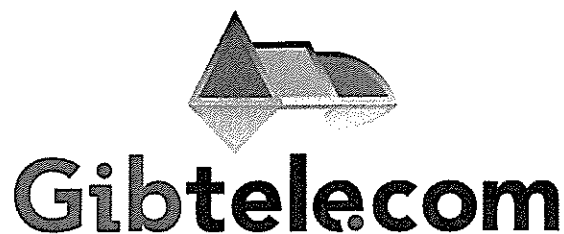


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22 July 2009

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

Dear Stewart,

Public Consultation 05/09 – Market Review - Wholesale Termination Markets

Enclosed please find Gibtelecom's response to the GRA's Public Consultation 05/09 – Market Review - Wholesale Termination Markets.

Yours sincerely,

Giovanca Pitto
Corporate Affairs

Enc



Gibtelecom Limited.

Registered address: Suite 942, Europort, Gibraltar. Company number: 37905 – Directors: The Hon J. Holliday, T.J. Bristow, D.D. Tirathdas, B. Dremelj, F.Ogris-Martić, K.Godnić

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**Gibtelecom Response to GRA Public Consultation
on Wholesale Mobile Termination Markets for
Alternative Network Operator (CTS)**

Gibtelecom presents its comments in response to the public consultation published by the Gibraltar Regulatory Authority (GRA) on 24 June 2009 (Public Consultation 05/09) on its proposed designation of CTS (Gibraltar) Ltd (CTS) as an SMP operator in the fixed call termination market and the mobile voice termination market.

This latest market review was foreshadowed, at least concerning mobile, in the earlier 2008 one concerning the broader wholesale mobile markets. This resulted in an SMP Decision Notice in August 2008 which designated Gibtelecom as an SMP operator and imposed SMP obligations upon the Company for the wholesale mobile voice termination market.

Preliminary remarks

This market review marks the first time the GRA is proposing to apply SMP obligations to an operator other than Gibtelecom. The GRA states that its avowed purpose in this market review is *“to ensure that any market power that may be identified at the wholesale level is appropriately controlled, and that all authorised operators are treated on a fair and proportionate basis by the Authority.”* That is Gibtelecom’s hope as well.

In this consultation, the GRA notes that it has 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. Specifically, the GRA states (at p.15):

“The Authority has considered regulatory options in light of its overall objectives, and in the context of the problems identified in the relevant wholesale markets. The application of SMP obligations on relatively small authorised operators in Gibraltar shall therefore take due account of the limited resources available to such operators to engage in detailed regulatory compliance arrangements.”

Gibtelecom is appreciative of this concern for the resources and capabilities of a new entrant. Yet, it must also draw the GRA’s attention to the fact that Gibtelecom itself is by any normal standard a small enterprise with rather limited resources. For example Gibtelecom only employs c130 employees, covering the complete range of fixed, mobile, internet, international and various other telecommunication services for a community of less than 30,000 people. The GRA’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. The GRA has characterised its approach to Gibtelecom as *the application of more onerous SMP obligations on Gibtelecom in the related relevant markets* which in the GRA’s views makes the need for detailed intervention vis-à-vis CTS unnecessary. Gibtelecom would remind the GRA that these obligations have proved in fact to be considerably onerous for the Company and are placing an unfair burden on Gibtelecom.

The GRA also gives a general notice (at p. iii) that it expects a similar set of SMP obligations to be imposed on any other new entrants to the fixed or mobile termination markets. In such case, Gibtelecom needs to express its expectations. With the addition of even one other new entrant, Gibtelecom expects the GRA to lighten its own existing set of SMP obligations placed on Gibtelecom in light of the establishment of effective competition in the market. This competition not only includes CTS, but according to the GRA web site a further locally authorized mobile operator, together with four Spanish mobile operators and two Moroccan whose signal penetrates most of Gibraltar.

Specific GRA Questions

Q1: Do you agree with the Authority's definition of relevant product markets? If No, please give reasons for your answer.

Gibtelecom agrees with the product definition of the relevant markets for the fixed call termination and mobile voice call termination for an individual operator's market.

Q2: Do you agree with the Authority that countervailing buyer power does not and would not militate against market power in wholesale termination markets in Gibraltar? If No, please give reasons for your answer.

Gibtelecom agrees that countervailing buyer power from it or any other operator does not and would not militate against CTS's market power in the wholesale fixed call and mobile voice termination markets.

Q3: Do you agree with the Authority's designation of SMP in the relevant markets? If No, please give reasons for your answer.

Gibtelecom agrees with the GRA's designation of CTS as an SMP operator in the two relevant termination markets.

Q4: Do you agree with the Authority's proposed SMP obligation of non-discrimination on CTS in the relevant market? If No, please give reasons for your answer. .

Gibtelecom agrees with the proposed non-discrimination SMP obligations for CTS. That is, CTS shall apply equivalent conditions in equivalent circumstances to other persons providing equivalent services. Further, CTS shall provide services and information to others under the same conditions and of the same quality as provided to itself or subsidiaries and partners.

Q5: Do you agree with the Authority's proposed SMP obligation of fair and reasonable with regard to the setting of wholesale termination tariffs in the relevant market? If No, please give reasons for your answer.

Gibtelecom has no objection to the application of a fair and reasonable standard to CTS's prices for termination services in the fixed call termination market. It notes that the GRA characterizes the price control regime for Gibtelecom, based on enforcing a cost-orientation standard and a need to demonstrate compliance via a LRIC cost accounting system, as "*more invasive*" and "*disproportionate*" for a small operator. What is true for a small operator such as CTS is, frankly, also true for Gibtelecom which is also a small company by any EU or other measure. The requirement for Gibtelecom to demonstrate compliance with the cost-orientation standard is very invasive, a heavy regulatory burden, and, in Gibtelecom's opinion, disproportionate.

Q6: Do you agree with the Authority's proposed interpretation of the 'fair and reasonable' obligation as a requirement for CTS to adhere to the principle of reciprocity? If No, please give reasons for your answer.

The GRA is proposing that CTS use the regulated "national" termination rates set by it for Gibtelecom (principle of reciprocity) as a proxy for the practical implementation of the fair and reasonable standard. As a proxy, the Gibtelecom termination charges do not fix CTS's charges for "national" traffic at the same level. Rather, this is a recommended default rate from which CTS can vary (meaning increase) based on some sort of showing. It is not clear how CTS would establish its case for higher charges as it is not subject to a cost orientation regime. The GRA gingerly explains that it "*will consider any dispute on its relative merits and seek to resolve such disputes to ensure the application of charges that are competitively neutral.*"

Gibtelecom accepts the principle of reciprocal charging for fixed and mobile "national" call termination with CTS, provided this is done fairly and with transparency. It does not accept that charges should be higher for CTS without the GRA defining in a concrete way the means for CTS to prove its claim.

Q7: Do you agree with the Authority's proposed SMP obligation of non-discrimination on CTS in the relevant market? If No, please give reasons for your answer.

As Gibtelecom has expressed its agreement to the proposed non-discrimination obligation for the fixed call termination market in its response to Question 4 above, so too does it state its agreement to the application of the same non-discrimination obligation for the wholesale mobile voice call termination market.

Q8: Do you agree with the Authority's proposed interpretation of the 'fair and reasonable' obligation as a requirement for CTS to adhere to the principle of reciprocity? If No, please give reasons for your answer.

Similar to its response to Question 5, Gibtelecom has no objection to the application of a fair and reasonable standard to CTS's prices for termination services in the wholesale mobile voice termination markets. And similar to the response to Question 5, Gibtelecom notes that the GRA does not support imposing on CTS a cost-orientation standard and a consequent need to submit compliance statements supported by detailed cost models. It calls such an obligation "*disproportionate and would likely lead to additional operating costs.*"

To repeat what was said beforehand, what is true for a small operator such as CTS is, frankly, also true for Gibtelecom which is also a small company by any measure. The requirement for Gibtelecom to demonstrate compliance with the cost-orientation standard is very invasive, a heavy regulatory burden, and, in Gibtelecom's opinion, disproportionate.

Q9: Do you agree with the Authority's proposed interpretation of the "fair and reasonable" obligation applying to CTS in 2009? If No, please give reasons for your answer.

The GRA, while proposing reciprocity in mobile termination rates based on those set for Gibtelecom, states that it is open to permitting CTS "*to set a mobile voice call termination rate for 2009 that may deviate from strict adherence to reciprocity. A fair and reasonable termination rate at the beginning of the market rollout may necessitate a charge above that set by Gibtelecom, reflecting substantial differences in abilities to exploit scale economies and market experience economies (learning by doing).*"

Again, Gibtelecom insists that the GRA set out more concrete requirements for verifying in advance any CTS need for mobile voice call termination rates set above those applied by Gibtelecom.

Q10: Do you agree with the scope of this review? If No, please give reasons for your answer. .

Given the growth of the SMS market, Gibtelecom questions whether this should now be included in any reviews of mobile termination markets.

Gibtelecom notes that this review is not extending to CTS receiving international incoming voice traffic, which is then transited to the Gibtelecom network and its customers despite this being outside the terms of Gibtelecom's RIO and no commercial agreement being in place. This has been the subject of separate Gibtelecom submissions, covering pricing and quality issues, and the Company (in line with GRA thinking) is seeking to seek to resolve matters directly with CTS.