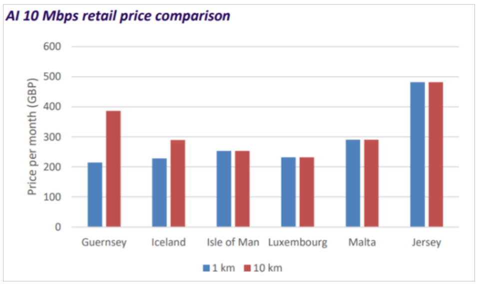


The GCRA 2022-2024 work programme considered the cost contributors to Guernsey's fixed broadband market and business circuit lines market. Both markets are significantly more concentrated than the current mobile market in Guernsey. The Authority has not been in a position to update the analysis in the time available but draws on its previous analysis below.

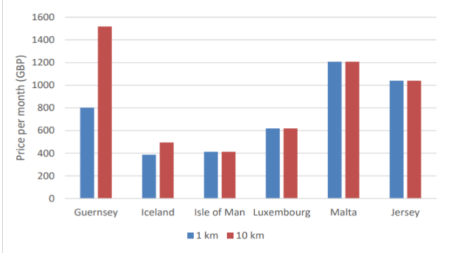
The Figure below illustrates Western Europe countries' fixed broadband average plan costs for 2020. In contrast to mobile, Guernsey is at the upper end of the price range compared to other jurisdictions where unlike mobile, in Guernsey a dominant firm, Sure, is present.



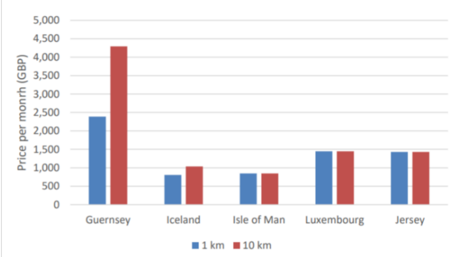
While it is more nuanced between lower and higher speeds, a similar comparison is apparent from the leased line international price comparison which informed the GCRA's 2022-2024 work programme. Again, in contrast to mobile, Guernsey is at the upper end of the price range compared to other jurisdictions in a market where unlike mobile, a dominant firm, Sure, is present.



AI 10 Mbps retail price comparison



AI 100 Mbps retail price comparison



AI 1 Gbps retail price comparison

In conclusion, the benefits of competition have been a major contributor to Guernsey's high ranking alongside other countries in the mobile market in contrast to markets where concentration is high and Guernsey's international ranking is significantly less favourable. The GCRA notes that, from a purely regulatory perspective, it is unusual consciously to substitute a situation in which there is effective competition, for one in which a lack of effective competition will require intensive regulatory oversight to protect consumers and we assume that the Committee will wish to take appropriate steps to ensure that Guernsey consumers and businesses are not adversely affected by this Transaction.

Should you wish to discuss any of the contents of this letter, please do not hesitate to contact me.

Yours sincerely

Michael Byrne
Chief Executive

Committee *for* Economic Development

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6th April, 2023

Dear Michael

Proposed acquisition of Airtel-Vodafone by Sure

You will be aware that the Committee is currently considering the matter of a potential exemption under section 14(1) of the 2012 Competition Ordinance in respect of the proposed acquisition of Airtel-Vodafone by Sure (the Transaction).

The Committee was grateful to receive your comprehensive response in the letter dated 24th November 2022. The Committee noted that whilst the GCRA could not comment on the public policy benefits of the Transaction, it did express the view that the Transaction would risk generating a substantial lessening of competition, with Sure gaining a market share of 70 to 80% on at least two markets in Guernsey. As such it was likely that were the GCRA to be assessing this Transaction, it would proceed to a second detailed review (Phase 2) and that substantial commitments would need to be offered to offset the expected lessening of competition before a potential clearance could be considered.

Taking account of the concerns raised in your letter, the Committee commissioned further work from Frontier Economics which assessed the likely economic impacts of the Transaction. I enclose a copy of the report received for your information **(Annex 1)**. The Committee's officers have also worked closely with the Jersey Competition and Regulatory Authority (JCRA) to further explore the implications of the Transactions for consumers in both islands. This has included developing additional remedies to address the concerns related to consumer choice and outcomes.

The outcome of this further work is that the Committee has now received a revised commitments proposal from Sure. This now includes additional structural commitments as well as behavioural commitments, which is in line with the approach recommended in your letter referenced above. A copy of the full proposal is attached (please see **Annex 2**).

In summary, the revised proposal includes the following remedies developed to address the concerns raised in your letter of 24th November and in the subsequent analysis provided by

Frontier Analysis. Sure is now proposing the following enhanced package of binding commitments:

- Two structural remedies: a spectrum divestment remedy and an MVNO-enabling remedy.
- Four behavioural remedies addressing price and value for consumers.
- A commitment to build a new high speed, 5G ready mobile network with enhanced security and environmental benefits.

In considering the revised package of commitments submitted by Sure, the Committee is of the view that, in terms of public policy, there are sufficiently compelling reasons to recommend approval of the Transaction. However, it will need to balance this against the impacts on consumer choice, pricing and outcomes, and this is an area where the Committee would benefit from the expertise of the GCRA.

The Committee would therefore welcome the GCRA's feedback, from a competition perspective, on the proposed commitments package as set out in **Annex 2**. In particular, the GCRA's view on the proposed conditions and your suggestions for any other conditions (if any) would be appreciated.

The Committee would also want to fully understand what powers/levers the GCRA has outside of the license conditions to regulate competition, and how these could be used. In this respect, the Committee recognises that if the Transaction is approved, then this could have implications for GCRA's role as regulator. In addition to the normal regulatory work, there will also be a need to develop solutions which enable and incentivise other operators (MNOs and possible new MVNOs) to compete fairly with Sure. This could include the development of a fronthaul/backhaul solution, ensuring fixed line number portability, allocation of number ranges, and the release of customers from bundle commitments. The Committee would wish to understand any resource implications the GCRA may have in achieving these solutions in a timely manner.

Finally, the Committee is mindful of the evidence submitted by Airtel that they have found operating in the Channel Island Market challenging. Faced with the need to invest additional expenditure in its network (which is near end of life) and the need to invest further to comply with the forthcoming Telecom Security Requirements, the Committee has noted that the strategic options open to Airtel's shareholder include to exit its investment in Guernsey. It has also taken into account that one of the owners of Airtel has advised senior politicians and officers of the governments of Guernsey and Jersey – in person – of the same.

The Committee considers that this is a likely outcome if the Transaction does not take place and that this will mean that the number of operators will reduce from three to two, even absent the merger. The Committee is therefore concerned that this process should be managed in the best way to ensure the optimal outcome for consumers in Guernsey, and is minded to ensure an orderly exit of Airtel from the market that protects outcomes for consumers and enables competition in the future.

We look forward to receiving your feedback, which we would be grateful to receive before 19th April.

Yours sincerely

Deputy Neil Inder
President

GUERNSEY COMPETITION & REGULATORY AUTHORITY

Reference : M1626G

22 April 2022

Deputy Neil Inder
President – Committee for Economic Development
Sir Charles Frossard House
La Charroterie
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Guernsey
GY1 1FH

Dear Neil

PROPOSED ACQUISITION OF AIRTEL-VODAFONE BY SURE

Thank you for your letter of 6th April outlining aspects of this proposed acquisition discussed with the parties and setting out the Committee for Economic Development's reasons for endorsing the proposed acquisition to the States of Guernsey for approval on grounds of exceptional and compelling reasons of public policy.

The Committee has sought comments or advice on the proposed transaction in its letters of 9th November 2022 and more recently of 6th April 2023. This letter and the previous response by the GCRA to your letter of 9th November 2022 have been made in accordance with section 14 of the Competition (Guernsey) Ordinance, 2012.

Summary

Authority members have carefully considered the information as provided, additional evidence available to it as the telecommunications regulator and competition authority and considered the likely market conditions following an acquisition of Airtel by Sure. The view is that:

1. ***The acquisition represents a more adverse outcome for consumers relative to other alternatives. With a virtual monopoly resulting, the likelihood of increased profit, potential for significant price rises, and potentially lower quality for consumers and business is a real concern. The importance of a comprehensive, ready-for-use MVNO[1] access arrangement is***

[1]"MVNO" or "Mobile Virtual Network Operator": means an organisation offering mobile communications services and operating a physical network infrastructure including, as a minimum, a mobile switching centre, home location register and authentication centre, having its own unique Mobile Network Code with distinct Number series (where applicable) according to ITU standards, and issuing its own branded SIM cards (or equivalent); But it operates without a mobile radio access network.

a minimum prerequisite for either an exemption by the States or approval by the GCRA through the standard merger/acquisition route.

2. ***The evidence for a public policy exemption route for this transaction remains unclear based on evidence available to the GCRA to date.***

3. ***The undertakings offered by the parties to date do not meaningfully mitigate the likely consequences of the adverse impact on mobile cost, quality, and choice.***

4. ***There are additional obligations that might considered to mitigate at least some of the outcomes were the Committee minded to grant an exemption. These would need to be developed further to ensure they are implementable and enforceable. In summary these are:***

    a. ***The availability of a comprehensive ready-for-use MVNO arrangement would reduce the risks mentioned. If there was an MVNO if not an MNO[2] as a third player on the retail market the speed at which a potential entrant can make offers available provides a critical restraint on a virtual monopoly.***
    b. ***Sure could make a positive commitment to set all international roaming rates at levels that better compare with mobile provider customers in other jurisdictions. Airtel has been particularly competitive in this area and the issue of roaming charges has been a long running challenge for Islanders travelling for business or leisure.***

5. ***While economic regulation can curb the worst excesses that arise from market concentration of this order, it is unlikely that economic regulation can adequately compensate for all outcomes likely to arise from an increase in market share by more than 20% to 80% through acquisition of a rival by the largest market player. In a market where the attractiveness of a service extends to next generation functionality and novelty that comes with that, economic regulation is limited in its ability to drive innovation, which competitive forces are significantly better at achieving.***

The acquisition represents a more adverse outcome for consumers relative to other alternatives.

Guernsey consumers have benefitted both in terms of price and quality from the presence of three mobile network operators to the extent that Guernsey compares well with other jurisdictions even with its population size. At the same time the most recent entrant, Guernsey Airtel, is profitable and its parent company is rated as the world's 3rd largest mobile telecoms operator by subscribers. If Guernsey Airtel intends to exit the Guernsey market, it would normally be expected to take the standard route for a commercial business namely, to conduct an orderly exit with remaining competitors competing for their market share, or to seek approval through the merger and acquisition process subject to commitments as appropriate. Guernsey Airtel also has a licence condition that governs its exit process – Licence Condition 22.1 of its mobile licence states:

If the Licensee proposes to cease to provide all or a material part of the Licensed Mobile Telecommunications Services, it shall give not less than three years notice in writing to the GCRA of the

[2] An "MNO" or "Mobile Network Operator" is a provider of wireless communications services that owns or controls all the elements necessary to sell and deliver services to an end user, including radio spectrum allocation, wireless network infrastructure, back haul infrastructure, billing, customer care, provisioning computer systems, and marketing and repair organizations.

proposal and its plans in relation to the cessation of such services. Such cessation shall be affected only with the consent of the GCRA and in accordance with any directions given in relation thereto by the GCRA and the Licensee shall comply with any such directions.

The alternative to the normal market exit process for an acquisition leading to a market structure that increases the market share of the largest provider by more than 20% to 80% and absent significant countervailing benefits, is that in future Guernsey prices will compare far less favourably than they have historically, and incentives to maintain quality and provide greater choice will substantially reduce. There is compelling research in this area to support such a view[3,4]. What these studies might tell us about this transaction is that as well as the number of competitors, the type of competitor also plays a decisive role in the benefits achieved. A challenger/maverick entrant is critical and in the GCRA's view Guernsey Airtel has played such a role in the Guernsey mobile market. The studies reinforce the view that jurisdictions and markets should rely not on the disposition of a commercial business seeking the benefits that come from being a virtual monopoly but on the realistic threat to its commercial interests should it fall short of consumer expectations. In the circumstances of a market with such a high degree of asymmetry in market share, post an Airtel acquisition, access by an MVNO is one of the few key competitive means left for looking after consumer interests.

The evidence for a public policy exemption route for this transaction remains unclear based on evidence available to the GCRA to date.

The GCRA has not seen persuasive evidence underpinning the case for States intervention. It had been suggested by the parties during the early stage of this transaction that the case for this was compelling but the evidence to date remains vague.

If harm to consumers and the market are however eclipsed by more important public policy considerations, exemption of an acquisition by the largest telecom provider in the market on exceptional and compelling grounds of public policy requires that a high threshold is met. As far as the GCRA can discern, these non-economic reasons of public policy are about the speed at which Sure would meet Telecom Security Standards which would in turn bring reputational benefits to the jurisdiction. As is the case for other mobile networks in the UK, Sure's access to capital would in the normal course of business be expected to fund these investments since it is a profitable business backed by a significant owner. These are costs the consumer would in any event bear but in a context where competition would provide a degree of protection. The proposition that appears to be forwarded by the parties is that the only means of securing compliance with these requirements in Guernsey is through a market structure that creates a virtual monopoly. This may align with their own commercial interests but absent significant commitments to offset the obvious risks they are contrary to sound principles of economic policy and the interests of consumers.

The GCRA has also not seen a case made to support the suggestion that only through this transaction is Sure able to meet those standards. It notes Frontier's view that the case, such as it is, is in any event overstated. It is relevant that JT is subject to the same Telecoms Security Requirements but can meet those without the benefit of acquiring Airtel and acquiring an 80% market share. While acknowledging the investment challenge faced by telecom providers, the considerable economic, market and consumer risks as an outcome of the acquisition proposed by the parties to this transaction are yet to

[3] *Evaluating Market Consolidation in Mobile Communications* -
https://cep.lse.ac.uk/pubs/download/dp1486.pdf
[4] *What are the factors that determine mobile prices?*
https://research.rewheel.fi/downloads/4G_5G_prices_2x_to_4x_lower_in_markets_with_4_MNOs_PUBLIC.pdf

be matched by clear benefits that can be both objectively assessed and shown to be solely contingent on the acquisition proceeding.

The undertakings offered by the parties to date do not meaningfully mitigate the likely consequences of the adverse impact on mobile cost, quality, and choice.

The undertakings given by the parties to mitigate the risk to consumers of such a large increase in market concentrations in a dynamic market are to date partial and insubstantial when set against the risks to consumers and the commercial advantage the virtual monopoly will enjoy as a result of the acquisition.

For example, the promise of an MVNO at a future date is not reliant on a commitment from Sure. This can in any event be put in place by the GCRA regardless of whether Sure volunteers it. While it would involve formal processes required by law that take longer than voluntary MVNOs arrangements, an undertaking from Sure is not the only means of achieving that end. However, a comprehensive, ready-for-use MVNO access arrangement that Sure proactively develops in a short time period that potential entrants would find credible to support a rapid launch of their services, is more within Sure's capability than the GCRA's and does assist. This should in the GCRA's view be a minimum prerequisite to either an exemption by the States or approval by the GCRA through the standard merger/acquisition route.

Another commitment mentioned is to provide an MVNO release of spectrum to JT. We would note that it is not within Sure's gift[5] to cede spectrum to another operator and do not see any release of spectrum post-acquisition as any meaningful commitment given the amount of 2G/3G/4G spectrum Sure already has to serve around 70k subscribers; Telefonica, a UK licensed network operator serves almost 20m subscribers and has a comparable 2G/3G/4G spectrum holding.

There are additional obligations that provide further countervailing benefits to consumers if the Committee is minded to grant an exemption

Should the Committee remain of the view that the circumstances of an acquisition of Airtel by Sure meets the standard of exceptional and compelling reasons of public policy, it is reasonable for consumers to expect that the parties provide undertakings that are significant enough to offset some of the risks posed when the reduction in choice amounts to a business increasing its market share by more than 20% to 80% by acquiring its largest competitor instead of through the merits of its competitive offerings.

Two areas where the absence of Airtel is likely to be pronounced are:

- the removal of a third challenger/disruptor competing with the two established providers in the Guernsey mobile market, Sure as the incumbent in Guernsey and JT Guernsey essentially as the incumbent in Jersey, and
- in charges for international roaming where Guernsey Airtel has been particularly competitive.

It is apparent from the report commissioned by the Committee that Frontier Economics is not persuaded of the benefits from the undertakings offered that they have looked at and their essential conclusion that what has been offered is insufficient. The GCRA's views align with those conclusions. Given Frontier Economics' assessment and with a view to seeking more tangible and substantive

[5] The licensing of spectrum in the Guernsey, as in the UK, is carried out by Ofcom, by virtue of powers given to it by the *Wireless Telegraphy Act 2006* and the *Communications Act 2003* (referred to as WT Licences)

commitments the GCRA suggests some options for consideration.

If the States were to consider proceeding with the exemption there are two forms of commitment it might also require. These do not entirely address the concerns identified above but would go further than those already made:

a. The nature of MVNO demand and a near finalised comprehensive ready-to-use MVNO agreement to match that gives a secure and transparent basis to inform market entry decisions by any prospective MVNO.
b. Sure could make a positive commitment to set all international roaming rates at levels that better compare with mobile provider customers in other jurisdictions. Airtel has been particularly competitive in this area and the issue of roaming charges has been a long running challenge for Islanders travelling for business or leisure.

Such arrangements require more specific analysis than is possible in the time available for this response, but these would need to be developed with a significant level of further detail to ensure the requirements are clear, work in practice and are enforceable given their complexity prior to the completion of any transaction.

It is unlikely that economic regulation can adequately compensate for all outcomes likely to arise from an increase in market share by more than 20% to 80% through acquisition of a rival by the largest market player.

Economic regulation that ‘mimics’ competitive pressures is less effective as a means of protecting consumers in a dynamic market, compared to what competition is capable of. In a market of rapid technical progress such as mobile it is the competitive process and not regulatory processes that are better equipped to keep up with consumer needs and expectations. There are also potential unintended consequences and therefore further regulatory challenges from a commercial business rising to a position of an 80% market share through acquisition rather than competition on its merits. One of these is that left with a market with two competitors the ability of the two remaining operators to co-ordinate behaviour to protect their dominant positions in each of their home markets increases. The business case for future investment also alters when the asymmetry between Sure and its nearest mobile network rival changes to this extent.

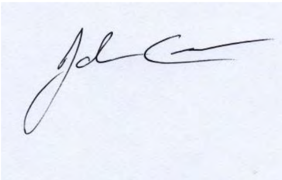
It is emphasised that the ability of economic regulation tools to address specific risks such as, greater co-ordination, reduced incentives for investment, non-competition, or wholesale removal of competing infrastructure by Sure’s only rival, are severely limited. To the extent that harm does arise and can be stopped by regulatory intervention these take considerable time and in some cases cannot reverse economic harm already caused. A contribution that competition brings is its ability to reduce the likelihood of issues arising in the first place because the consumer can avoid or mitigate the harm by exercising choice.

Finally, it is worth underlining that the situation in Jersey involves an acquisition between the 2nd and 3rd largest providers and the market share change from this transaction in Jersey is an increase of 24% to 47%. In important respects this is not comparable to that in Guernsey where the 1st acquires the 2nd largest and the concerns and remedies needed for the Guernsey market may therefore not be the same as in Jersey.

I trust this provides a sufficient basis to inform the options you may wish to consider going forward.

The Authority is available to discuss this response with your Committee and we believe it may assist the Committee in its further consideration of this matter and provide any further clarity required on the matters I have set out above.

Yours sincerely



John Curran
Chairman

Copies to : Chief Strategy & Policy Officer

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR ECONOMIC DEVELOPMENT

TEMPORARY AND LIMITED EXEMPTION TO THE COMPETITION LAW TO ENABLE GUERNSEY AIRTEL LIMITED TO EXIT THE MARKET BY WAY OF AQUISITION BY SURE (GUERNSEY) LIMITED

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

19th June 2023

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Economic Development requests that the "Temporary and limited exemption to the Competition Law to enable the acquisition of Guernsey Airtel Limited to exit the market by way of acquisition by Sure (Guernsey) Limited" policy letter and the draft "The Competition (Time Limited Exemption) (Guernsey) Ordinance, 2023" be considered at the States of Deliberation's meeting that will commence on 19th July 2023.

The proposition relates to a commercial transaction that needs to be concluded during July, and any later date for consideration will potentially not enable the commercial transaction to be concluded.

The Committee has written to the Presiding Officer seeking permission for both the policy letter and the draft ordinance to be considered concurrently at the States of Deliberation's meeting commencing on 19th July 2023 and permission has been granted.

In addition, the Committee has also written to Deputy Dyke as Chair of the Legislative Review Panel seeking permission for late submission of the draft ordinance as the LRP will not be able to consider the draft ordinance until the 26th June 2023, which would be after the draft ordinance has been lodged with the Greffe on 19th June. As a result, the Committee has offered to move any amendments subsequently suggested by the LRP before the States of Deliberation considers the draft ordinance.

The Committee is grateful for your attention in this matter.

Yours faithfully,

NR Inder
President

SJ Falla
Vice President

A Kazantseva-Miller
N G Moakes
S P J Vermeulen

A Niles
A Mancini
Non-States Members