

24 June 2014

Gibraltar Regulatory Authority
Attn. Gavin Santos
Electronic Communications Regulatory Manager
2nd Floor
Eurotowers 4
1 Europort Road
Gibraltar

Dear Gavin,

Market Review – wholesale call origination and termination

Enclosed please find Gibtelecom's response to the Authority's Market Review public consultation on Wholesale call origination on the public telephone network provided at a fixed location; and Wholesale call termination on individual public telephone networks provided at a fixed location (Public Consultation 07/14).

Please do not hesitate to contact me should you require any clarification on any aspect of our response.

Yours sincerely,



Rachel Holgado
Regulatory Officer

Enc.



Gibtelecom response to Public Consultation 07/14

Wholesale call origination on the public telephone network provided at a fixed location; and

Wholesale call termination on individual public telephone networks provided at a fixed location

24 June 2014

Gibtelecom Response to GRA Market Review for Wholesale call origination on the public telephone network provided at a fixed location; and Wholesale call termination on individual public telephone networks provided at a fixed location.

Introduction and general comments

1. Gibtelecom is presenting its comments in response to the Authority's public consultation 07/14 published on 23 May 2014 on wholesale fixed markets.
2. This consultation appears to follow the same general line adopted in prior wholesale fixed market reviews carried out in 2011 and 2007, with the Authority proposing to broadly maintain the same market definitions; market analyses; SMP (Significant Market Power) designations and obligations. The Authority also proposes to re-introduce an annual externally-audited accounting separation report (ASR) requirement. In this regard, as well as with the proposed price control and cost accounting SMP obligations, Gibtelecom's responses are without prejudice to any comments the Company may make on the Authority's currently open public consultation paper on Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail Price Notification (Public Consultation 08/14 of 5 June 2014).
3. Gibtelecom is agreeable to most of the Authority's proposals. However, the Company is submitting comments or seeks clarification on some aspects of the proposed SMP obligations.
4. For ease of reference, Gibtelecom is providing its replies below the Authority's questions, which are being duplicated in bold italicised text.

Q1. Do you agree with the proposed definition of markets susceptible to ex ante regulation? If not, why not? Please give reasons for your answer.

Gibtelecom accepts the Authority's proposed definitions of the wholesale call origination and call termination provided at fixed locations susceptible to ex-ante regulation. These are largely the same as those put forward in previous wholesale fixed market reviews in 2007 and 2011.

The Company would nevertheless like to make a factual correction. Under section 3.2, page 11 of the public consultation document, the Authority states that "*In the case of unbundled local loops, no other operator currently offers this in Gibraltar, and is unlikely to do so in response to a SSNIP in price of call origination...*". This is not the case. Gibtelecom has had an unbundled reference offer on the table for operators to use since 2006. In fact, one other operator signed onto the offer a number of years ago but this was not progressed. On the matter of unbundling of the local loop, Gibtelecom would also like to reiterate its point (originally made in its response to the prior wholesale fixed market review of 2011¹) that a local loop unbundling product, such as that made available by the Company, could serve as a workable and sustainable alternative to another operator/service provider purchasing call origination services off the incumbent.

With regards call termination services, Gibtelecom would once again repeat its comments² on the scope of the Authority's market review by not including Sapphire Networks as an SMP operator in its own individual telephone network, as well as not seemingly taking into account the prospect of other fixed line operators, such as Gibfibrespeed, entering the market within the lifetime of this market review.

¹ Gibtelecom response of 14 June 2011 to GRA public consultation 02/11 of 26 April 2011.

² See footnote 1

Q2. Do you agree with the market analysis and proposed SMP designation of the wholesale fixed call origination market? Please give reasons for your answer.

Gibtelecom accepts the Authority's positions in its market analysis and proposed SMP designation of the wholesale call origination market.

Q3. Do you agree with the market analysis and proposed SMP designation of the wholesale fixed call termination market? Please give reasons for your answer.

Gibtelecom accepts the Authority's positions in its market analysis and proposed SMP designation of the wholesale call termination market. The Company would also refer the Authority to its comments under Q1 above on the scope of the market review.

Q4. Do you agree with the proposed SMP obligations in the wholesale fixed call origination market? Please give reasons for your answer.

Gibtelecom broadly accepts the SMP obligations being proposed by the Authority but would like to make the following comments.

Transparency

Gibtelecom takes it that the requirement to "publish" changes to terms and conditions and/or prices of wholesale call origination and termination services does NOT include a requirement to publish the changes more widely in the local press as confirmed by the Authority in its Response to Consultation 05/11.

Accounting Separation

Without prejudice to any comments the Company may make on the Authority's public consultation 08/14, which, at the time of writing is still ongoing, Gibtelecom continues to object to the re-introduction of the requirement to submit annual externally audited accounting separation reports (ASRs). The Company refers the Authority to its most recent communication on the matter; through its response dated 24 February 2014 to the Authority's public consultation 01/14 on retail fixed markets. For ease of reference, this is being reproduced below, and which remains the Company's position for this public consultation 07/14.

Extract from Gibtelecom response of 24 February 2014 to public consultation 01/14

'Gibtelecom objects to the re-introduction of the requirement to submit annual externally audited accounting separation reports. The Company has on numerous occasions (eg Gibtelecom letters of 22 July 2009; 5 November 2009; 29 October 2010; 14 June 2011 and other correspondence) recorded with the GRA its views regarding the invasive, costly and onerous nature of having to produce such reports, on an annual basis.

These views were accepted by the Authority when, in its Document 01/11 (reissued), it reviewed its requirement to be submitted with annual ASRs to once every three years. This is not the only time the Authority has agreed with Gibtelecom's views in this regard. In its Response to the Consultation and Notification to European Commission on wholesale fixed call origination and termination markets, dated 18 August 2011, the Authority states that it will be applying "...a less onerous obligation of accounting separation on Gibtelecom." and that "The Authority accepts Gibtelecom's statement regarding the development of its annual separated accounts and the lengthy process involved in

collating, analysing and presenting the data. The Authority therefore proposes to reduce the regulatory burden on Gibtelecom by removing the requirement to submit annual ASRs”.

As a measure of how resource-consuming and complex producing an ASR is, the Authority itself also seemed to struggle with producing such costing data a few years back. In this regard the Authority mentions that it would have to “stagger” its own exercise “...over a long period due to the inherent lengthy procedure of data collection.”

The European Union has on occasions also professed the impact ASRs have on small entities, such as, by any measurable standard, Gibtelecom. In its reply to the Authority of 19 October 2009 on public consultation 05/09 acknowledged the undue burden full blown cost orientation [ASR] principles can impose on small firms.

Gibtelecom therefore requests the Authority reconsider its proposal to re-impose an annual externally audited ASR requirement.’

Access

Gibtelecom notes that the proposed Access obligation is in keeping with that already in place for Gibtelecom. However, under point (d), the proposed requirements states that “to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or **roaming on mobile networks;**”. Can the Authority please clarify the intent of the words in bold, in particular in the context of providing wholesale services on **fixed networks?**

Cost accounting

Gibtelecom notes that these obligations are entirely new and an expansion of the previous cost accounting SMP obligations imposed on the Company. Gibtelecom cannot reconcile the requirement to have such an obligation imposed, in particular that under point (e) (“it maintains cost accounting systems which produce appropriate information to demonstrate compliance with cost-orientation”) when the Authority is, at the same time, proposing to continue applying a price control, via a glide-path mechanism, dictating the wholesale call origination rates to be used (and therefore beyond a cost-orientation obligation).

Price controls

Gibtelecom cannot agree with the Authority’s proposal to exert a price control on wholesale call origination rates. The Company has on many occasions made the point that cost-orientated rates are obtained via Gibtelecom’s regulated accounts. The Company should thus either be requested to produce ASRs, and use the rates derived therein, or have a price control imposed (in a manner that is consistent with the unique local conditions and market) without having to go through the laborious and costly annual ASR submission process, but certainly not both.

Furthermore, other than “the Authority has reviewed the fixed origination and termination rates notified by other NRAs...”, Gibtelecom finds there is little in the way of clarification or justification on the part of the Authority on how the new glide path and wholesale origination and termination rates being proposed have been derived. At the time of the last wholesale fixed market review in 2011, the Authority went to some length to explain how the wholesale rates to be introduced were calculated. Gibtelecom would be grateful for a more substantial description by the Authority on how the proposed rates have been developed and the mechanism employed to derive the glide path reductions.

Q5. Do you agree with the proposed SMP obligations in the wholesale fixed call termination market? Please give reasons for your answer.

Gibtelecom's reply to this question is identical to that for the wholesale fixed call origination market.

Transparency

Please see Gibtelecom's response under the "Transparency" section of question 4 above.

Accounting Separation

Please see Gibtelecom's response under the "Accounting Separation" section of question 4 above.

Access

Please see Gibtelecom's response under the "Access" section of question 4 above.

Cost accounting

Please see Gibtelecom's response under the "Cost accounting" section of question 4 above.

Price controls

Please see Gibtelecom's response under the "Price controls" section of question 4 above.

Closing remarks

The Authority will note that Gibtelecom is generally in agreement with their proposals, but is making comments and/or seeking clarification on certain aspects of their impact and effects. Most notably this includes the re-introduction of an annual accounting separation report and price control and cost accounting obligations.

END OF SUBMISSION