



Gibtelecom

11 August 2014

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

Dear Gavin,

Market Review – wholesale mobile markets

Enclosed please find Gibtelecom's response to the Authority's public consultation on wholesale voice call termination on individual mobile networks and wholesale SMS termination on individual mobile networks (Public Consultation 09/14).

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

Yours sincerely,

Rachel Holgado
Regulatory Officer

Enc.



Gibtelecom

Gibtelecom response to Public Consultation 09/14

Wholesale voice call termination on individual mobile networks

Wholesale SMS termination on individual mobile networks

11 August 2014

Gibtelecom Response to GRA Market Review for wholesale voice call termination on individual mobile networks and wholesale SMS termination on individual mobile networks.

Introduction and general comments

1. Gibtelecom is presenting its comments to the Authority's public consultation 09/14 on wholesale mobile markets (wholesale voice call termination on individual mobile networks and wholesale SMS termination on individual mobile networks) published 8 July 2014.
2. This is effectively the fifth set of wholesale mobile market reviews carried out by the Authority; the previous ones being carried out in 2007, 2009, 2011 and 2012. The consultation appears to generally follow the same arguments and proposals as those put forward in these reviews, with the Authority proposing to broadly maintain the same market definitions; market analyses; SMP (Significant Market Power) designations and obligations. The main change seems to be the proposed new requirement to have an accounting separation requirement for wholesale SMS termination (the previous obligations in this market were on transparency and non-discrimination). Gibtelecom also notes that the Authority is proposing to re-introduce the requirement to submit externally-audited accounting separation reports (ASR) on an annual basis.
3. Gibtelecom is generally in agreement with most of the Authority's proposals. However, the Company is submitting comments and/or is seeking clarification on certain aspects of their impact and effects.
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 definitions of markets susceptible to ex ante regulation? If not, why not? Please give reasons for your answer.

Gibtelecom agrees with the proposed definitions of markets susceptible to ex-ante regulation. The Company would nevertheless like to comment on the point about their geographical scope. The Authority posits that having Spanish and Moroccan mobile operators cover the local area has no impact on the local retail mobile markets. Gibtelecom has previously argued that due to its small size and the close proximity of two neighbouring territories means Gibraltar being reached by mobile signals from operators in each (four from Spain and two from Morocco). In some areas, these mobile signals from external networks are strong enough to prevent handsets from non-Gibtelecom subscribers (eg tourists and cross-frontier workers) from switching to the Gibtelecom network for roaming services. This leads to a loss in mobile roaming derived revenue, which some could argue to be an unfair and unbalanced market situation.

Q2: Do you agree with the market analysis and proposed SMP designations of the wholesale voice call and SMS termination markets on mobile networks? Please give reasons for your answer.

Gibtelecom agrees with the Authority's proposal that Gibtelecom should be designated with SMP in the markets for wholesale voice call and SMS termination on our own mobile network and that the same analyses and SMP designations should be applied on Eazitelecom.

Q3: Do you agree with the proposed SMP obligations in the wholesale mobile call termination market? Please give reasons for your answer.

Gibtelecom would broadly accept the proposed SMP obligations subject to the following comments.

Transparency

Gibtelecom assumes that the requirement to notify the Authority of any changes to terms and conditions, in particular with regards changes to prices relates to changes made through the Company's Reference Interconnect Offer. This being the case, the Company questions the need to carry out such a notification exercise at a time when the wholesale rates are being imposed by the Authority itself through their price control remedies. Gibtelecom also questions the need to publish changes on the Company's website. As being proposed by the Authority, and in keeping with current SMP transparency obligations, the Company would notify other operators directly of any changes. Would it therefore be necessary, or practicable, to publish the same changes prominently on the Gibtelecom website, especially when these are aimed at such a small audience?

Finally, Gibtelecom would like to pass comment on the lack of a proposal to impose a transparency obligation on Eazitelecom. As an SMP mobile operator in its own network, Eazitelecom can control the terms and conditions under which it provides access to other authorised operators. Gibtelecom believes that such terms and condition should therefore be subject to regulatory scrutiny and that the same transparency requirements should thus be imposed on Eazitelecom, or any other mobile operator that enters the market, if this is the case.

Accounting Separation

As in its responses to the various public consultations published by the Authority over the past months and beyond, Gibtelecom reasserts its objection to the re-introduction of the burdensome requirement to submit annual externally audited accounting separation reports (ASRs). Furthermore, the Company notes that the Authority is not proposing to apply an accounting separation requirement obligation on Eazitelecom. The Authority justifies this on Eazitelecom's "recent" entry into the market and that it is therefore appropriate to impose asymmetric remedies during a "transitional period". Gibtelecom has on many occasions put across its views that the Company is by any measure considered to be small and that producing annual ASRs is very costly and onerous. Gibtelecom therefore finds it difficult to accept the Authority's effective view that Eazitelecom is not having an accounting separation obligation imposed on it on account of its small size. In addition, can the Company take it that once Eazitelecom's "transitional period" is over, that the Authority will be imposing an accounting separation SMP obligation on this alternative mobile operator?

Price controls and cost accounting

Gibtelecom again maintains its views on the cost accounting obligations being proposed. The Authority states that these requirements are used to produce appropriate information to demonstrate compliance with cost-orientation. Can the Authority therefore please explain how such a requirement (which is ordinarily met through the production and submission of an accounting separation report) can be married with their other price control requirement to have wholesale termination rates imposed, via a three-year glide path, on Gibtelecom?

The Company would also be grateful for more information from the Authority on the derivation of the new wholesale rates being proposed for the next three years. Gibtelecom finds there is little data to justify these new rates, other than the Authority stating that it has assessed the mobile call termination rates notified by other NRAs. In response to the Authority's statement that the glide path which had been put into place following the last review has reduced mobile termination rates to a level which compares well with other EU jurisdictions, Gibtelecom notes that according to the BEREC Termination Rates Snapshot report of January 2014 (see also the Company's comments under question 4 below), the Company's mobile voice termination is already well below the EU simple average (Gibtelecom 1p per minute as from 1 January 2014 versus the EU average of approximately 1.6p per minute).

Q4: Do you agree with the proposed SMP obligations in the wholesale mobile SMS termination market? Please give reasons for your answer.

Gibtelecom would broadly accept the proposed SMP obligations subject to the following comments.

Transparency

Gibtelecom's comments under this section are identical to those under the Transparency section of question 3 above.

Accounting Separation

Gibtelecom notes that this is a new SMP requirement. Despite the Authority's account that Gibtelecom "*...should remain subject to an obligation to account separately for its wholesale SMS call [SIC] termination on its mobile network.*"¹, this would be the first time that the Company is subjected to such a remedy. Following the latest wholesale mobile market review, the Authority introduced transparency and non-discrimination requirements in this market. Without prejudice to Gibtelecom's objections to having an accounting separation obligation, Gibtelecom would have to ascertain whether the separation of its mobile services into SMS services is possible with its current cost accounting model.

Gibtelecom also refers the Authority to the Company's comments under the Accounting Separation section of question 3 above.

Price controls and cost accounting

Please refer to the Company's comments under the price controls and cost accounting section under Question 3 above. Again, the Company requests the Authority provide clear data on how the proposed new glide path wholesale SMS termination rates are being calculated. The Authority explains that these rates have been based on the information provided through the BEREC snapshot on termination rates across the EU. However, the information provided by the BEREC report is simply a snapshot of the rates from different EU jurisdictions as at January this year. There is no information in this report to suggest what the rates will be each year for the next three years starting 1 January 2015. Can the Authority therefore please expand on its calculations? Furthermore, as with the Company's comments under question 3 above, Gibtelecom notes that its current SMS termination rate, as from 1 January 2014, is also well below the EU simple average (Gibtelecom SMS termination rate of 1p per SMS versus EU average of approximately 2.1p per SMS)

Closing remarks

The Company is agreeable with most of the Authority's proposals. Gibtelecom is however making comments and/or seeking clarification on aspects of the proposed SMP obligations. Most notably this includes the re-introduction of an annual accounting separation report; price controls and cost accounting obligations more generally.

END OF SUBMISSION

¹ Page 26 of public consultation 09/14 of 8 July 2014