

28 June 2011

Gibraltar Regulatory Authority
Attn. Mr Stewart Brittenden
Electronic Communications Regulatory Manager
Suite 603
Europort
Gibraltar

Dear Stewart,

Market Review – wholesale voice call termination on individual mobile networks and wholesale SMS termination on individual mobile networks

Enclosed please find Gibtelecom's response to the Authority's Market Review public consultation on Wholesale voice call termination on individual mobile networks and Wholesale SMS termination on individual mobile networks (Public Consultation 03/11).

Yours sincerely,



Dwayne Lara
Regulatory Manager

Enc.



Gibtelecom response to Public Consultation 03/11

Wholesale voice call termination on individual mobile networks; and

Wholesale SMS termination on individual mobile networks

28 June 2011

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

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

In response to the public consultation on its market review of the wholesale voice call termination on individual mobile networks and wholesale SMS termination on individual mobile networks published by the Gibraltar Regulatory Authority (GRA) on 11 May 2011, Gibtelecom is pleased to present its comments.

This latest market review is considered to form part of a second round of market analyses which this time seem to take on board newer EU recommendations on relevant markets. The new EU recommendations concentrate on wholesale markets, with only one retail market – provision of access at a fixed location for residential and non-residential customers now being considered.

As an initial comment, Gibtelecom notes that the Authority is referring to "Gibtel" as being "*wholly owned by Gibtelecom*"¹. This statement gives the impression that Gibtel is a subsidiary of Gibtelecom. This is not correct. Gibtel is simply the brand name behind Gibtelecom's wireless services (previously Gibwireless).

Additionally, the Authority quotes as Gibtelecom (Gibtele.com) being the source of the information behind the graph in figure 2 (page 13 of the public consultation). The Company takes this as a clerical error as clearly, judging from the information provided by Gibtelecom through the responses to the Authority's market review quantitative questions, at least one other local mobile and fixed operator has acted as a co-source for the relevant data.

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 above preliminary conclusions regarding the wholesale voice call termination market definition exercise?

Please give reasons for your answer.

Gibtelecom agrees with the Authority's preliminary conclusions for defining the market boundaries for the wholesale voice call termination market subject to the Authority considering the comments below. The Company notes that the Authority's assessment of what constitutes the wholesale voice call termination market is generally in line with that put forward during its first round of market reviews starting in 2007.

Scope of market review

Gibtelecom is aware that a third mobile operator, Eazi Telecom Limited (Eazitel) was awarded a license in the third quarter of 2009. It is expected, based on current information, that Eazitel will soon commence to roll out services. Noting the prospective nature of regulatory market reviews, can Gibtelecom take it that the impact on the competitive nature of the local wholesale mobile market (and therefore potentially affecting existing SMP obligations on current operators) as a result of Eazitel commencing operations will be analysed by the Authority, through a further market review procedure and SMP assessment on this new Gibraltar mobile operator? As the Authority states in the public consultation "*A new entrant may have the potential to remedy a number of the competition problems*

¹ Section 2 **Mobile market structure background**, page 10 of Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011

identified in the wholesale mobile markets".² There is precedence for conducting such a market assessment in the form of the Authority conducting a further market analysis (and subsequent imposition of SMP remedies) of wholesale call termination markets³ shortly after the second mobile operator, CTS (Gibraltar) Ltd, was awarded a license in March 2009.

Effect of foreign operators

As with the previous wholesale mobile market analysis, Gibtelecom notes that the Authority is considering limiting the relevant geographical market as national (Gibraltar) in scope. The Company also notes that in its comments pursuant to Article 7 of the Framework Directive following the Authority's notification of its wholesale mobile market review in 2007, the EU urged the Authority to continue monitoring the competitive situation in Gibraltar and in particular any constraints arising from foreign operators.⁴ The Company therefore continues to believe that the Authority should place greater emphasis on the competitive constraints on the Company and resulting analysis of market shares (and lost revenue) as a consequence of the inundation of mobile signals from six foreign operators due to the extreme close proximity of two neighbouring countries (Spain and Morocco). The signals permeate the small geographical area of Gibraltar (6.5km²) and, in the case of those from Spanish licensed operators, are strong enough to prevent the handsets carried by visitors and Spanish frontier workers from switching to the Gibtelecom mobile network for roaming services. This is evidenced by the Authority itself, when it states that "*When entering Gibraltar, these users will likely continue to be connected to their Spanish home network instead of roaming on a Gibraltar network. This is due to the high signal strength of the neighbouring Spanish networks which cover most of Gibraltar*".⁵

The Spanish operators continue to retain a strong market presence, which is tied to the strength of their mobile signals, and there is therefore little or no reason for their users to need to change to a Gibtelecom service. It is worth observing that at least one Spanish operator (Telefónica Móviles – Movistar) requires their users to go through a complicated and onerous pre-registration process with their home network in order to enable roaming facilities with Gibtelecom. This obviously makes it additionally difficult for Gibtelecom to gain this Spanish operator's subscribers as roaming customers. For instance, in May 2011 Movistar customers, who command a 41.34%⁶ share of the Spanish mobile market only registered 0.59% of the total Spanish roamers for that month with the Gibtelecom network. Other examples of competitive constraints on Gibtelecom as a result of the pervasiveness of foreign operators' signals on the Rock include calls made by those higher-value customers who spend their working life in Gibraltar (both Gibraltarians and non-nationals), but who reside in the general neighbouring area. These potential Gibtelecom customers have clear preferences, and substitute their Gibtelecom mobile numbers for, Spanish mobile numbers given that in the majority of cases their calls will be made at a cheaper Spanish local, or national level.

Furthermore, Gibtelecom is not in agreement with the Authority's assessment that the effects of the two Moroccan mobile operators' networks (IAM and Meditel) are peripheral in nature and are therefore not considered further in the public consultation. It is a well-known fact that a segment of the Gibraltarian population acquire Moroccan operators' SIM cards, using these within areas of Gibraltar to initiate and receive non-roaming calls. Again, this places constraints on Gibtelecom's ability to acquire such customers.

² Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011, section 5.2, page 36

³ Gibraltar Regulatory Authority Public Consultation 05/09 of 24 June 2009 and Decision Notice 09/09 of 3 December 2009 on wholesale termination markets .

⁴ SG-Greffe (2007) D/207396, Case No GI/2007/0723: Voice call termination on individual mobile networks dated 30 November 2007

⁵ Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011, section 2, page 11

⁶ Cuota de Mercado de líneas móviles, Comisión del Mercado de las Telecomunicaciones, Nota Mensual April 2011

Gibtelecom is also subjected to challenging frequency use proficiency and re-use as a direct result of foreign operators' mobile signals encroachment. This is again supported by the Authority when it says that "...coverage with a GSM network is challenging because of the topographical nature of Gibraltar and close proximity of four Spanish networks".⁷

Invariably the pricing landscape in Spain also has an effect on the Gibraltar market, as pricing information is clearly visible to consumers, who use this to compare against Gibtelecom prices and may cause a demand-side constraint at retail level. As the Authority reckons, a constraint at retail level could have an impact on the wholesale market, as prices are constrained back to their original levels. The Company also contends that it would be relatively easy for Gibtelecom subscribers to switch to Spanish operators in the event of a hypothetical small but non-transitory increase in the Company's mobile service prices. In Gibtelecom's mind supply-side substitution at retail level is thus available. These are points that the Authority seems to fail to make in its market review.

Q2. Do you agree with the above preliminary conclusions regarding the wholesale SMS termination market definition exercise?

Please give reasons for your answer.

Gibtelecom accepts the Authority's preliminary conclusions for defining the market boundaries for the wholesale SMS termination market subject to the comments below. The Company notes that the Authority's assessment of what constitutes the wholesale SMS termination market is generally in line with that put forward during its first round of market reviews starting in 2007.

Gibtelecom would also like to point out that there appears to be incorrect references to mobile "voice calls" and "wholesale voice call termination" under section 3.3.3 of the public consultation. The Company assumes that these should refer to mobile "SMS" and "wholesale SMS termination".

Effect of foreign operators

Gibtelecom's comments under this section are the same as those under the same section in our reply to Q1 above. Gibtelecom has continuing reservations with the Authority's general view that foreign operators' mobile signals do not act as a competitive constraint on the local mobile market. The fact that during the previous market reviews the EU Commission's foremost comment⁸ was to invite the Authority to continue monitoring the situation with regards the effects of foreign operators on the local competition environment shows that a close regulatory eye and assessment is needed.

The situation has not changed since the 2007 market reviews, and therefore the Company continues to believe that the Authority should place greater emphasis on the competitive constraints on the Company and resulting analysis of market shares (and lost revenue) as a consequence of the inundation of mobile signals from six foreign operators due to the extreme close proximity of two neighbouring countries (Spain and Morocco). The signals permeate the small geographical area of Gibraltar (6.5km²) and, in the case of those from Spanish licensed operators, are strong enough to prevent the handsets carried by visitors and Spanish frontier workers from switching to the Gibtelecom mobile network for roaming

⁷ Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011, section 2, page 11

⁸ SG-Greffe (2007) D/207396, Case No GI/2007/0723: Voice call termination on individual mobile networks dated 30 November 2007

services, which include SMS texting. This is evidenced by the Authority itself, when it states that *"When entering Gibraltar, these users will likely continue to be connected to their Spanish home network instead of roaming on a Gibraltar network. This is due to the high signal strength of the neighbouring Spanish networks which cover most of Gibraltar"*⁹.

The Spanish operators continue to retain a strong market presence, which is tied to the strength of their mobile signals, and there is therefore little or no reason for their users to need to change to a Gibtelecom service. At least one Spanish operator (Telefónica Móviles – Movistar) requires their users go through a complex and burdensome pre-registration process with their home network to enable roaming facilities with Gibtelecom, making it additionally difficult for Gibtelecom to gain this Spanish operator's subscribers as roaming customers. As an example, the total number of Movistar (who have, according to the latest Spanish NRA figures, a 41.34% share of the Spanish mobile market) customers registered as roamers with the Gibtelecom network only represent 0.59% of the total number of Spanish roamers for the month of May 2011. Other examples of competitive constraints on Gibtelecom as a result of the pervasiveness of foreign operator's signals on the Rock include SMSs sent by those higher-value customers who spend their working life in Gibraltar (both Gibraltarians and non-nationals), but who reside in the general neighbouring area. These potential Gibtelecom customers have clear preferences, and substitute their Gibtelecom mobile numbers for, Spanish mobile numbers given that in the majority of cases their texts will be sent at a cheaper Spanish local (national) level.

Furthermore, Gibtelecom is not in agreement with the Authority's assessment that the effects of the two Moroccan mobile operators' networks (IAM and Meditel) are peripheral in nature and are therefore not considered further in the public consultation. It is a well-known fact that a segment of the Gibraltarian population acquire Moroccan operators' SIM cards, using these within areas of Gibraltar to send SMSs. Again, this places constraints on Gibtelecom's ability to acquire such customers.

Gibtelecom is also subjected to challenging frequency use proficiency and re-use as a direct result of foreign operators' mobile signal encroachment. This is again supported by the Authority when it says that *"...coverage with a GSM network is challenging because of the topographical nature of Gibraltar and close proximity of four Spanish networks"*¹⁰.

Invariably the pricing landscape in Spain also has an effect on the Gibraltar market, as pricing information is clearly visible to consumers, who use this to compare against Gibtelecom prices and may cause a demand-side constraint at retail level. As the Authority reckons, a constraint at retail level could have an impact on the wholesale market, as prices are constrained back to their original levels. The Company also contends that it would be relatively easy for Gibtelecom subscribers to switch to Spanish operators in the event of a hypothetical small but non-transitory increase in the Company's mobile service prices. In Gibtelecom's mind supply-side substitution at retail level is thus available. These are points that the Authority seems to fail to make in its market review.

Q3. Do you agree with the above preliminary conclusions regarding mobile voice call termination market analysis and proposed SMP designations?

Please give reasons for your answer.

⁹ Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011, section 2, page 11

¹⁰ Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011, section 2, page 11

Gibtelecom accepts the Authority's preliminary conclusions regarding market analysis and proposed SMP designation for the wholesale mobile call termination market subject to the following comments.

Use of benchmarking data

The Authority has used EU termination rates with an average rate to demonstrate that Gibtelecom's mobile voice termination rate appears high. The Company argues that great care should be taken when comparing Gibtelecom (and Gibraltar in particular), with its much smaller network with other much larger jurisdictions, markets and operators. The Authority should, in Gibtelecom's mind have consideration for local market conditions and in particular other unique geopolitical and other circumstances that might render more simplistic vis-à-vis comparisons with other territories somewhat moot. We also refer the Authority to our response under Q5 regarding Gibtelecom's views on the related subsequent proposals to impose glide path price control and associated accounting separation obligations.

Using the Authority's same figures, Gibtelecom notes that its wholesale voice call termination prices are lower than much larger and populated countries such as Malta (mobile subscribers c422k; geographical area 316km²), Belgium (mobile subscribers c12,419,000; geographical area 30,528km²) and Bulgaria (mobile subscribers c10,617,000; geographical area 110,789 km²)¹¹.

Effect of foreign operators

As with the previous wholesale mobile market analysis, Gibtelecom notes that the Authority is considering limiting the relevant geographical market as national (Gibraltar) in scope. The Company also notes that in its comments pursuant to Article 7 of the Framework Directive following the Authority's notification of its wholesale mobile market review in 2007, the EU urged the Authority to continue monitoring the competitive situation in Gibraltar and in particular any constraints arising from foreign operators.¹² The Company therefore continues to believe that the Authority should place greater emphasis on the competitive constraints on the Company and resulting analysis of market shares (and lost revenue) as a consequence of the inundation of mobile signals from six foreign operators due to the extreme close proximity of two neighbouring countries (Spain and Morocco). The signals permeate the small geographical area of Gibraltar (6.5km²) and, in the case of those from Spanish licensed operators, are strong enough to prevent the handsets carried by visitors and Spanish frontier workers from switching to the Gibtelecom mobile network for roaming services. This is evidenced by the Authority itself, when it states that "*When entering Gibraltar, these users will likely continue to be connected to their Spanish home network instead of roaming on a Gibraltar network. This is due to the high signal strength of the neighbouring Spanish networks which cover most of Gibraltar*"¹³.

The Spanish operators continue to retain a strong market presence, which is tied to the strength of their mobile signals, and there is therefore little or no reason for their users to need to change to a Gibtelecom service. It is worth observing that at least one Spanish operator (Telefónica Móviles – Movistar) requires their users to go through a complicated and onerous pre-registration process with their home network in order to enable roaming facilities with Gibtelecom. This obviously makes it additionally difficult for Gibtelecom to gain this Spanish operator's subscribers as roaming customers. For instance, in May 2011

¹¹ Data obtained from the CIA World Fact book. <https://www.cia.gov/library/publications/the-world-factbook/>

¹² SG-Greffe (2007) D/207396, Case No GI/2007/0723: Voice call termination on individual mobile networks

¹³ Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011, section 2, page 11

Movistar customers, who command a 41.34%¹⁴ share of the Spanish mobile market only registered 0.59% of the total Spanish roamers for that month with the Gibtelecom network. Other examples of competitive constraints on Gibtelecom as a result of the pervasiveness of foreign operators' signals on the Rock include calls made by those higher-value customers who spend their working life in Gibraltar (both Gibraltarians and non-nationals), but who reside in the general neighbouring area. These potential Gibtelecom customers have clear preferences, and substitute their Gibtelecom mobile numbers for, Spanish mobile numbers given that in the majority of cases their calls will be made at a cheaper Spanish local, or national level.

Furthermore, Gibtelecom is not in agreement with the Authority's assessment that the effects of the two Moroccan mobile operators' networks (IAM and Meditel) are peripheral in nature and are therefore not considered further in the public consultation. It is a well-known fact that a segment of the Gibraltarian population acquire Moroccan operators' SIM cards, using these within areas of Gibraltar to initiate and receive non-roaming calls. Again, this places constraints on Gibtelecom's ability to acquire such customers.

Gibtelecom is also subjected to challenging frequency use proficiency and re-use as a direct result of foreign operators' mobile signal encroachment. This is again supported by the Authority when it says that "*...coverage with a GSM network is challenging because of the topographical nature of Gibraltar and close proximity of four Spanish networks*".¹⁵

Invariably the pricing landscape in Spain also has an effect on the Gibraltar market, as pricing information is clearly visible to consumers, who use this to compare against Gibtelecom prices and may cause a demand-side constraint at retail level. As the Authority reckons, a constraint at retail level could have an impact on the wholesale market, as prices are constrained back to their original levels. The Company also contends that it would be relatively easy for Gibtelecom subscribers to switch to Spanish operators in the event of a hypothetical small but non-transitory increase in prices. In Gibtelecom's mind supply-side substitution at retail level is thus available. These are points that the Authority seems to fail to make in its market review.

Gibtelecom would also like to point out that there appears to be an erroneous reference to "fixed operators" under section 4.2.3 a of the public consultation. The Company assumes that this should refer to "mobile operators".

Q4. Do you agree with the above preliminary conclusions regarding mobile SMS termination market analysis and proposed SMP designations?

Please give reasons for your answer.

Gibtelecom accepts the Authority's preliminary conclusions regarding market analysis and proposed SMP designation for the wholesale SMS termination market subject to directing the Authority to our comments under the "Use of benchmarking data" under Q3 above and those below.

Effect of foreign operators

Gibtelecom's comments under this section are the same as those under the same section in our replies to Q1, Q2, and Q3 above. Gibtelecom has continuing reservations with the

¹⁴ Cuota de Mercado de líneas móviles, Comisión del Mercado de las Telecomunicaciones, Nota Mensual April 2011

¹⁵ Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011, section 2, page 11

Authority's general view that foreign operators' mobile signals do not act as a competitive constraint on the local mobile market. The fact that during the previous market reviews the EU Commission's foremost comment¹⁶ was to invite the Authority to continue monitoring the situation with regards the effects of foreign operators on the local competition environment shows that a close regulatory eye and assessment is needed.

The situation has not changed since the 2007 market reviews, and therefore the Company continues to believe that the Authority should place greater emphasis on the competitive constraints on the Company and resulting analysis of market shares (and lost revenue) as a consequence of the inundation of mobile signals from six foreign operators due to the extreme close proximity of two neighbouring countries (Spain and Morocco). The signals permeate the small geographical area of Gibraltar (6.5km²) and, in the case of those from Spanish licensed operators, are strong enough to prevent the handsets carried by visitors and Spanish frontier workers from switching to the Gibtelecom mobile network for roaming services, which include SMS texting. This is evidenced by the Authority itself, when it states that *"When entering Gibraltar, these users will likely continue to be connected to their Spanish home network instead of roaming on a Gibraltar network. This is due to the high signal strength of the neighbouring Spanish networks which cover most of Gibraltar"*¹⁷.

The Spanish operators continue to retain a strong market presence, which is tied to the strength of their mobile signals, and there is therefore little or no reason for their users to need to change to a Gibtelecom service. At least one Spanish operator (Telefónica Móviles – Movistar) requires their users go through a complex and burdensome pre-registration process with their home network to enable roaming facilities with Gibtelecom, making it additionally difficult for Gibtelecom to gain this Spanish operator's subscribers as roaming customers. As an example, the total number of Movistar (who have, according to the latest Spanish NRA figures, a 41.34% share of the Spanish mobile market) customers registered as roamers with the Gibtelecom network only represent 0.59% of the total number of Spanish roamers for the month of May 2011. Other examples of competitive constraints on Gibtelecom as a result of the pervasiveness of foreign operator's signals on the Rock include SMSs sent by those higher-value customers who spend their working life in Gibraltar (both Gibraltarians and non-nationals), but who reside in the general neighbouring area. These potential Gibtelecom customers have clear preferences, and substitute their Gibtelecom mobile numbers for, Spanish mobile numbers given that in the majority of cases their texts will be sent at a cheaper Spanish local (national) level.

Furthermore, Gibtelecom is not in complete agreement with the Authority's assessment that the effects of the two Moroccan mobile operators' networks (IAM and Meditel) are peripheral in nature and are therefore not considered further in the public consultation. It is a well-known fact that a segment of the Gibraltarian population acquire Moroccan operators' SIM cards, using these within areas of Gibraltar to send SMSs. Again, this places constraints on Gibtelecom's ability to acquire such customers.

Gibtelecom is also subjected to challenging frequency use proficiency and re-use as a direct result of foreign operators' mobile signal encroachment. This is again supported by the Authority when it says that *"...coverage with a GSM network is challenging because of the topographical nature of Gibraltar and close proximity of four Spanish networks"*¹⁸.

¹⁶ SG-Greffe (2007) D/207396, Case No GI/2007/0723: Voice call termination on individual mobile networks dated 30 November 2007

¹⁷ Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011, section 2, page 11

¹⁸ Gibraltar Regulatory Authority Public Consultation 03/11 of 11 May 2011, section 2, page 11

Invariably the pricing landscape in Spain also has an effect on the Gibraltar market, as pricing information is clearly visible to consumers, who use this to compare against Gibtelecom prices and may cause a demand-side constraint at retail level. As the Authority reckons, a constraint at retail level could have an impact on the wholesale market, as prices are constrained back to their original levels. The Company also contends that it would be relatively easy for Gibtelecom subscribers to switch to Spanish operators in the event of a hypothetical small but non-transitory increase in prices. In Gibtelecom's mind supply-side substitution at retail level is thus available. These are points that the Authority seems to fail to make in its market review.

Q5. Do you agree with the Authority's proposed SMP obligations to be imposed on Gibtelecom in the voice call termination market?

Please give reasons for your answer.

Gibtelecom has comments on the following SMP obligations proposed to be imposed by the Authority.

Transparency

Gibtelecom does not accept the proposed transparency obligations as they stand. The Authority states that the existing transparency obligations imposed in 2008, with some modifications, are being maintained. However, Gibtelecom finds that the proposed text for the transparency obligations put forward in this public consultation are completely different to those currently in force.

For the Authority's ease of reference, below are the existing SMP transparency obligations imposed on Gibtelecom

1. Gibtelecom shall publish information concerning:
 - a. The terms and conditions for mobile voice call termination services, including prices; and
 - b. The accounting system used in relation to voice call termination services.
2. Gibtelecom shall notify the Authority at least 45 days in advance of changes to terms and conditions (including price increases).
3. Gibtelecom shall notify the Authority at least 30 days in advance for price reductions.
4. Gibtelecom shall publish changes to terms and conditions at least 30 days in advance of implementation.
5. Gibtelecom shall provide at least 30 days notice to publish an increase in tariffs.
6. Gibtelecom shall provide at least 14 days notice to publish a decrease in tariffs.
7. Publication shall include a prominent notice on the company's website.
8. The above shall form part of the reference interconnection offer.

The proposed transparency requirements are as follows (text in bold is as appears in the public consultation)

- 1) Gibtelecom shall make available call termination services and make public the terms and conditions in a Reference Interconnection Offer (RIO).
- 2) The terms and conditions applicable to call termination services may be subject to amendment and/or direction by the Authority.
- 3) Gibtelecom shall notify the Authority at least 60 days in advance of changes to terms and conditions (including price increases).

- 4) Gibtelecom shall notify the Authority at least 30 days in advance for price reductions.
- 5) Gibtelecom shall publish changes to terms and conditions (including price increases) at least 30 days in advance of implementation. **Publication shall include direct notification to all other operators in the market.**
- 6) Gibtelecom shall publish a decrease in tariffs at least 14 days in advance of implementation. **Publication shall include direct notification to all other operators in the market.**
- 7) Publication shall include a prominent notice for at least **two weeks** on the company's website. **The Authority shall be notified when the prominent notice is posted.**

It is plain to see that the proposed transparency obligations above are not the same as the existing ones. This is especially true of the notification period under obligation 3. which now has a 60 day notification period to the Authority of changes to terms and conditions including price increases, versus obligation 2. of the existing obligations which has a 45 day notification period. At the time of the previous round of market analyses, Gibtelecom argued for a reduction in the notification period from 60 to 45 days. This was accepted by the Authority and was reflected in the ensuing Decision Notice (Decision Notice 03/08). The Company does not therefore see why the Authority now appears to be increasing this back to 60 days. Gibtelecom therefore requests a review of the proposed transparency requirements to bring them more in line with those agreed to by the Authority during the previous round of wholesale mobile market analyses.

Gibtelecom would also like to query the publication requirements for changes to terms and conditions as well as for price changes. The proposed SMP obligations state that publication "*shall include direction notification to all other operators in the market*" and that "*publication shall include a prominent notice for at least two weeks on the company's website*". Given that the proposed obligations will require changes to be made **directly** to the parties that will be most affected by them, i.e. wholesale operators, and that the changes will also be published on the Company website, can Gibtelecom take it that there will therefore be no requirement to publish the changes to the more general public through the local press? Gibtelecom would find it unusual to have to notify the wider audience given that changes will be at a wholesale, inter-operator level.

Accounting Separation

As the Authority is well aware from previous correspondence on the matter, including the Company's latest response to the Authority's public consultation 02/11 (our submission of 14 June 2011 refers) Gibtelecom continues to find the production and auditing of accounting separation reports (ASR) a burdensome and costly exercise. This fact is exponentially expounded with the current requirement to have to produce audited ASRs on a yearly basis, nine months after Gibtelecom's financial year end. In its public consultation on wholesale fixed voice origination and termination markets (public consultation 02/11) and again in this public consultation (03/11) the Authority itself appears to be struggling with the production (both in terms of time and cost) of a network costing model, using LRIC approaches, to supplement those produced by Gibtelecom. In both public consultations, when referring to building the Authority's costing model, the Authority states

"Moreover, in terms of resources, the building of such models would have to be staggered over a long period due to the inherent lengthy procedure of data collection.....The Authority does not currently have a BU-LRIC model of Gibtelecom's fixed network. In this regards there exists a possibility that

*such a model would not yet be completed by the timeframe of this market review.*¹⁹

The Authority gave indications that it was starting on the path to developing such a model by asking Gibtelecom a set of substantive questions around two years ago. To date, the industry has not been made aware of the results of this model.

The time and effort it takes to produce ASRs / costing models are challenges that Gibtelecom also faces, particularly when having to do so on a yearly basis.

One, if not the main, purpose behind producing ASRs, in Gibtelecom's view, is to calculate interconnection (termination) rates. The ASRs showed that these rates were being computed according to the cost orientation principles and obligations imposed on Gibtelecom. The Company acknowledges that during the first round of market reviews, Gibtelecom did not have cost information available, through an accounting separation report to demonstrate the calculation of mobile voice call termination rates. The Authority therefore calculated an implied mobile termination rate, using this to impose the existing glide path price control, running to 2011. However, Gibtelecom subsequently submitted separated wholesale mobile voice and other cost data in April 2010, which was followed in September 2010 by that year's submission of standalone regulatory separated accounts (including fixed wholesale services) as part of the Company's annual audited accounting separation report (ASR) submission requirements. Gibtelecom argued then, and continues to do so, that by now having the ability to identify a more accurate wholesale mobile termination rate, reflective of the service's true network costs, that the ASR-derived rates should be set as the mobile voice termination rate and should supplant the glide path price control.

Furthermore, the Authority now proposes to extend the existing glide path price control on Gibtelecom for the next three years, ending 2014. Gibtelecom does not find this acceptable. If a price control is to be implemented then Gibtelecom questions its SMP obligation to continue to produce complex accounting separation reports. What reliance would interested parties obtain from the ASR if at the end of the day the information contained therein is rendered redundant as a result of the Authority supplanting the cost-derived interconnection rates with benchmarked proxies? Gibtelecom refers the Authority to the Company's similar views on the conflict between having termination rates supplied through an obligation to produce an ASR and having them imposed through a benchmark price control contained in its response to public consultation 03/10 (Gibtelecom submission dated 26 May 2010) and more recently in the Company's response to the Authority's public consultation 02/11 (our submission of 14 June 2011 refers).

Price control and cost accounting

Gibtelecom objects to the Authority's proposal to have a price control on wholesale voice call termination rates imposed. These comments should be read in conjunction with those under the "Accounting Separation" section immediately above.

The Company already is obligated to provide substantive ASRs annually, and the Authority proposes to continue maintaining this obligations. This is in itself a laborious and costly exercise for a small company the size of Gibtelecom. This is a view shared by the Authority, when in reference to having to produce a costing model, says that

¹⁹Gibraltar Regulatory Authority Public Consultation 02/11 of 26 April 2011, page 54 and Public Consultation 03/11 of 11 May 2011, page 42

"In the local context, when compared with the costs faced by other NRA's in other European markets, the cost of building a LRIC model in Gibraltar is considerably higher given the small size of the local markets".²⁰

Gibtelecom could not agree more with this sentiment, which although referring to having to produce a model using LRIC methodologies (on which the Authority already has the Company's views), also applies to having to produce accounting separation reports of any kind. Furthermore, the Authority in this consultation appears to have kept in mind the small size of CTS and is therefore proposing not to impose the more onerous obligation of accounting separation on this operator. Surely the same should apply to Gibtelecom, which is a small enterprise, serving an A to Z of telecommunications products and services to a population of c30,000 by any standard. The Company's core mobile network personnel represent c3.8% of the total Gibtelecom staff, a number which the Company calculates is at a par (or maybe even below) with the resources allocated by CTS to mobile services.

As stated in our comments under the "Accounting Separation" section above, as the Authority is aware, the ASR is used to derive cost-orientated origination and termination rates. Having a price control applied in the way the Authority now proposes would therefore render ASRs, in the Company's mind, somewhat redundant. The Company should 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.

Gibtelecom also questions the Authority's proposal to extend the glide path price control in order to meet a "target" rate based on the extrapolation of expected EU-wide average mobile termination rate reductions over the next three years. It is the Company's opinion that, if anything, and without prejudice to Gibtelecom's views on the imposition of a price control, the "target" rate should be set at the current EU mobile termination rate average at the time of the consultation release and prevailing exchange rates, currently around 6.2 eurocents. This is the same mechanism being put forward by the Authority in its very recent review of the wholesale fixed origination and termination markets.

Gibtelecom also refers the Authority to the Company's comments under "Use of benchmarking data" sections in Q3.

Scope of market review

Gibtelecom also refers the Authority to the Company's views as expressed under the response to Q1 – "Scope of market review" section above.

Q6. Do you agree with the Authority's proposed SMP obligations to be imposed on CTS in the voice call termination market?

Please give reasons for your answer.

Gibtelecom agrees with the Authority's proposed SMP obligations to be imposed on CTS in the wholesale mobile voice call termination market.

Gibtelecom would nonetheless like to comment on the following.

²⁰ Gibraltar Regulatory Authority Public consultation 03/11 of 11 May 2011, page 41, and public consultation 2/11 of 26 April 2011, page 54

Inconsistencies in application of SMP obligations

The Authority proposes to impose obligations of non-discrimination; access; and price control, all of which are being brought over from the Authority's decision notice 09/09 of 3 December 2009. Gibtelecom questions why CTS, having been designated as having SMP in its own mobile network does not have a transparency remedy applied in the same way as does Gibtelecom, who also have the same SMP designation in the same market.

In the same way, Gibtelecom would also like to understand why CTS is not having an accounting separation obligation imposed. As previously highlighted to the Authority on a number of occasions, the Company still continues to find it difficult to reconcile the Authority's continual references to the invasiveness and burden that full ex-ante cost-orientation obligations, in the form of accounting separation requirements places on small firms in small markets, with the fact that Gibtelecom, by any measure, can also be considered to fall in this same size bracket. The EU Commission in its reply to the Authority of 19 October 2009 on the market review also acknowledged the undue burden full-blown cost-orientation principles can impose on small firms. In this consultation, the Authority notes that it has also kept in mind the small scale of the CTS operation in Gibraltar and has accordingly restrained itself in its choice of SMP obligations to be imposed on CTS. For instance, the Authority is quoted as saying that

"Nevertheless, when the Authority examines the detailed nature of these obligations it needs to be proportionate. Some obligations or some detail of the obligations imposed on Gibtelecom may be too burdensome to impose on CTS..."²¹

Gibtelecom is appreciative of this concern for the resources and capabilities of CTS. Yet, it must also draw the Authority's attention to the fact that Gibtelecom itself is by any normal standard a small enterprise with rather limited resources. As mentioned in our reply to Q5. the Company's core mobile network personnel represent c3.8% of the total Gibtelecom staff, a number which the Company calculates is at a par (or maybe even below) with the resources allocated by CTS to mobile services. When allowing for the size of regulatory resources, who would be most involved with the handling of imposed regulatory measures, the Gibtelecom figure (1.28%) is even lower than that which the Company estimates for CTS' equivalent. The Authority's concern for CTS needs also to expand to Gibtelecom before it decides to impose more burdensome SMP obligations on the Company which are disproportionate to the objective sought.

Gibtelecom would also like to understand why the non-discrimination obligation on the Company is different to that imposed on CTS. According to the proposed non-discrimination SMP remedy text for Gibtelecom, the obligations are

- 1) Gibtelecom shall not unduly discriminate in matters related to mobile voice call termination services.
- 2) Gibtelecom shall apply equivalent conditions in equivalent circumstances to other persons providing equivalent services.
- 3) Gibtelecom shall provide services and information to others under the same conditions and of the same quality as provided to itself or subsidiaries and partners.
- 4) Gibtelecom shall not discriminate in tariffs between calls arriving from other national authorised fixed or mobile networks.

²¹ Gibraltar Regulatory Authority Public consultation 03/11 of 11 May 2011, page 3

In contrast, the non-discrimination obligation on CTS is as follows

- 1) CTS shall not unduly discriminate between customers.
- 2) CTS shall apply equivalent conditions in equivalent circumstances to other authorised operators providing equivalent services.
- 3) CTS shall provide services and information to other authorised operators under the same conditions and of the same quality as it provides for its own services.

The Authority will note that there are some subtle text changes under obligations 1) and 3), as well as the complete omission of obligation 4). Can the Authority explain the reasons for such differences, which the Authority states are being continued from the previous market reviews?

Q7. Do you agree with the Authority's proposed SMP obligations to be imposed on Gibtelecom in the SMS termination market?

Please give reasons for your answer.

Gibtelecom has comments on the following SMP obligations proposed to be imposed by the Authority.

Transparency

Gibtelecom does not accept the proposed transparency obligations as they stand. The Authority states that the existing transparency obligations, with some minor alterations, are being maintained. However, Gibtelecom finds that the proposed text for the transparency obligations put forward in this public consultation are completely different to those currently in force.

For the Authority's ease of reference, below are the existing SMP transparency obligations imposed on Gibtelecom

1. Gibtelecom shall publish information concerning:
 - a. The terms and conditions for SMS termination services, including prices;
 - b. The accounting system in relation to SMS termination services.
2. Gibtelecom shall notify the Authority at least 45 days in advance of changes to terms and conditions, including price increases.
3. Gibtelecom shall notify the Authority at least 30 days in advance of reductions in price.
4. Gibtelecom shall publish changes to terms and conditions at least 30 days in advance of implementation.
5. Gibtelecom shall provide at least 30 days notice to publish an increase in tariffs.
6. Gibtelecom shall provide at least 14 days notice to publish a decrease in tariffs.
7. Publication shall include a prominent notice on the company's website.
8. The above shall form part of the reference interconnection offer.

In turn, the proposed text reads as follows

- 1) Gibtelecom shall make available call termination services and make public the terms and conditions in a Reference Interconnection Offer (RIO).
- 2) The terms and conditions applicable to call termination services may be subject to amendment and/or direction by the Authority.

- 3) Gibtelecom shall notify the Authority at least 60 days in advance of changes to terms and conditions (including price increases).
- 4) Gibtelecom shall notify the Authority at least 30 days in advance for price reductions.
- 5) Gibtelecom shall publish changes to terms and conditions (including price increases) at least 30 days in advance of implementation. **Publication shall include direct notification to all other operators in the market.**
- 6) Gibtelecom shall publish a decrease in tariffs at least 14 days in advance of implementation. **Publication shall include direct notification to all other operators in the market.**
- 7) Publication shall include a prominent notice for at least **two weeks** on the company's website. **The Authority shall be notified when the prominent notice is posted.**

It is obvious that the proposed transparency obligations above are not the same as the existing ones. This is especially true of the notification period under obligation 3. which now has a 60 day notification period to the Authority of changes to terms and conditions including price increases, versus obligation 2. of the existing obligations which has a 45 day notification period. At the time of the previous round of market analyses, Gibtelecom argued for a reduction in the notification period from 60 to 45 days. This was accepted by the Authority and was reflected in the ensuing Decision Notice (Decision Notice 03/08). The Company does not therefore see why the Authority now appears to be increasing this back to 60 days. There also appears to be an error under obligations 1) and 2) of the proposed measures. These state that "*Gibtelecom shall make available call termination services and make public the terms and conditions in a Reference Interconnection Offer*" and "*The terms and conditions applicable to call termination services may be subject to amendment and/or direction by the Authority.*" respectively. Gibtelecom assumes that these particular obligations should refer to "SMS termination services" in both cases, and that the references to "*call termination services*" are incorrect.

Gibtelecom therefore requests a review of the proposed transparency requirements to bring them more in line with those agreed to by the Authority during the previous round of wholesale mobile market analyses

Notwithstanding, Gibtelecom would also like to query the publication requirements for changes to terms and conditions as well as for price changes. The proposed SMP obligations state that publication "*shall include direction notification to all other operators in the market*" and that "*publication shall include a prominent notice for at least two weeks on the company's website*". Given that the proposed obligations will require changes to be made **directly** to the parties that will be most affected by them, i.e. wholesale operators, and that the changes will also be published on the Company website, can Gibtelecom take it that there will therefore be no requirement to publish the changes to the more general public through the local press? Gibtelecom would find it unusual to have to notify the wider audience given that changes will be at a wholesale, inter-operator level.

Non-discrimination

As for the SMS transparency requirements, Gibtelecom finds the proposed non-discrimination SMP requirements to be materially different to those already in existence. For ease of reference the current non-disclosure obligations are as follows

1. Gibtelecom shall not unduly discriminate in matters related to SMS termination services.

2. Gibtelecom shall apply equivalent conditions in equivalent circumstances to other persons providing equivalent services.
3. Gibtelecom shall provide services and information to others under the same conditions and of the same quality as provided to itself or subsidiaries and partners.

The proposed obligations are now (numberings shown are as stated in public consultation)

- 5) Gibtelecom shall not unduly discriminate in matters related to mobile voice call termination services.
- 6) Gibtelecom shall apply equivalent conditions in equivalent circumstances to other persons providing equivalent services.
- 7) Gibtelecom shall provide services and information to others under the same conditions and of the same quality as provided to itself or subsidiaries and partners.
- 8) Gibtelecom shall not discriminate in tariffs between calls arriving from other national authorised fixed or mobile networks.

The Authority will see that obligation 8) does not form part of the existing obligations.

Scope of market review

Gibtelecom also refers the Authority to the Company's views as expressed under the response to Q1 – "Scope of market review" section above.

Q8. Do you agree with the Authority's proposed SMP obligations to be imposed on CTS in the SMS termination market?

Please give reasons for your answer.

Gibtelecom agrees with the Authority's proposed SMP obligations to be imposed on CTS in the wholesale call termination market.

Gibtelecom would nonetheless like to comment on the following.

Differences in SMP obligations

Gibtelecom would like to understand why the non-discrimination obligation on the Company is different to that imposed on CTS. According to the proposed non-discrimination SMP remedy text for Gibtelecom, the obligations are

- 1) Gibtelecom shall not unduly discriminate in matters related to mobile voice call termination services.
- 2) Gibtelecom shall apply equivalent conditions in equivalent circumstances to other persons providing equivalent services.
- 3) Gibtelecom shall provide services and information to others under the same conditions and of the same quality as provided to itself or subsidiaries and partners.
- 4) Gibtelecom shall not discriminate in tariffs between calls arriving from other national authorised fixed or mobile networks.

In contrast, the non-discrimination obligation on CTS, which are the same ones as currently imposed on Gibtelecom, is as follows

- 1) CTS shall not unduly discriminate between customers.
- 2) CTS shall apply equivalent conditions in equivalent circumstances to other authorised operators providing equivalent services.
- 3) CTS shall provide services and information to other authorised operators under the same conditions and of the same quality as it provides for its own services.

The Authority will note that there are some subtle text changes under obligations 1) and 3), as well as the complete omission of obligation 4). Can the Authority explain the reasons for such differences?

Gibtelecom would also like to question why CTS, having been designated as having SMP in its own mobile network does not have a transparency remedy applied in the same way as does Gibtelecom, who also have the same SMP designation in the same market.

Closing Remarks

Gibtelecom broadly accepts the SMP assessments in the wholesale voice call and SMS termination markets, nevertheless Gibtelecom asks the Authority to reconsider their assessment of the impact of foreign mobile operators on the local retail and wholesale mobile markets. It is Gibtelecom's opinion that the effects are enough to warrant a re-evaluation of the competition market in Gibraltar and ensuing SMP designations (and ultimately SMP obligations). Gibtelecom also objects to the proposed imposition of a price control, particularly as Gibtelecom is already subjected to having to provide substantive cost-based data through yearly audited ASRs.

Whilst agreeing that CTS should continue being designated as having SMP in its own individual mobile network for voice call termination and now SMS termination, Gibtelecom is of the opinion that similar obligations as those on the Company should be applied. If the Authority's reasoning for not doing so is that this would be placing an undue and disproportionate burden on a small company then Gibtelecom asks the Authority to reflect on the fact that that Gibtelecom is by any measure also a small enterprise yet has the onerous and taxing obligation to produce annual audited ASRs.