

24 February 2014

Gibraltar Regulatory Authority  
**Attn: Mr Stewart Brittenden**  
Head of Communications and Broadcasting  
Suite 603  
Europort  
Gibraltar

Dear Stewart,

**Market Analysis – Retail Fixed Markets**

Enclosed please find Gibtelecom's response to the GRA's public consultation on access to the public telephone network at a fixed location for residential and non-residential customers; publicly available local telephone services provided at a fixed location for residential and non-residential customers; and publicly available international telephone services provided at a fixed location for residential and non-residential customers (Public Consultation 01/14).

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

Yours sincerely,



Rachel Holgado  
Regulatory Officer  
Enc.



Gibtelecom response to the Authority's  
consultation on retail fixed markets

Public consultation 01/14

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February 2014

**Gibtelecom submission to Gibraltar Regulatory Authority public consultation dated 22 January 2014 on access to the public telephone network at a fixed location for residential and non-residential customers; publicly available local telephone services provided at a fixed location for residential and non-residential customers; and publicly available international telephone services provided at a fixed location for residential and non-residential customers**

Introduction and general comments

1. Gibtelecom is presenting its comments in response to the Authority's public consultation 01/14 published on 22 January 2014 on retail fixed markets.
2. The Company notes that the consultation closely mirrors the prior retail fixed market review process and decisions carried out in 2007. The Authority proposes to maintain the existing significant market power (SMP) designations and obligations on Gibtelecom, with the exception of the re-introduction of an annual accounting separation report (ASR) requirement. The Authority is also proposing to introduce new cost-accounting and price control obligations.
3. Gibtelecom also notes that the markets being reviewed by the Authority are not included in the latest EU recommendations on relevant markets to be considered for ex-ante regulation<sup>1</sup>. The Authority justifies this on the specific market circumstances in Gibraltar.
4. The Authority states that Sapphire Networks is not currently providing public fixed line services and that this is the reason why this alternative fixed line operator is not being considered in this market analysis. However, in taking a prospective view of the state of the market (ie the lifetime of this review), the Authority does not appear to be considering another licensed operator that may provide services within the remit of fixed retail services – Sheriff Electrical Limited (Gibfibrespeed). Although the Authority's register of authorisations does not record Gibfibrespeed as a provider of fixed telephony services, this may change in the short to medium term.
5. Gibtelecom is agreeable to most of the Authority's proposals. However, the Company seeks clarification or requests changes to some aspects of the proposed SMP obligations.
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

***Q1. Do you agree with the proposed definitions of markets susceptible to ex-ante regulation?***

Gibtelecom accepts the Authority's proposed definitions of retail fixed markets susceptible to ex-ante regulation. These are largely in line with those put forward during the first round of market reviews starting in 2007. The Company notes that the Authority is analysing markets included in the "old" EU recommendations (a "new" set of EU recommendations on relevant markets concentrating on wholesale markets were introduced in 2003 (see footnote 1), with further recommendations in the pipeline) on the grounds of Gibraltar's distinctive market circumstances.

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<sup>1</sup> EU Commission Recommendation of 17 December 2007 on relevant products and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services.

**Q2. Do you agree with the market analysis and proposed SMP designation of the retail fixed access market?**

Gibtelecom accepts the positions outlined by the GRA in its market analysis and proposed SMP designation for the retail fixed access market. With regards taking a 'longer term' view, Gibtelecom believes consideration should be given to changing market circumstances in the light of possible entrants to the market (eg Sapphire Networks; Gibfibrespeed) within the lifetime of this review.

**Q3. Do you agree with the market analysis and proposed SMP designation of the retail fixed local calls market?**

Gibtelecom agrees with the Authority's proposed market analysis and SMP designation in the retail fixed local calls market. See the Company's comments under question 2 above on taking a prospective view of the market.

**Q4. Do you agree with the market analysis and proposed SMP designation of the fixed international calls market?**

The Company accepts the Authority's proposal on the designation of SMP on the fixed international calls market. See the Company's comments under question 2 above on taking a prospective view of the market.

**Q5. Do you agree with the proposed SMP obligations in the retail fixed access market.**

Gibtelecom broadly accepts the SMP obligations being proposed by the Authority in the retail fixed access market. The Company, however, seeks clarification or has some reservations on aspects of the obligations. These are explained below.

Retail fixed access

**Transparency**

The Authority proposes to maintain the 60 day notification requirement of changes to terms and conditions and price increases. Gibtelecom continues to believe that these are very long lead times in the context of today's fast-paced business world and industry. The Company has previously argued for having shorter notification times, and this was in part accepted by the GRA in its Decision Notice 03/08 when the notification period to the GRA for wholesale price increases and changes to terms and conditions was shortened to 45 days from the proposed 60 days. Gibtelecom therefore requests this advance notification period be reduced in the same manner – ie from 60 to 45 days. Gibtelecom also requests, for the same reasons stated at the beginning of this paragraph, that the notification period for the introduction of prices for new services be reduced to 14 days from the proposed 30. This will allow the Company to launch new products and services sooner to the benefit of the market and customers in general.

With regards the other notification periods (30 days to the Authority for a price reduction; 30 days for wider publication of price increases and changes to terms and conditions; and 14 days for wider publication of price decreases), as well as publication media, Gibtelecom finds these acceptable.

## **Accounting separation and Cost Accounting**

Gibtelecom objects to the re-introduction of the requirement to submit annual externally audited accounting separation reports. The Company has on numerous occasions (eg Gibtelecom letters of 22 July 2009; 5 November 2009; 29 October 2010; 14 June 2011 and other correspondence) recorded with the GRA its views regarding the invasive, costly and onerous nature of having to produce such reports, on an annual basis. These views were accepted by the Authority when, in its Document 01/11 (reissued), it reviewed its requirement to be submitted with annual ASRs to once every three years. This is not the only time the Authority has agreed with Gibtelecom's views in this regard. In its Response to the Consultation and Notification to European Commission on wholesale fixed call origination and termination markets, dated 18 August 2011, the Authority states that it will be applying *"...a less onerous obligation of accounting separation on Gibtelecom."* and that *"The Authority accepts Gibtelecom's statement regarding the development of its annual separated accounts and the lengthy process involved in collating, analysing and presenting the data. The Authority therefore proposes to reduce the regulatory burden on Gibtelecom by removing the requirement to submit annual ASRs"*.

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

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

Gibtelecom therefore requests the Authority reconsider its proposal to re-impose an annual externally audited ASR requirement. Perhaps the Authority could at least consider extending the already tight submission deadline requirement of nine months after the year end? As Gibtelecom has explained previously, this timeline is shorter than the requirement to file the Company's statutory financial statements! An ASR submission deadline of twelve to eighteen months would seem more reasonable in the context of reducing the burden imposed on a small to medium sized entity such as Gibtelecom.

Gibtelecom also notes that the Authority explicitly proposes that Gibtelecom maintain cost accounting systems which produce appropriate information to demonstrate compliance with cost orientation. This requirement has only previously been imposed on wholesale markets, essentially to determine and verify termination and origination rates, as well as other products falling under the wholesale market regime. As far as this further imposition of cost orientation on the retail fixed markets is concerned, can the Authority please provide some clarity on this? Can the Company assume that this will form part of any requirement to have separated accounts, and not as a separate exercise? Furthermore, any such cost-orientation obligation could only be met if Gibtelecom were permitted to adjust its retail prices accordingly and in a timely manner. See Price Control section below.

## **Price Control**

Gibtelecom's concerns under this obligation are down to the level and quanta of information that the Authority would require, as this is not made clear at the outset. The Company is wary that in

providing “sufficient” cost data and analyses, this could amount to producing “mini-ASRs” or substantial costing information each time there is a price change. Gibtelecom believes that due to its small size and limited resources, there is a need to minimise regulatory compliance costs and processes wherever possible. Introducing additional proposals should be done in a way that does not unreasonably interfere with the correct and efficient running of the business. With this in mind, can the Authority provide more information on the exact information it is looking at being provided, and in what format?

As in our response under the Accounting Separation and Cost accounting section above, Gibtelecom would like some clarity on the Authority’s explicit proposal to “continue to ensure that its prices are cost orientated”. In addition, it is imperative that Gibtelecom be allowed to adjust its prices accordingly and in a timely fashion, should the need arise.

***6. Do you agree with the proposed SMP obligations in the retail fixed local calls markets?***

Retail fixed local calls

Gibtelecom’s comments under this question are the same as under question 5 above

**Transparency**

Please see Gibtelecom’s response under the “Transparency” section of question 5

**Accounting separation and Cost Accounting**

Please see Gibtelecom’s response under the “Accounting separation and Cost Accounting” section of question 5

**Price Control**

Please see Gibtelecom’s response under the “Price Control” section of question 5

***7. Do you agree with the proposed SMP obligations in the retails fixed international calls market?***

Retail fixed local calls

Gibtelecom’s comments under this question are the same as under question 5 above

**Transparency**

Please see Gibtelecom’s response under the “Transparency” section of question 5

**Accounting separation and Cost Accounting**

Please see Gibtelecom’s response under the “Accounting separation and Cost Accounting” section of question 5

**Price Control**

Please see Gibtelecom’s response under the “Price Control” section of question 5

### Closing remarks

1. The Authority will note that Gibtelecom is generally in agreement with their proposals.
2. Notwithstanding, the Company raises some comments on the scope of the review, in particular to take into account possible new entrants during its life. Gibtelecom also questions the requirement to re-introduce annual submissions of a substantial and externally audited accounting separation report, particularly given prior discussions and decisions on the matter.
3. With regards cost-accounting and price controls, Gibtelecom questions the level of information that would need to be provided and that this does not constitute an additional undue burden on the Company's limited resources.

**END OF SUBMISSION**