

8 June 2017

Gibraltar Regulatory Authority  
Attn. Stewart Brittenden  
Head of Communications and Postal Regulation  
2nd Floor  
Eurotowers 4  
1 Europort Road  
Gibraltar

Dear Stewart,

**Public Consultation CO2/17 – Wholesale Broadband Access Markets and Retail Broadband Market**

Enclosed please find Gibtelecom's response to the Authority's public consultation on wholesale and retail broadband markets (Public Consultation CO2/17).

Please do not hesitate to contact me should you require clarification on any aspect of the Company's response.

Yours sincerely,



Dwayne Lara  
Corporate & Regulatory Manager

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**Gibtelecom response to Public Consultation CO2/17**

Broadband markets

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**8 June 2017**

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

## **Gibtelecom response to GRA public consultation on wholesale broadband access and retail broadband markets.**

### **Introduction and general comments**

1. Gibtelecom is presenting its comments in response to the Authority's public consultation CO2/17 published on 8 May 2017 on wholesale broadband access and retail broadband markets.
2. Although not explicitly stated, the Company notes that consultation CO2/17 is a reissue of the Authority's Public Consultation CO2/16 of 30 June 2016. That consultation was withdrawn by the Authority on the 28 July 2016.
3. The Company also notes that the Authority is being guided by the latest EU recommendations on relevant markets<sup>1</sup>. These recommendations present four markets, all of them at a wholesale level, susceptible to ex-ante regulation. These are as follows:
  - Market 1: Wholesale call termination on individual public telephone networks provided at a fixed location
  - Market 2: Wholesale voice call termination on individual mobile networks
  - Market 3:
    - a) Wholesale local access provided at a fixed location
    - b) Wholesale central access provided at a fixed location for mass-market products
  - Market 4: Wholesale high-quality access provided at a fixed location
4. The Authority is reviewing the wholesale local access (WLA) market and the wholesale central access (WCA) market (Markets 3(a) and (b) above). The wholesale markets are revised versions of the unbundled local loop (physical) access and wholesale broadband access services markets defined and listed in the two earlier versions of the Commission's Market Definition Recommendations.
5. The Authority, however, is also unilaterally reviewing the retail broadband market (which has never formed part of the EU recommendations on relevant markets) and considering designating Gibtelecom as the significant market power (SMP) provider in this market, with a consequential set of regulatory obligations to be imposed thereon.
6. For ease of reference, Gibtelecom is providing its replies below the Authority's questions, which are being duplicated in bold italicised text.

### ***Question 1: Do you agree with the definition of the retail broadband market and that it satisfies the three criteria test? Please provides reasons for your answer.***

Gibtelecom does not agree with the Authority's proposal to review the retail broadband market. Consequently, it does not agree with the definition of the retail broadband market, that the Three Criteria Test is satisfied, or the application of SMP obligations on Gibtelecom. The Company believes

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<sup>1</sup> Commission Recommendation C(2014) 7174 of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation.

there are a number of shortcomings with regards the Authority's views on the review of the retail broadband market as set out below.

#### Lack of detail and justification

The retail broadband market has never been listed by the Commission as a market susceptible to ex-ante regulation and the Authority has never taken action prior to this market review of applying SMP measures to it. The SMP procedures and practice require a national regulatory authority (NRA) to make a special showing before applying SMP to a market not listed in the Commission's Market Definition Recommendations. The EU recommendations also presume that when both a retail market and its upstream wholesale market are not effectively competitive, SMP measures should be applied only to the wholesale market, as had been the case with the previous wholesale broadband access review in 2007/08. Again, a special showing is needed to also in parallel apply SMP measures to the retail market. Gibtelecom does not believe the Authority has provided the higher standard of justification or detail necessary to consider reviewing the retail broadband market.

The Authority sets out to define the retail broadband market but, in Gibtelecom's mind, makes a perfunctory, and very broad attempt at assessing the level of competition thereon, subsequently proposing to designate Gibtelecom as the SMP provider. The Authority's assessment is made under "Section 4.2 Competition assessment: retail broadband at a fixed location" on part of page 24. The Authority is not providing any concrete or clear detailed data on the structure of the retail market; its performance or dynamics over the years and; more importantly, looking forward (as required by the EU), including market shares and price trends.

The Authority's assessment also appears to be contradictory at times, for instance when saying that *"An operator aiming to offer retail broadband services in Gibraltar would need to be able to replicate some or the entire public telephone network. The time to do this and the investment required suggests that this is not likely in the timeframe of the review"*. The following sentence states that *"However, having said this, Gibfibrespeed and U-mee are both rolling out their own networks to deliver broadband services in Gibraltar."* In other parts of the consultation document the Authority refers to U-mee already reaching 50% of users whilst Gibfibrespeed reaches 80% of these. Another example would be the Authority alluding to the lack of competition at a retail broadband level, yet stating that *"...it is expected that the coverage of the alternative networks will increase significantly over the period of this review to the extent that there will be no areas where conditions of competition differ significantly from those of others."*<sup>2</sup> and *"...it is also clear that two competitors are building out competing broadband infrastructure and may, beyond the period of this review, be able to offer real competition to Gibtelecom. Given the emergence of competition and the likely competitive constraints this competition will have on Gibtelecom's freedom to set prices independently of its competitors..."*<sup>3</sup>.

#### Unprecedented application of retail ex-ante measures

The Authority is proposing to impose SMP obligations on both the retail and wholesale broadband markets. The consultation does not seem to mention that when there is a lack of effective competition in the downstream retail market and the linked upstream wholesale market, the SMP legal framework is reluctant to impose SMP remedies in a retail market. The EU recommendations rely instead on SMP remedies imposed on the upstream wholesale market. It is only when the wholesale remedies prove inadequate in that there is no tendency towards competition in the relevant market does the SMP

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<sup>2</sup> Page 21 of C02/17

<sup>3</sup> Page 30 of C02/17

legal framework support the added imposition of SMP remedies on the retail market. Recital 18 of the 2014 Market Definition Recommendation 2014/710/EU puts it the following way:

*“Ex ante regulation imposed at the wholesale level should be considered sufficient to tackle potential competition problems on the related downstream market(s). **A downstream market should only be subject to ex ante regulation if competition on that market still exhibits significant market power despite the presence of ex ante regulation on the related wholesale upstream market(s).** Given the advances in competition that have been achieved thanks to regulation, this Recommendation identifies only relevant markets at the wholesale level. It is believed that their regulation can address a lack of effective competition at the wholesale level, which in turn is the cause of identified market failures in the related retail markets. **Should a national regulatory authority nonetheless demonstrate that wholesale interventions have been unsuccessful, the relevant retail market may be susceptible to ex ante regulation provided that the national regulatory authority has found that the three-criteria test prescribed in this Recommendation is met.**”*

Following the approach outlined in Recital 18, the Authority, to the degree it is justified in holding Gibtelecom to have SMP status, should only impose SMP obligations on the wholesale broadband markets. There is no evidence that the intervention by the Authority at the wholesale broadband access market level since 2008 has been unsuccessful. Gibtelecom has had regulatory-approved wholesale unbundling and broadband access offers on the table for other authorised operators to make use of since the requirement to have these documents made available were first instituted a number of year ago (Gibtelecom’s RUO was first made available in 2009). The fact that these have not been taken up by competitors is not a showing in and of itself that the market has failed, but rather commercial decisions taken by these alternative providers.

As mentioned above, the European Commission has continuously reduced the number of relevant markets (from eighteen markets in 2003 to seven markets in 2007 to four [all wholesale] markets as of Oct 2014). As of May 2016, only two EU countries retain ex-ante regulations from the initial 2003 retail markets (fixed calling) – this number may now be lower. To Gibtelecom’s knowledge, there is no precedent for declaring the retail broadband market as relevant and subsequently finding SMP in such market.

### Three Criteria test

Gibtelecom is of the view that the Authority also fails to make any substantive argument to demonstrate its position that there is no prospective competition in the retail broadband market. In applying the “Three Criteria Test” necessary to conclude whether a market should be susceptible to ex-ante regulation, the Authority centres its main discussion on the “high and non-transitory barriers to entry” and “tendency towards effective competition” criteria.

- *High and non-transitory barriers to entry*

The Authority seems to hold that, despite the competitive entry of U-mee and GibFibreSpeed (GFS), there is little chance that entry barriers will be overcome and effective competition will be established within the timeframe of the current review, which in accordance to EU rules and guidelines, should be three years. Gibtelecom notes that the reference to this timeframe, which was explicitly included in page 2 of the Authority’s withdrawn consultation C02/16 as “*The market reviews included in this document are forward-looking and cover a period of three years from the date of the GRA’s final decision.*” is no longer present in this reissued consultation document C02/17. The Authority nevertheless admits that the Gibraltar situation has significantly changed in recent years and that the

Gibtelecom network is being replicated. The Authority appears to downplay the speed of this replication and emphasises the high cost of deployment.

Gibtelecom differs with this position. The competitors are replicating the Gibtelecom network with FTTH networks, and have done so at a very rapid pace. The Authority states that U-mee have been authorised since 2013 and launched their services only around 18 months or so ago. Their network, according to the Authority, currently reaches 50% of end-users, with GFS's network reaching 80% of the Gibraltar population. The Authority takes the view (at pages 15 and 24) that competitors will not likely sufficiently replicate the Gibtelecom broadband network in the timeframe of review and concludes that Gibtelecom holds SMP status in the retail broadband market. Yet the Authority also admits that both U-mee and GFS are rolling out their own broadband networks, and they already reach large parts of the territory.

As concerns the Authority's discussion of the geographic market definition, it further admits that both competitors should have almost full coverage of Gibraltar end-users within the timeframe of the review (at page 21). Even if a full rollout takes longer, the prospect of such full ability to compete should be a major factor in the competitive assessment (that is, whether effective competition may arise).

Gibtelecom is therefore firmly convinced that there are **no** high and non-transitory barriers to the Gibraltar retail broadband access market.

- *Tendency towards effective competition*

SMP market reviews are forward-looking and not restricted to the current situation, and any assessment would need to look beyond the review period. This is the thrust of the Three Criteria Test. Recital 6 of the EU's recommendations on relevant markets of October 2014 states that "*...an analysis of effective competition should include an analysis as to whether the market is prospectively competitive, and thus whether **any lack of effective competition is durable.***" This point is further expanded on in Recital 9. Recital 15 adds "*A tendency towards effective competition implies that the market will either reach the status of effective competition absent ex ante regulation within the period of review, or will do so after that period provided clear evidence of positive dynamics in the market is available within the period of review.*"

The Explanatory Note to the recommendations further emphasise the "tendency towards competition" point. Section 2.1 of this document states that "*In this regard, **a retail market may become effectively competitive only after the review period defined by Article 16 of the Framework Directive, but there may be clear evidence of market dynamics which indicate that the market will become effectively competitive in the foreseeable future even without the imposition of ex ante regulation in the market concerned.***" Section 2.2(ii) adds "*To be susceptible to ex ante regulation a market should present characteristics demonstrating that it will not tend over time towards effective competition.*" The same section goes on to explain that "*A tendency towards effective competition **does not necessarily imply that the market will reach the status of effective competition within the period of review. It simply means that there is clear evidence of dynamics in the market within the period of review which indicates that the status of effective competition will be reached in the foreseeable future without ex ante regulation in the market concerned.***"

Taking such an obligatory prospective view, it seems very conceivable that coverage will reach close to 90% or even 100% within a 3 year market review timeframe. Indeed, the Authority admits in Section 3.3.7 (page 21) "*...it is expected that the coverage of the alternative networks will increase significantly*

*over the period of this review to the extent that there will be no areas where conditions of competition differ significantly from those of others.”*

The Authority’s apparent non-prospective assessment is further compounded when it underscores that GFS and U-mee “only control approximately 24% of the market”. (This figure was showing as 15% in the Authority’s withdrawn consultation document C02/16 less than twelve months ago, again, giving a clear indication of the very rapid pace of increasing competition in Gibraltar). The Authority is citing the current market share figure without seemingly applying a forward-looking view.

In summary, Gibtelecom argues that there is already competition in the retail broadband market and that this is only expected to increase in the foreseeable future, with the real prospect that there will be a complete rollout of the competitor’s respective broadband networks, certainly within the foreseeable future. The Company is therefore strongly convinced that the retail broadband market tends towards competition in the absence of ex-ante regulation and that it is therefore not eligible for SMP measures as it fails to satisfy two of the three criteria in the Three Criteria Test (the other being concerned with competition law which the Authority excludes from the test on account of there not being any such legislation in place in Gibraltar).

#### Market share data

Gibtelecom would also like to comment on the levels of market share being quoted by the Authority. The consultation document explains the various ways the Broadband Gibraltar Ltd Group provides broadband access to end-users through Sapphire itself and through its wholly-owned subsidiary U-mee. The broadband services provided by Sapphire, that is to say, those offered under the “Port and Pipe” agreement with Gibtelecom (which the Authority labels resale), its VDSL services and its direct internet services under the trade names of Sapphire Direct, Metro Internet and Business Metro Internet are apparently not being considered in this market review as Sapphire/U-mee is deploying a FTTH network and focusing its efforts alone on that. The Authority states that the broadband services listed above from Sapphire itself, while still being offered, are no longer available to new customers. It is unclear what impact the Authority’s stance has on assessing the retail broadband markets.

The Authority estimates Gibtelecom has 75% (the Company believes this number to be lower) of the retail broadband market (down from 80% calculated by the Authority in last June’s withdrawn Public Consultation). Does this include Sapphire’s customers? In such case, the exclusion would be a factual error. Whilst it might be true that Sapphire is no longer marketing its Sapphire services to new customers, it no doubt has a continuing relationship with its existing customers and a strong influence over their future choice of retail broadband services. Sapphire will undoubtedly steer its client base to U-mee for FTTH service that has already been rolled out to 50% of the Gibraltar end-users and whose deployment continues. The market share calculations, if the Sapphire customer base has been excluded, should be redone. U-mee is given a 14% (10% in last June’s withdrawn Public Consultation) market share. What is the combined market share of Sapphire and U-mee? The same can be said of Gibfibrespeed, and their sister company, Gibsat. Gibfibrespeed are now promoting an “upgrade” service whereby Gibsat customers can transfer over to the former. They are doing this by leveraging the existing Gibsat coax infrastructure with the Gibfibrespeed fibre-to-the-home network. This will undoubtedly strongly influence the decision by Gibsat customers and invariably push them into new agreements with Gibfibrespeed above other choices. Has the Authority also taken into the effect of these practices on the competitive state of play, together with also considering the impact on market share numbers?

### Conflation of TV services with retail broadband

As the Authority is aware, Gibtelecom has in the past expressed, a number of times, its views regarding the conflation by local alternative service providers of TV services with retail broadband products. The Company believes that this bundling of TV over a regulated electronic communications network using electronic communications services is having an appreciable effect on the market and the way competition in this space is progressing.

[REDACTED] As shown above, by the Authority's own admission, the market shares of Umee and Gibfibrespeed have increased substantially since the previous withdrawn public consultation (C02/16) was issued less than 12 months ago (see for instance page 7 of Consultation C02/16 published at the end of June 2016). Since then, the Authority calculates that Umee's and Gibfibrespeed's shares have increased year on year by 40% (from 10% to 14%) and 100% (from 5% to 10%) respectively. These are all clear indicators of increasing competition and that this trend will likely continue during at least the lifetime of the market review.

### Factual correction

Gibtelecom would like to point out that it also has a 16mbps download Superswift broadband product. This product, which was introduced recently when Gibtelecom in parallel automatically upgraded all its 4 and 8mbps customers<sup>4</sup>, appears to be missing from the consultation document.

***Question 2: Do you agree with the proposed definitions of the products and services that fall into markets 3(a) and 3(b)? Please give reasons for your answer.***

Gibtelecom broadly agrees with the Authority's proposed definitions subject to the following comments.

The Authority at page 17 attempts to demonstrate the supply-side substitutability of Gibtelecom's VDSL-based wholesale offer for FTTH networks. That is to say, Sapphire Networks is willing, when it decided not to progress with receiving access to Gibtelecom's wholesale broadband network through Gibtelecom's wholesale broadband access offer (WBAO), to build its own FTTH fibre network. Gibtelecom reiterates its question as to whether the VDSL network (used by both Gibtelecom and Sapphire Networks though no longer offered to new customers) are counted as part of the relevant wholesale market. This would affect market share figures and trends.

Similarly, Gibtelecom asks the Authority whether GFS's coaxial networks are being counted as part of the wholesale broadband markets. Again, if they have been excluded, the market share calculations would be affected and would therefore be incorrect. Gibtelecom believes these calculations should be made ahead of the Authority assessing the wholesale broadband markets.

***Question 3: Do you agree with the proposed geographic definition for markets 3(a) and 3(b)? Please give reasons for your answer.***

Yes.

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<sup>4</sup> Subject to technical constraints



**Question 4: Do you agree that the retail broadband and wholesale broadband access markets in Gibraltar are susceptible to ex ante regulation? Please give reasons for your answer.**

Gibtelecom does not agree that the retail broadband market is susceptible to ex-ante regulation. The Company's reasons, with explanations, are listed under its response to question 1 above.

With regards wholesale broadband access, Gibtelecom is of the view that there is a real tendency towards competition in the retail broadband market, and that competitors are replicating a Gibraltar-wide network, allowing them to act independently of each other. This is admitted by the Authority on page 17 of the consultation document, where it says "...as evidenced by the roll-out of competing network infrastructures." And "Two alternative operators have subsequently begun building their own fibre-to-the-home networks..." Gibtelecom therefore considers there is thus now no longer a need to intervene at a wholesale level and believes that its designation as the SMP wholesale provider, and its consequent SMP obligations, should be lifted. The Company has on many occasions made it known to the Authority that the SMP obligations that are currently in place on Gibtelecom in the wholesale broadband markets are too onerous for a small operator operating a territory with a population of only around 30,000. Precedent for this already exists at the EU level. For instance, Romania has lifted ex-ante wholesale regulation in Markets 3a and 3b, with a further eight EU countries (as of June 2016 – this number may now be higher) having already reduced or lifted ex-ante regulation in market 3b.

Furthermore, the Authority does not appear to apply the Three Criteria Test to the two wholesale broadband markets now being reviewed. It cites the Commission's Explanatory Note to the Market Definition Recommendation as exempting an NRA from having to perform the test for relevant markets listed in the Recommendation. A superficial reading of the Explanatory Note can lead to this interpretation. However, the entire relevant passage from the 2014 Market Definition Recommendation itself on this point at Recitals 19 and 20 states that:

*"(19) The markets listed in the Annex have been identified on the basis of the above-mentioned three cumulative criteria. The national regulatory authorities should start from a presumption that, in these markets, the three criteria are met. If, however, a national regulatory authority concludes that, absent regulation at the wholesale level, the retail market(s) as defined display(s) sustainable competition, it should also conclude that ex ante regulation is no longer needed at the wholesale level.*

*(20) For the markets listed in the Annex, a national regulatory authority may still consider it appropriate, on the basis of specific national circumstances, to conduct its own three-criteria test. A national regulatory authority may conclude that the three-criteria test is or is not met in the national circumstances. If the three-criteria test is not met for a specific market listed in the Recommendation, the NRA should not impose regulatory obligations on that market. "*

While there is a presumption that the markets listed in the Commission's Market Definition Recommendation pass the Three Criteria Test, each NRA has the discretion to carry out such a test when it considers it appropriate on the basis of specific national circumstances. Each NRA is under the obligation to define relevant markets and formulate SMP measures that are appropriate, and that respond to the nature of the problem as manifested in that particular Member State. Article 15(3) of the Framework Directive states:

*"National regulatory authorities shall, taking the utmost account of the Recommendation and the Guidelines, define relevant markets **appropriate to national circumstances**, in particular relevant geographic markets within their territory, in accordance with the principles of competition law."*

In Gibraltar, the specific national circumstances demonstrate that fibre broadband networks have been deployed by two competitors which reach between 50% and 80% of the end-users in Gibraltar and should reach almost all within the required three year timeframe of the review. These circumstances necessitate the GRA to use its discretion to apply the Three Criteria Test. The result of that test would further undermine the grounds for finding the retail broadband market to be a relevant market for SMP analysis, let alone for applying SMP remedies.

**Question 5: Do you agree with the market analysis and proposed SMP designation of the retail broadband market? Please give reasons for your answer.**

Gibtelecom does not agree with the market analysis and proposed SMP designation of the retail broadband market. Please refer to the various reasons listed under the Company's response to question 1.

**Question 6: Do you agree with the market analysis and proposed SMP designation of the wholesale broadband access market? Please give reasons for your answer.**

Gibtelecom does not agree with the accuracy of the wholesale broadband market analysis carried out by the Authority, and thus, consequent SMP designation.

As explained in the Company's responses above, the Authority appears to dismiss the rollout of the alternative operator's networks as sufficient to act as a competitive constraint on Gibtelecom. Page 25 of the consultation document reads:

*"An operator aiming to offer a wholesale broadband access offer in Gibraltar would need to be able to replicate Gibtelecom's public telephone network. The time to do this and the investment required suggests that this is not likely in the timeframe of the review.*

*Gibfibrespeed, Sapphire Networks and U-mee are also deploying their networks and may in the medium to long term provide wholesale broadband access products to other operators.*

*Despite both competing operators have invested in network infrastructure, it is not clear that they can feasibly build network across all of Gibraltar. The GRA therefore expects that Gibtelecom is likely to remain the only provider with 100% network coverage for the duration of this review."*

Gibtelecom notes that a statement in the withdrawn consultation C02/16 is no longer present in consultation C02/17. This is where the Authority stated, on page 25, that *"Although Gibfibrespeed's network covers most of the local population it is not certain whether that network would be suitable for wholesale access services."* Can the Authority explain the exclusion of this statement from the consultation document, and in particular given its extant (and complementary) statement that *"Gibfibrespeed's FTTH network currently reaches 80% of Gibraltar's population."*<sup>5</sup>

Additionally, part of the Authority's justification is that a customer is unable **"at present"** to switch broadband providers (at page 26 under the Countervailing buyer power subheading). This is not correct. Customers are currently able to switch between Gibtelecom and any of the alternative providers (U-mee and GFS) on account of the networks they are rolling out and their expanding reach. As GFS and U-mee continue to deploy their FTTH networks, switching across the whole of the territory should be possible within the review period or thereabouts. The Authority already admits switching is possible between Sapphire Networks and Gibtelecom clients.

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<sup>5</sup> Page 7 of C02/17

Gibtelecom therefore argue that the Authority's forecast is wrong. Deployment will reach most end-users and switching will be possible.

***Question 7: Do you agree with the proposed SMP obligations in the retail broadband access market? Please give reasons for your answer.***

Gibtelecom does not agree with the proposed SMP obligations in the retail broadband access market. Please refer to the various reasons listed under the Company's response to question 1. Even if the Company were to agree with the proposed SMP obligations, there would be technical and other constraints which could have a bearing on some of the transparency obligations being suggested by the Authority. These include the ability to offer the same services to all customers in Gibraltar, regardless of location. As the Authority is aware, a customer's location could determine, for technical reasons, the availability of certain broadband services and/or quality of service parameters.

***Question 8: Do you agree with the proposed SMP obligations in the wholesale local access market? Please give reasons for your answer.***

Gibtelecom does not believe any SMP obligations should continue to be imposed on the wholesale broadband access markets. The reasons for this are explained in the Company's responses above. The current SMP obligations on Gibtelecom, as a small operator carrying out its business in a jurisdiction with a c30,000 population meeting EU requirements designed for much larger territories are too onerous and impracticable. In the case of the wholesale local access market, the Authority is even now proposing to add to this burden by imposing a new access obligation in the form of an RCEIAO (see below). In this matter, Gibtelecom is unclear on the nature of a Reference Civil Engineering Infrastructure Access Offer (RCEIAO) together with its reconciliation against the Company's extant Reference Unbundling Offer (RUO). Would the hypothetical introduction of a RCEIAO supersede and withdraw Gibtelecom's RUO? Can the Authority please explain why a RCEIAO is needed and its reasoning for making such a proposal?

Gibtelecom can nevertheless comment that the Authority does not propose to impose access remedies on Gibtelecom for the FTTH market as it does not operate FTTH networks at this time. However, it intimates that such access remedies may be imposed once Gibtelecom does build and operate FTTH networks. The Authority should note that the Company understands that this would only be possible following the initiation and processing of a new market review.

***Question 9: Do you agree with the proposed SMP obligations in the wholesale central access market? Please give reasons for your answer.***

Gibtelecom does not believe any SMP obligations should continue to be imposed on the wholesale broadband access markets, including the wholesale central access market. The reasons for this are explained in the Company's various responses above.

**Other remarks forming part of Gibtelecom's response to Consultation C02/17**

The Authority will note that Gibtelecom does not agree with the Authority's assessment of the retail broadband access market, nor consequential SMP designation and imposition of obligations. The Company feels that this market is not exhibiting any high and non-transitory barriers to entry; and that it is showing a tendency towards competition. Furthermore, the retail broadband access market is not listed as a relevant market and Gibtelecom believes that the Authority has not provided the

necessary justification to demonstrate that this market should be reviewed. In accordance with the EU recommendations, the retail broadband access market should not therefore be subject to ex-ante regulation.

On wholesale broadband access products, the Authority will see that Gibtelecom believes that in the advent of sustainable competition in the retail broadband market, based on two operators rolling out their own Gibraltar-wide infrastructure (and therefore not relying on Gibtelecom wholesale inputs), intervention at the wholesale level should now be withdrawn.

The question also has to be asked as to whether a review of the retail fixed access markets should also be carried out. Gibraltar is also subject to two other local services providers (U-mee and Gibfibrespeed) offering fixed line services, as part of their broadband and TV bundle services portfolio. Gibtelecom asks what the Authority's plans are in this regard.

***END OF SUBMISSION***