

7 July 2014

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

Dear Gavin,

Public Consultation – 08/14 Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail Price Notification

Following your email of 5 June 2014, enclosed please find Gibtelecom's response to the Authority's public consultation on Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail Price Notification (Public Consultation 08/14).

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

Yours sincerely,



Dwayne Lara
Corporate & Regulatory Manager

Enc.



Gibtelecom response to Public Consultation 08/14

Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail
Price Notification

7 July 2014

**Gibtelecom Limited
15/21 John Mackintosh Square
Gibraltar**

Gibtelecom Response to GRA public consultation on Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail Price Notification.

Introduction and general comments

1. Gibtelecom is presenting its comments in response to the Authority's public consultation 08/14 published on 5 June on accounting separation, cost accounting systems, cost orientation and retail price notification.
2. The GRA is proposing incremental changes to Decision Notice 01/11 (reissued on 30 November 2011) with their stated intention of providing increased transparency through the publication of additional information; consolidating extant decisions; and producing a set of regulatory accounts which are "fit for purpose" from which the Authority can make regulatory decisions and assess compliance with legal obligations.
3. The GRA is also proposing to introduce new obligations and documentary requirements and submissions to meet cost orientation obligations. This includes a new set of rules and framework (the Retail Price Notification Framework) to assess compliance with retail market price controls. The Authority states that this framework replaces their earlier regulation of retail prices in SMP markets via a price cap.
4. As an SME, Gibtelecom continues to reiterate that the submission of annual audited ASRs continues to be very onerous and costly. This has been recorded numerous times, with the Authority seemingly accepting the Company's views by amending the requirement to produce such extensive and substantive documents to once every three years. Through its recent retail and wholesale fixed markets reviews, the Authority now again requires annual submissions of audited regulated accounts. With consultation 08/14, the Authority generally seems to require additional work to be carried out and information provided. Gibtelecom is not in favour of having any new additional requirements that would exacerbate what is already a significantly arduous and resource intensive process. However, where the additional information being requested is readily available, could be efficiently extracted, and makes sense, Gibtelecom would be content to meet such new proposals.
5. Gibtelecom would like to record its views regarding the timing of this public consultation. As the Authority is aware, the next set of audited regulatory accounts is due to be submitted by Gibtelecom at the end of this coming September. The Company reckons that by the time the Authority issues its Decision Notice on this consultation paper, after having reviewed the comments it has received from interested parties; prepares its Response to the Consultation; and receives any comments from the EU Commission pursuant to Article 7(3) of the Framework Directive it would be impracticable and unreasonable to expect Gibtelecom to make the necessary changes to meet any new reporting requirements in time for this September. The Company would therefore request that any changes to be made take effect as from the reporting year 2014, and that any effect on prior year figures be taken into consideration.
6. For ease of reference, Gibtelecom is providing its replies below the Authority's questions, which are being duplicated in bold italicised text.

Specific GRA questions

Question 1: Do you agree that the Profit and Loss statement shall be amended for a relevant market based on the template in section 1 of Annex B? Please give reasons for your answer.

To the extent that the additional information now required can be extracted in a meaningful and cost-effective way, Gibtelecom does not foresee any major operational problems with “opening up” the Operating Costs; Exceptional Operating Costs; and CCA adjustments lines. The Company would have to put in place new cost accounting procedures to trigger the >10% total HCA figure reporting requirements to ensure that these are reported correctly. Of course, the cost items to be reported could change year-on-year depending on the level of costs across the board, requiring Gibtelecom to make additional annual assessments of its reporting lines.

Gibtelecom, though, would like to question the value of having such additional data, as they would form a subset of a total cost figure that is already being reported. Including a breakdown of the total operating and exceptional costs, as well as splitting up the CCA adjustments would, in the Company’s mind, not go beyond what is already being provided to establish the relationship between costs and charges.

Question 2: Do you agree that the amended Mean Capital Employed statement shall be stated for a relevant market based on the template in section 2 of Annex B? Please give reasons for your answer.

Gibtelecom takes it that the proposed requirement to show all individual asset valuations greater than 10% of the total of all **CCA valuations** for that market means showing all tangible fixed asset valuations where these are greater than 10% of the **Total Fixed Assets** figure? Furthermore, the Company assumes that the requirement to report additional lines would be based on doing so for asset classes, and not individual assets.

Again, to the extent that the proposed additional information can be extracted easily and without exacerbating what is an already burdensome regulatory requirement, Gibtelecom does not anticipate any major obstacles in reporting the additional data (other than question its value). As with the provision of more detailed information on the profit and loss statements, the Company would have to introduce new cost model processes and triggers to ensure the new requirements are met.

Question 3: Do you agree that the operator shall provide an amended Reconciliation statement of the key financial captions of the ASR with the statutory accounts based on the template in Section 3 Annex B, including the elements outlined in this section to separately reconcile revenue and costs to the statutory accounts? Please give reasons for your answer.

Gibtelecom is not entirely sure what the Authority it intending to achieve with this proposal. At the moment, the Reconciliation Statement provided by the Company shows the turnover, costs, and returns of the relevant SMP markets. These are then adjusted to reflect those “below the line” figures which do not have corresponding turnover, cost, and subsequently, return amounts. These include Corporation Tax, Dividends and Interest figures. The Gibtelecom Reconciliation Statement does not therefore “*only reconcile the return [emphasis added] in the “Adjustments” section of the Reconciliation Statement*”¹ - these figures are currently shown in the Reconciliation Statement below the Returns column for presentational purposes only.

¹ Section 3.3, page 8 of public consultation 08/14

With regards the new “Elimination of transfer charges” line being proposed by the Authority, Gibtelecom does not see a need for this new line to be added. This is because the level of transfer charges are already included and well explained in the Transfer Charges Matrix (Matrix 2) of the regulated accounts. Having to include the same figures in the Reconciliation Statement would, the Company believes, be an unnecessary duplication of work.

Question 4: Do you agree that Operators shall replace the current Statement of Unit Costs by providing a Service Statement for each relevant wholesale market as set out in Section 4 of Annex B, including the elements outlined in this section in order to check compliance with non-discrimination and/or cost orientation obligations?

Please give reasons for your answer.

Gibtelecom believes there is a typographical error within the sample Wholesale Service Statement shown at Section 4 of Annex B of the consultation document. The second table states that the figures to be included are for the “current year”. Gibtelecom believes this should be for the “prior year”? Additionally, the Company believes that under the columns “Average revenue per unit”, these should show “R/u” instead of “x/u”. Can the Authority please confirm this to be the case?

Gibtelecom would have to assess whether the current cost model can provide the additional level of detail required, but it does not expect any major difficulties in presenting the information in the format now being proposed (in the event the data can be extracted efficiently). The Company would nevertheless like to learn what the Authority means by “Ceiling FAC per unit”? The note to this table explains that this figure is derived from the Service Cost Statement (Section 6 of Annex B of the consultation document), but Gibtelecom cannot find any references to this in that Statement. Section 3.6 states that “*The resultant FAC unit cost by service from this schedule **should** [emphasis added] equal the FAC shown in the Service Statement as the “Ceiling” in Section 4 of Annex B*”. Can the Company take it that “should” should be interpreted as the figure that is to be slotted in to the “Ceiling FAC per unit” column? Furthermore, can the Authority provide more clarity on the purposes and benefits of reporting on this basis (Ceiling FAC per unit), as well as on “Average revenue per unit/FAC”?

Question 5: Do you agree that the network Statement of Costs in Section 5 of Annex B shall be produced to provide documentation and transparency of the network components. Please give reasons for your answer.

As with the Company’s responses to the above new reporting requirements, Gibtelecom believes it would be able to provide this information whenever this can be extracted efficiently.

Question 6: Do you agree that the Service Costs statement in Section 6 of Annex B shall be produced to document and give transparency to the allocation of network component costs to services. Please give reasons for your answer.

Gibtelecom believes it has identified a similar clerical error to the one described in the Company’s reply to question 4 above. The fourth table in Section 6 of Annex B of the consultation paper shows that the data to be provided should be for the “current year”. Gibtelecom believes this should refer to the “prior year”.

Gibtelecom believes this information could be provided with additional work, and as long as it can be extracted effectively.

Question 7: Do you agree that the cost orientation test for the cost accounting obligation can be appropriately met by the use of the Service Statement in Section 4 of Annex B for wholesale services and the production by the operator of the retail Cost Orientation Statement in Section 7 of Annex B for retail services? Please give reasons for your answer.

Gibtelecom acknowledges the Authority's recognition that imposing or introducing a cost accounting obligation based on LRIC practises would effectively put the limited resources available to operators under strain. This is something that the Company has on many occasions recorded with the Authority in previous consultation responses and other correspondence.

Gibtelecom agrees that compliance with wholesale charges cost orientation obligations could be assessed through the use of a wholesale service statement as set out in Section 4 of Annex of the consultation paper. This information is in part already provided and calculated by Gibtelecom via the Statement of Unit Costs included in the current set of regulated accounts. However, the Authority is fully aware that the charges for some of Gibtelecom's regulated wholesale services (fixed call termination; fixed call origination) are already set by them. This is despite the Company providing ample historical costing justification through its many regulated account submissions.

With regards retail charge compliance assessments, the Company notes that there is no scope within the compliance statement (Section 7 of Annex B of the consultation document), or Section 3.7 itself to include the standard (industry-practice) retail price mark up calculations. To assess compliance, the Authority states that prices should be "between" the sum of wholesale charges and all direct and shared costs; and this plus retail common costs. This formula is also reflected in the compliance statement by having a "floor" and "ceiling" for the retail costs. Can the Authority please clarify where in the retail cost orientation compliance calculations would retail price mark ups be included?

Gibtelecom is not clear on the Authority's statement that "*Any prices that are materially outside of this range should be justified by the operator's notification under the retail Price Notification Framework*". The Company is having trouble marrying this statement with the one under Section 6 where the Authority states "*Operators will not be required to submit PNF information for current prices for which they are not requesting changes*". Can the Authority please elaborate on the intended effects or purpose of each statement?

Question 8: Do you agree that the accounting documents shall be amended to include the elements outlined in this section? Please give reasons for your answer.

Gibtelecom's comments on each of the proposed amendments are below.

Asset lives and depreciation rates

Gibtelecom accepts having these form part of the regulated accounts documentation, as long as the Company does not consider them to be commercially sensitive.

CCA Valuation methods

Gibtelecom already provides information on which CCA valuation method it employs for all relevant assets, including the type of index used and its source. The Company refers the Authority to section 1.7.9 of its Attribution Methodology document for a description of the indexation mechanism used. This is based on MM17 current cost accounting values derived from the Office for National Statistics in the UK. Furthermore, Gibtelecom also explained its valuation methods in its response to the Authority's public consultation 06/10 of 30 September 2010. The Company therefore does not understand the Authority's proposal to include information that is already being provided.

Network components

Gibtelecom assumes that, although sitting outside question 8 in the consultation paper, this section is to be treated in the same way as for the “Asset lives and depreciation rates” and “CCA valuation methods” sections above. Moreover, the Company takes it that the Authority means having the network components described in the “Attributions Methodology” document, and not the “Accounting Methodology” document. Gibtelecom would nevertheless accept the Authority’s proposal to amend the relevant regulated accounts document to describe the network components and which comprise the provision of services. This would be subject to confidentiality considerations, if any.

Question 9: Do you agree that the production of an asset list showing purchase prices including the elements outlined in this section would improve the valuation of assets? Please give reasons for your answer.

Gibtelecom does not agree that the production of an asset list showing purchase prices including the elements outlined in this section would improve the valuation of assets.

The Company has previously explained that it employs the indexation method, using transparent, appropriate and publicly available indices from the Office for National Statistics in the UK, to value its assets. The reasons for doing so were set out in Gibtelecom’s response to public consultation 06/10 of 30 September 2010 (response reproduced below). These included not being in favour of having discrete replacement costs methodologies for different types of assets as doing so for the Company’s extensive asset base would be extremely impractical and costly with the limited resources available, as well as obtaining asset valuations through the use of supplier quotes/invoices. In its Response to Consultation and Decision 01/11 of 30 November 2011 (reissued), the Authority accepted the use by Gibtelecom of the indexation methodology, recognising Gibtelecom’s difficulties in obtaining quotes from suppliers, in particular to implement an MEA asset valuation mechanism. Gibtelecom therefore fails to understand this apparent change in the Authority’s position. Furthermore, the Authority’s proposal to submit an annual list showing the prices used for each class of asset is not clear. Prices would be determined on an individual asset basis, not by groups or classes.

The Company does not therefore agree with the production of an asset list showing purchase prices including the elements outlines in this section and proposes to continue employing the indexation valuation methodology, providing clear information on this within the Attributions Methodology document.

Extract of Gibtelecom response to question 19 of the Authority’s public consultation 06/10 of 30 September 2010 (Gibtelecom response of 26 October 2010)

“Gibtelecom does not agree with having discrete replacement cost methodologies for different types of assets. The Company’s asset base is quite extensive (the GRA has previously been provided with a list of these assets) and it would therefore be tremendously impracticable and costly with the limited resources available, to have to sift through each and every asset, or class of asset, in order to determine which replacement method would apply according to the different criteria being suggested. It would also be extremely onerous to have to obtain individual quotes from suppliers, for example in the case of absolute valuation, to be able to assign current purchase prices to each asset that would fall under this particular asset valuation methodology. From past experience, Gibtelecom has found that in cases where suppliers can actually supply current information (it is not uncommon for them to be unable to provide quotes on individual assets) they usually take inordinate amounts of

time to return the necessary information, if at all. In addition, both Gibtelecom, and the GRA would have to rely on the accuracy and relevance of the information provided.

Gibtelecom therefore proposes to continue solely applying indexation valuation methods, as it has done for some time. The Company believes this to be the most practicable, reasonable, consistent and transparent (the relevant data is obtained straight from publicly available government data) way to revalue assets to a more current basis. Furthermore, the effect on bottom-line asset valuations would in all probability be minimal should different individual assessments be used in comparison to the established indexation technique.”

Question 10: Do you agree that material changes should result in the prior year being restated and presented with the relevant audit opinion and that all changes of more than 5% are notified to the Authority prior to publication and audit of the ASR to assess if there are material changes? Please give reasons for your answer.

Gibtelecom is not against the principle of restating prior year figures when there is a material change in attribution methods, transfer charges or general accounting principles. However, unless the Authority is willing to be flexible in the submission timelines, the Company would not be in favour of having to notify the Authority of such material effects these changes may have on the regulated accounts ahead of their publication and audit.

As the Authority is aware, the production and eventual publication (which is implied to mean submission to the Authority, and not public release), is in itself already subject to tight timescales, with the Company’s limited resources often struggling to hand in the externally audited reports by the Authority’s nine-month deadline (even earlier than companies law requirement to file statutory accounts). Having to now notify the Authority of any material changes impacting the separated accounts ahead of its submission would mean having to have them ready earlier in the year. This would not be practicable or reasonable given the fact that the first “usable” versions of the statutory accounts from which the ASR is derived are not normally available until the fourth or fifth month of the year. The Company would thus only be able to notify the Authority of any material changes and leave enough time to complete the audit of the regulated accounts if the Authority is willing to extend the nine-month deadline, at least in years where material changes do take place.

In addition, Gibtelecom is of the view that if a material change needs to be implemented as a result of regulatory requirements then the Company should not be penalised and placed in the unfair and burdensome position of having to completely rewrite the previous year’s separated accounts.

Question 11: Do you agree that the above amended list of publicly available documents shall be made public and published on the website of the operator annually within two months after the submission of the ASR to the Authority. Do you also agree that the ASR should be signed off by a board member to give the necessary assurances that the ASR has been considered at a suitable level? Please give reasons for your answer.

Gibtelecom appreciates the Authority’s continuing assertions to keep sensitive information confidential and not made public. The Company also welcomes the Authority allowing operators the opportunity to demonstrate that information is sensitive.

Other than those documents/statements/lists that Gibtelecom is not in agreement with producing (material changes prior to the publication of the ASR; list of asset valuation methods with current and prior year purchase prices indicating if MEA applies) explained above, the Company already publishes its suite of regulated accounting documents on its web page and within the same timeframes. Gibtelecom therefore foresees no major problems with continuing this process, as well

as now having to seek sign-off by a Gibtelecom board member. The Company nevertheless is of the opinion that having the separated accounts independently audited and verified would have been enough.

Question 12: Do respondents agree with the purpose and scope of the PNF? If not, please provide reasons for your view and justification for why the scope and purpose should differ from that set out above. Where possible, please provide examples to illustrate your position.

Gibtelecom agrees with the Authority that any obligation or regulation on retail prices should bear into consideration the effects these might have on small operators. As such, the Company is broadly in agreement with the proposal to assess retail price obligations via “lighter touch” regulation. This would take the form of notifying the Authority and providing certain additional details whenever there is a change to a regulated retail service (access to the public telephone network at a fixed location; publicly available local telephone services at a fixed location; and publicly available international services provided at a fixed service). This includes the introduction of new prices on these regulated fixed services, as well as when bundling or tying such services.

Question 13: Do respondents agree with the process and information requirements set out above for modification to existing prices by an operator? If not, please provide reasons for your view and justification for why the scope and purpose should differ from that set out above. Where possible, please provide examples to illustrate your position.

Gibtelecom considers that some of the additional information being proposed is superfluous, unnecessary, and at times burdensome. For instance, the requirement to assess the impact on the profit and loss and mean capital employed statement (see point (g)(VI)) for the relevant regulated market is confusing. To assess the impact on something, one would need to have a comparative figure or measure. In the case of the profit and loss and mean capital employed statements this would mean having to generate a new ASR every time a price changes, and comparing this to the most current ASR submission? What would happen if Gibtelecom makes two price changes in the same year? Against what would the impact be assessed? The Company also believes that providing parts of the data required under (h) would also be onerous. For example, the requirement to provide information on the number of existing users that would be affected by the proposed change would need in depth analysis and examination of marketing and business information. In any case, this would only be a projection and might not be a reflection of what might happen going forward.

With regards the notification periods, Gibtelecom accepts these as they are similar to what is already in place. However, the Company is concerned with the Authority’s ability to effectively block or modify a price change at will. This is because the Authority is seemingly under no obligation to meet its 15 or 10 day review period, stating that “*Failure by the Authority to block or modify a price change under this process does not constitute an approval of the price. The Authority reserves its right to investigate any price for SMP products and services at any time.*”² In the interests of certainty and regulatory consistency, Gibtelecom believes that the Authority should be able to meet its own timescales. Gibtelecom cannot afford to notify the Authority 45 days before a price change is expected to be introduced, and commit financial and other resources, in particular towards marketing campaigns whilst meeting the 14 day regulatory requirement to make public announcements, if the Authority can block or modify the Company’s proposal at the last minute.

² Point 6 of Section 6.2, page 21 of public consultation 08/14

Question 14: Do respondents agree with the process and information requirements set out above for the introduction of new prices by an operator? If not, please provide reasons for your view and justification for why the scope and purpose should differ from that set out above. Where possible, please provide examples to illustrate your position.

Gibtelecom's comments under this question are identical to those provided under question 13 above. The Company would, nevertheless, be grateful for clarification from the Authority on what is meant by "business case information and projection of costs and revenues". The Company gets the impression that this would be additional information to that already being asked through the price change notification requirements?

Question 15: Do respondents agree with the process and information requirements set out above bundling and tying of services by an operator? If not, please provide reasons for your view and justification for why the scope and purpose should differ from that set out above. Where possible, please provide examples to illustrate your position.

With regards being able to offer bundled regulated services as standalone products, Gibtelecom at this time does not imagine this would be a major problem. For all other aspects of this proposal, Gibtelecom's comments under this question are identical to those provided under question 13 above.

END OF SUBMISSION