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11 June 2007

Gibraltar Regulatory Authority
Attn. Mr Stewart Brittenden
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GIBRALTAR REGULATORY AUTHORITY
RECEIVED
DATE: 11/6/07
BY: 15:30.

Dear Stewart,

Market Analysis –Wholesale Mobile Markets

Further to the previous comments on the Retail Fixed and Wholesale Fixed Market Analyses, enclosed please find Gibtelecom's response to the GRA's Market Analysis public consultation on the Wholesale Mobile Markets (Public Consultation 03/07).

Yours sincerely,

Dwayne Lara
Regulatory Executive
Corporate Affairs Unit

Enc

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

Gibtelecom response to Public Consultation 03/07

Wholesale Mobile Markets

11 June 2007

Gibtelecom Limited
Suite 942
Europort
Gibraltar

Gibtelecom Response to GRA Market Review for Wholesale Mobile Markets

In response to the public consultation on its market analysis of the wholesale mobile markets published by the Gibraltar Regulatory Authority (GRA) on 10 April 2007 (Public Consultation 03/07), Gibtelecom is pleased to present its comments.

I. Market Definitions

Gibtelecom accepts the positions outlined by the GRA on the scope of the market definitions for the three wholesale mobile markets subject to the comments indicated below in response the GRA's specific questions on market definition.

Q1: Do you agree that fixed and mobile services are in separate markets?

Yes.

Q2: Do you agree with the Authority's conclusion on the cluster of services at the retail level?

Yes.

Q3: Do you agree with the Authority's identification of the wholesale access and call origination market?

Gibtelecom does not accept as complete the positions outlined by the GRA for the market definition of the wholesale mobile access and call origination market.

Advance mobile data services should be included in market definition.

The GRA proposes to exclude advanced mobile data services from the retail mobile access and origination market, the market used to derive data for the wholesale access and origination market. It takes the position that it is too early to say whether services such as non-GSM radio data communications services will be competitors for GPRS-based data services. Gibtelecom asserts the contrary. Gibtelecom itself is planning to introduce 3G with High Speed Downlink Packet Access (HSDPA) facilities within the two-year review timeframe. In addition, Spanish operators' 3G signals penetrate Gibraltar frequency space and the service is believed to be widely made use of locally. Advance data services should therefore be included in the scope of the market definition.

WLAN should be included in market definition.

The GRA proposes to exclude WLAN (WiFi Hotspots) from the mobile retail access/origination market definition. Contrary to the GRA's claim, it is not improbable that WLANs will be established in Gibraltar during the timeframe of this market review. This is true, first, because Gibraltar is a geographically small and densely populated place. Second, WiFi Hotspots already exist in Gibraltar. They are run by third parties and offer coverage in the two marinas and restaurants and the surrounding residential and business premises. Gibtelecom holds that the market definition should be expanded to include WLAN (WiFi Hotspots).

Q4: Do you agree with Authority's view that the geographic scope of the market is limited to the territory of Gibraltar?

Yes, but one needs to remember that Gibraltar frequency space, due to its small size of 6.5km^2 and the close proximity of two neighbouring territories, is inundated by mobile signals from five mobile operators licensed outside Gibraltar. These signals penetrate Gibraltar's airspace 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.

Furthermore, one needs to realize that a geographic market definition confined to the territory of Gibraltar represents a change in GRA policy. Under the TO 2000 framework, the GRA did consider the market power of Spanish licenced mobile operators and concluded that Gibtel, as Gibtelecom's mobile operator was then known, did not occupy a SMP position and hence Gibtel would not be subject to SMP obligations. True, this was also based on the 350 dispute and the consequent lack of Gibtel roaming agreements with Spanish operators. But while, on account of the Trilateral Agreements, the 350 issue has been resolved and Gibtelecom has one working roaming agreement with a Spanish mobile operator and is in the process of arranging others, the Spanish operators retain a strong market presence tied to the strength of their mobile signals. This is evidenced by the lack of Spanish roamers within the Gibtelecom network (61 Telefonica Moviles users registered on Gibtelecom network as foreign roamers on average per month since 10 February 2007).

Q5: Do you agree with the Authority's view that there is a relevant product market for voice call termination on the individual network of each mobile network operator?

Yes.

Q6: Do you agree that there is a relevant wholesale market for SMS termination on the individual network of each mobile network operator in Gibraltar?

Yes, but Gibtelecom advocates that its SMS termination rate should be benchmarked against EU countries, and not against administrations which, in Gibtelecom's opinion, do not bear sufficient resemblance to objectively compare against. When evaluated against EU SMS termination rates, Gibtelecom compares favourably.

II. Market analysis and SMP designation

Q7: Do you agree with the analysis undertaken by the Authority and with the conclusion reached on SMP in the access and call origination market?

Gibtelecom accepts the positions outlined by the GRA in its market analysis and proposed SMP designation for the wholesale access and call origination market subject to the following comments.

Gibtelecom's market share is lower than 88%.

The Market Analysis report on the Wholesale Mobile Access and Call Origination Market states in paragraph 3.3 (p. 30) that the GRA estimates that Gibtelecom commands an 88% market share based on revenue. Gibtelecom refutes this assumption and estimates that the Gibtelecom market share based on revenue should be 71% for the reasons set out below.

1. Paragraph 3.2 states "*Mobile teledensity in Gibraltar is very difficult to assess accurately due to the extensive ownership of Spanish registered mobile phones.*" The GRA then proceeds to ignore this fact and does not factor in these mobiles in its assessment of the total market.

   Within paragraph 3.2 the report identifies that Gibraltar's teledensity is 20% below the EU average (73% as opposed to 92.8%). It is therefore not unreasonable to assume that the ownership of Spanish registered mobile phone by Gibraltar residents is 20%. Therefore:

73% generate	£5.9m
1% generates	£80,822
20% generates	£1.62m

2. The total revenue generated by mobile phone users within Gibraltar should therefore be taken as:

Frontier workers in Gibraltar	£0.79m
Gibtelecom	£5.90m
Spanish registered	£1.62m
Total market by revenue	**£8.31m**

   The market share commanded by Gibtelecom is therefore 71% (£5.90/£8.312)

This does not take account of any potential revenue from several million visitors to Gibraltar a year who may continue to stay connected to a Spanish operator whilst in Gibraltar.

As previously mentioned in the response to Question 4, the market analysis does not reflect the full force of the signals from five mobile operators located outside Gibraltar which penetrate most of Gibraltar's airspace. Their signals, particularly those from the Spanish mobile operators, are strong enough to prevent a normal roaming switchover to the Gibtelecom mobile network. For example, since the roaming agreement was agreed with Telefonica Moviles, very few Telefonica mobile customers have actually roamed on the Gibtelecom network (no more than 61 Telefonica subscribers on average per month). But the effects go beyond the needs of normal roaming. They allow Gibraltar residents and Spanish frontier workers to maintain Spanish mobile accounts and use them from Gibraltar.

Factual correction – Annual revenues compared.

To support its contention that Gibtelecom's return on capital employed (ROCE) has been excessive, the GRA estimates Gibtelecom's 2005 mobile ROCE based on a comparison (at p33) of 2003 mobile revenues (£3.77m) and 2005 mobile revenues (£5.95m). It knows the 2003 ROCE figure and qualified it as "*well in excess of the cost of capital for the business.*" Finding a 75% rise in revenues between 2003 and 2005, it implies that ROCE in the same period increased by a similar amount, particularly as the GRA belittles the amount of investment in the mobile business (the GRA "*does not believe that the assets employed by the mobile business have increased by nearly as much and therefore the return on capital employed is highly likely to have increased since 2003.*") The GRA has drawn a misleading conclusion based on incorrect data and a failure to consider what Gibtelecom has actually invested. First, the 2005 revenue figure should be compared with a 2003 revenue figure of £4.2m. The revenue rise is, hence, 59%, not 75%. More important than the revenue rise is the rise in network investment over the same period. Gibtelecom has invested close to £2.7m to upgrade the Gibwireless GSM network to GPRS, and is planning future investments of £2.3m into 3G and HSDPA facilities. Higher revenues do not translate to higher ROCE when you are investing heavily to upgrade the network to meet evolving technical expectations.

Influence of Spanish MNOs on Gibraltar mobile access and origination market.

In line with our replies to Question 4 noting the lack of consideration of the full force of Spanish mobile operators in Gibraltar, Gibtelecom asserts that the very evidence cited by the GRA demonstrates clear, palpable competitive constraints on Gibtelecom's market power. Furthermore, the Spanish retail prices are regulated by the Spanish NRA following its own SMP market analysis procedure. Those prices are subject to a "reasonable pricing" requirement and Gibtelecom's prices are, on balance, lower than the Spanish retail prices.

While the GRA concludes that the relevant geographic market does not extend to Spain, it cites in various ways the distinct influence that the activities of Spanish mobile operators have on the competitive conditions in the Gibraltar market. The GRA's' recitation of this influence includes: (1) the regular use of Spanish mobiles by a distinct sub-set of visitors (5,000 Spanish frontier workers who crossover into Gibraltar each working day); (2) Spanish mobile operators offer subsidized handsets, while Gibtelecom does not, and therefore attract Gibraltar customers; (3) the Spanish mobile operators use the 900MHz band, meaning it is unlikely that a new Gibraltar-based entrant would use the same frequency; (4) the misleading nature of Gibraltar's mobile teledensity figure since it fails to account for residents and day workers which use a Spanish handset; (5) the inclusion of 3G service in the market definition, even though they are not yet offered in Gibraltar, based on the fact that Spanish mobile operators offer 3G services; and (6) Spanish MNO retail prices "may" act as a ceiling on Gibtelecom's retail prices although the GRA discounts the actual effect, saying that Spanish retail prices are too high as shown by the high ROCE figures contained in the Spanish NRA's SMP decision for the mobile access and origination market.

Q8: Do you agree with the analysis and SMP designation with regard to the voice call termination market?

The positions outlined by the GRA in its market analysis and proposed SMP designation for the wholesale voice call termination market are accepted subject to the following comments.

Disputes method for calculating mobile termination charges and comparison to EU-wide figures.

The GRA's method for calculating the mobile termination charges on the Gibtelecom network (subtracting half of the Peak fixed domestic call charge from the fixed to mobile charge) produces an average mobile call termination charge figure of 21.3 eurocents. Gibtelecom asserts this method is not entirely accurate and consequently overstates the mobile call termination charge level. A more representative method would be to deduct the established wholesale fixed interconnection charge, which is stated in Gibtelecom's Reference Interconnect Offer. These are 1.8p/min Standard and 1.3p/min cheap, resulting in a mobile call termination charge of 15.2p/min and 12.2p/min respectively. Converting these to Euro cents at the rate used by the GRA (€1.47 to £1) results in mobile termination rates of 22.34 eurocents/min standard and 17.93 eurocents/min cheap The average rate for mobile termination in Gibraltar is therefore 20.1 eurocents per minute.

The GRA, comparing the 21.3 eurocent figure with the set of EU-wide average figures in Figure 5 of its Market Review comes to the conclusion that Gibtelecom's average mobile call termination charge exceeds the EU average by about 50%. This is wrong. The EU average for October 2005 in the table in Figure 5 for all operators is 12.79 eurocents. Gibtelecom's average charge is less than 40% above the EU average figure.

Q9: Do you agree with the analysis and SMP designation with regard to the SMS termination market?

Gibtelecom does not agree that the positions outlined by the GRA in its market analysis and proposed SMP designation for the wholesale SMS termination market are based on a full, proper analysis of the facts.

Gibtelecom's SMS termination prices not excessive based on a fair and consistent use of benchmark figures.

The GRA has applied the benchmarking tool to assess whether Gibtelecom's SMS mobile termination rate (MTR) prices are excessive, excessive price being an indicator of market dominance. In carrying out the cross-country comparisons, the GRA has selected several European countries as alternative benchmarks against which to evaluate Gibtelecom's MTR: the UK, France, unnamed mobile operators in other European countries, Spain and the British Virgin Islands (BVI). In brief, for three out of the four comparisons, the GRA finds Gibtelecom's prices to be not excessive or barely excessive. In the fourth (BVI), it finds Gibtelecom's prices "too high" in comparison and appears to ground its overarching conclusion for purposes of the SMS market analysis that Gibtelecom's prices are excessive based on that one comparison. Gibtelecom reviews hereafter these benchmark comparisons and explains why it holds that the results of the benchmarking exercise have been misinterpreted. That is, in short, they do not prove Gibtelecom's SMS prices are excessive.

- Concerning the French and the UK benchmarks for retail prices, the GRA finds that Gibtelecom's prices, when compared after a 50% upward adjustment for the admittedly higher MTR costs of Gibtelecom's much smaller network, are not excessive (p37). Indeed, even without the upward adjustment, Gibtelecom's retail price of 8p is below the cited French SMS retail price of 8.5p. Yet, the GRA then discounts the comparisons as problematic given market size, competition characteristics and the fact, as concerns the UK case, that the wholesale SMS termination market has not yet been subject to a completed market review.

- The GRA also explores comparisons with the retail prices of other European mobile operators in unnamed countries (which Gibtelecom assumes are located within the EU) and again finds that Gibtelecom's retail prices "*do appear slightly excessively high.*" Given the lack of figures, Gibtelecom cannot review the basis of this finding but notes that the finding, even at its worst, puts Gibtelecom's retail prices in a good competitive light.

- There is an implicit comparison with the retail SMS prices in the Spanish market. In a market with 3 major mobile operators and other forms of mobile service competition, the GRA notes that the common retail price for an SMS is about 10p. This price level is significantly above Gibtelecom's retail price of 8p. Again, the GRA discounts the suitability of the comparison and then adds that, at such a high level, the Spanish SMS prices do not act as a competitive constraint on Gibtelecom's SMS prices. But the point of the GRA evaluation at this stage is to assess whether or not Gibtelecom's prices are excessive. Compared to those in Spain, they certainly are not excessive.

It is in a comparison with a non-European country that the GRA finds what it deems to be the appropriate benchmark country and evidence of excessive prices. The GRA declares it selected BVI as its better benchmark market because of its essential structure and characteristics – a single mobile GSM operator that has not been subject to price control. The mobile operator there (CCT Global Communications, aka BoatPhone) charges 12 US cents (about 6.4p) per SMS. Compared to this, the GRA concludes that the Gibtelecom rate of 8p is "*probably too high*". With all due respect, Gibtelecom finds the comparison inappropriate and flawed. Gibtelecom believes that the Caribbean communications regulatory arena should not be used as a direct surrogate for a regulatory environment that is already well established and tested. The BVI, and the Caribbean in general is not subjected to the same EU internal market rules and regulations and dynamics. The GRA has surveyed a number of European markets and found in each one that Gibtelecom's retail prices were sometimes the same but mostly lower. Yet, it discounts this evidence in favour of a non-European market on an island. It claims the BVI market is similar as there is only one operator and prices are unregulated.

However, the BVI is located next to the American Virgin Islands. Might end-users in the BVI actually have a choice between CCT and other mobile operators licensed in the American Virgin Islands and thus prices set by CCT are subject to practical competitive constraints? It seems so. There is an overlap in mobile service between the mobile operators in the American Virgin Islands (Sprint and Cingular/ATT) and CCT/Boatphone in the BVI. For example, the recent Fodor's Guide to the US Virgin Islands advises visitors: "*Cell phones from the U.S. companies Cingular and Sprint work in most locations in the USVI if you have a roaming feature; if you are on St. John's north* *coast, you may have some difficulties with service, where you may find yourself connected to BoatPhone, a Tortola service. Phones from other companies may work, but only Cingular and Sprint have offices in the USVI. Many cell phone companies treat calls in the USVI just like any other calls in the U.S., but be sure to ask; this is not always the case."* [1] More confirmation of USVI and BVI mobile competition comes from a BVI information website: "*Cell Phones. US cell phones usually work north of (BVI) Tortola (especially on Jost Van Dyke), with at least reasonable roaming rates, due to the closeness to USVI cell towers on St. Thomas (which may override local cell service). Elsewhere, foreign cell phones can register en phone* with a credit card for expensive connections via Boatphone "[2].

Moreover, the price comparison is misleading due to the volatility of the US Dollar-UK Pound (and US Dollar-Euro) currency fluctuations over the past few years. The value of the US Dollar has fallen drastically over the past few years. One UK Pound was worth $1.4569 on 27 May 2002 and on 24 May 2007 it was worth $1.9855 (Bank of England website). Thus, the value of the UK Pound has risen over 33% in 5 years.

In summary, Gibtelecom has retail SMS prices which are essentially the same or lower than those in European markets reviewed by the GRA in its benchmark survey. Its SMS prices are actually cheaper than most in the Europe. See the table provided in the French NRA's final decision on its market review for the SMS termination market (ARCEP Decision 06-0593, dated 27 July 2006 at p91). It records the EU 25 average SMS retail price as 12 eurocents. Gibtelecom's retail price is less than that at 8p or 11.76 eurocents equivalent using GRA €1.47=£1. The BVI benchmark in inconsistent with the benchmarking methodology – conditions are fundamentally different and the currency fluctuation factor throws all comparisons off-balance and renders them erratic. Also, Gibtelecom has been lowering SMS retail prices. In 2006, it reduced the retail price from 10p to the current 8pand this applies to all SMS whether in Gibraltar, Europe or elsewhere.

III. SMP remedies

Q10: Do you agree with the Authority's proposed SMP obligations in the access and call origination market?

Gibtelecom objects to the proposed application of retail minus price caps for the wholesale mobile access and call origination market in the way proposed.

Retroactive effect of Retail Minus remedy

The GRA proposes to apply the Retail Minus price cap with retroactive effect to 1 January 2007. As the GRA will not be in a position to adopt a final decision on the wholesale access and call origination market (or any other market subject now to public consultation) until at least this Summer, the retroactive effect would extend the obligation back at least six or seven months. If the final decision were delayed until November or December, the retroactive period would be lengthened to almost a year.

Gibtelecom objects on two basic grounds. First, the GRA lacks a legal basis. Under the older TO 2000 Gibraltar telecommunications framework, the GRA did have the power

[1] http://www.fodors.com
[2] : http://www.b-v-i.com

under 2001 Interconnection Regulation 8(9) to impose SMP price control remedies on a retroactive basis, but they applied only to wholesale prices, not retail ones. The new 2006 Gibraltar framework omits this authority. Second, applying the retail price control obligation on a retroactive basis would create costly, practical problems. This obligation would require Gibtelecom to re-bill each of its 6,000 post-paid subscribers for each month since the end of 2006. That means a separate new bill for each month with a separate re-determination of the amount owed. The rebilling effort would be a complicated and costly operation covering from 6 to 12 monthly bills. There are technical limitations on the amount of data that can be processed at any one time, and data records that need to be reprocessed would need to be extracted and prepared beforehand. The data to be adjusted would then need to be tested in a 'sandbox' environment so that any errors are isolated and do not affect the main database. Once this is done, a billing cycle would need to be carried out for all of the records involved, for each month of retrospection. Gibtelecom expects this to be quite burdensome in execution, plus there is the added complexity of crediting prepaid accounts (Reload). Records for this type of account are only maintained for 43 days and pending implementation of a new pre-paid platform in 2008, any retrospection before then is virtually impossible. In addition, it is Gibtelecom's experience that pre-paid customers do often release and replace their accounts. In such case, how would Gibtelecom calculate and to whom would it apply the relevant retrospective credit?

Transparency – Deadlines for advance notice and advance publication.

Gibtelecom objects to the very long lead times for advance notice and advance publication of terms and conditions, in particular changes in tariffs. The GRA would require Gibtelecom (1) to notify it 60 days in advance of any changes to terms and conditions, including prices changes and (2) to publish (a) changes to terms and conditions 30 days in advance, and (b) changes to tariffs 30 days in advance for price increases and 14 days in advance for price decreases. Given that the GRA intends to propose the imposition of a retail price control price cap (Retail Minus) to remedy Gibtelecom's SMP in the wholesale mobile access and call origination market, it is not clear whether the advance notice and publication requirements apply solely to wholesale matters or, in addition, to retail matters. We address, first, the possible application of the remedy to the retail market.

Gibtelecom requests that the advance notification and advance publication periods for retail terms, conditions and prices be significantly reduced. The Gibtelecom Mobile Licence (Part 1, Clause 13(3)) fixes the advance publication period for any retail price increase at 7 days and any retail price decrease as the day on which it takes effect (zero days). It follows from that requirement that any advance notification to the GRA as concerns retail prices should be no more than 14 days for a price increase and 7 days for a price decrease. As for other terms and conditions vis-à-vis consumers, Gibtelecom requests the advance notification to the GRA be set at 14 days and advance publication be set at 7 days.

As for changes at the wholesale level, Gibtelecom objects to the very long lead times for notifying and publishing changes. It requests the period for advance notification to the GRA be reduced from 60 days to 30 days for changes in wholesale terms and conditions including tariff increases. It requests a reduction in the period for the advance notification to the GRA for a tariff reduction from 60 days to 30 days. A 60 day advance notification requirement is too burdensome in the context of normal business activity.

Gibtelecom accepts the advance publication periods of 30 days for a tariff increase and 14 days for a tariff decrease.

Need to take account of new EU Roaming Price Cap Regulation

The GRA has proposed as a remedy for SMP in the wholesale mobile access and origination market a retail price cap for Gibtelecom's prices. Concurrently, the EU Institutions are in the final stages of adopting an EU regulation to regulate international roaming prices at both the retail and wholesale levels. The latest publicly available draft, the version adopted by the European Parliament on 23 May 2007 at First Reading, sets mandatory price caps, both at the retail and wholesale levels, for incoming and outgoing calls to and from mobile customers when they are roaming outside their home country networks. The GRA and EU level measures overlap to some extent, and the EU measure, as a regulation, would automatically bind Gibraltar, the GRA and Gibtelecom and probably enter into force before the GRA adopts a final decision on SMP status and remedies.

Gibtelecom deems it most important that the GRA, when evaluating its objectives in imposing a retail price cap on Gibtelecom, consider the overlapping effects of the EU Regulation. Certainly the EU-imposed retail price caps will require Gibtelecom to review its retail charges and the need to bring them into line with the effects of the EU Regulation's roaming price caps. The vast bulk of Gibtelecom's international traffic is either to or from EU countries.

Q11: Do you agree with the Authority's proposed SMP obligations in the voice call termination market?

Gibtelecom accepts the proposed remedies for the wholesale mobile voice call termination market subject to the following comments.

Transparency – Deadlines for advance notice and advance publication.

Gibtelecom accepts the advance publication periods of 30 days for a tariff increase and 14 days for a tariff decrease. However, a 60 day advance notification requirement to the GRA is too burdensome in the context of normal business activity.

Gibtelecom of course accepts that it must publish a Reference Interconnection Offer (RIO) as an SMP in the wholesale mobile markets. However, it objects to the very long lead times for advance notice and advance publication of terms and conditions, in particular changes in wholesale tariffs. The GRA would require Gibtelecom (1) to notify it 60 days in advance of any changes to terms and conditions, including prices changes and (2) to publish (a) changes to terms and conditions 30 days in advance, and (b) changes to tariffs 30 days in advance for price increases and 14 days in advance for price decreases. Gibtelecom requests the advance notification period be reduced from 60 days to 45 days for changes in terms and conditions including tariff increases. It requests a reduction in the period for the advance notification to the GRA for a tariff reduction from 60 days to 30 days.

Mobile call termination rate decrease too high and 2 year glide path too short.

The GRA proposes to reduce the wholesale voice call termination rate by 6p per minute over a 2 year period, requiring a 3p (on average) decrease each year. It announces that the price at the end of the 2 year period will still be above the underlying long-run incremental cost (LRIC) of voice call termination in the Gibtelecom network. Gibtelecom disagrees. Until now, Gibtelecom has not been designated as an SMP in the mobile market sector and has not had to keep account of its costs. Before a price control is to be applied, the true cost of mobile voice call termination must be determined. This requirement can only be met if Gibtelecom can carry out and complete a study for the GRA of its costs.

Gibtelecom has no problem with the concept of reducing retail prices to levels consistent with those of an efficient and effective business, but must observe that the GRA offers no analytical justification for the 6p reduction figure it has chosen nor for the 2 year length of the glide path.

Need to take account of new EU Roaming Price Cap Regulation

The GRA has proposed as a remedy for SMP in the wholesale mobile access and origination market a retail price cap for Gibtelecom's prices and a price reduction for wholesale voice termination rates. Concurrently, the EU Institutions are in the final stages of adopting an EU regulation to regulate international roaming prices at both the retail and wholesale levels. The latest publicly available draft, the version adopted by the European Parliament on 23 May 2007 at First Reading, sets mandatory price caps, both at the retail and wholesale levels, for incoming and outgoing calls to and from mobile customers when they are roaming outside their home country networks. The GRA and EU level measures overlap to some extent, and the EU measure, as a regulation, would automatically bind Gibraltar, the GRA and Gibtelecom and probably enter into force before the GRA adopts a final decision on SMP status and remedies.

Gibtelecom deems it most important that the GRA, when evaluating its objectives in imposing a retail price cap and wholesale voice termination rate reductions on Gibtelecom, consider the overlapping effects of the EU Regulation. Certainly the EU-imposed retail price caps will require Gibtelecom to review its retail and wholesale termination charges and the need to bring them into line with the effects of the EU Regulation's roaming price caps.

Q12: Do you agree with the Authority's proposed SMP obligations in the SMS termination market?

Gibtelecom agrees with the proposed remedies for the wholesale mobile SMS termination market subject to the following comments:

Transparency – Deadlines for advance notice and advance publication.

Gibtelecom accepts the advance publication periods of 30 days for a tariff increase and 14 days for a tariff decrease. However, a 60 day advance notification requirement to the GRA is too burdensome in the context of normal business activity.

Gibtelecom of course accepts that it must publish a Reference Interconnection Offer (RIO) as an SMP in the wholesale mobile markets. However, it objects to the very long lead times for advance notice and advance publication of terms and conditions, in particular changes in wholesale tariffs. The GRA would require Gibtelecom (1) to notify it 60 days in advance of any changes to terms and conditions, including prices changes and (2) to publish (a) changes to terms and conditions 30 days in advance, and (b) changes to tariffs 30 days in advance for price increases and 14 days in advance for price decreases. Gibtelecom requests the advance notification period be reduced from 60 days to 45 days for changes in terms and conditions including tariff increases. It requests a reduction in the period for the advance notification to the GRA for a tariff reduction from 60 days to 30 days.

Mobile SMS termination rate decrease too high and 2 year glide path too short.

The GRA proposes to reduce the wholesale SMS termination rate by 1p per minute over a 2 year period, requiring a 0.5p (on average) decrease each year. It announces that the price at the end of the 2 year period will still be above the underlying long-run incremental cost (LRIC) of voice call termination in the Gibtelecom network. Gibtelecom disagrees. Gibtelecom's prices are not excessive if one compares with others around the EU. In the light of Gibtelecom's stated objections on the conclusions and justifications for a finding of excessive prices in the SMS termination market, the price reductions are therefore disproportionate and inappropriate.

Further, until now, Gibtelecom, having not been designated as an SMP in the mobile market sector, has not had to keep account of its costs. Before a price control is to be applied, the true cost of SMS termination must be determined. This requirement can only be met if Gibtelecom can carry out and complete a study for the GRA of its costs.

Gibtelecom has no problem with the concept of reducing retail prices to levels consistent with those of an efficient and effective business, but must observe that the GRA offers no analytical justification for the 1p reduction figure it has chosen nor for the 2 year length of the glide path. Further, the Company, even in the face of the GRA's own findings that its SMS retail prices were not really excessive, is sympathetic to making the cost of SMS messages cheaper for the consumer. And, Gibtelecom can point in evidence that it has been reducing the SMS retail price. In 2006, it reduced the retail SMS price from 10p to 8p.

Closing remarks

Gibtelecom broadly accepts the market definitions and market assessments for the three mobile markets. Nonetheless, it has reservations about the extent to which the effects of mobile operators in nearby markets, particularly those from Spain, on the Gibraltar market have been considered in reaching the conclusion that Gibtelecom is dominant. Gibtelecom also identifies as a failing the lack of adequate consideration of the actual and potential entry of new wireless technologies, such as WiFi Hotspot and 3G respectively, on the Gibraltar market. And, as concerns the SMS termination market, Gibtelecom disagrees with the benchmarking method employed by the GRA and its ultimate conclusion based on comparison with retail prices in the British Virgin Islands.

As concerns proposed SMP remedies, Gibtelecom does not accept, in principle, the implementation of the retail price cap with retrospective effect as a SMP remedy for the wholesale mobile access and call origination market. In addition, the retroactive adjustment of monthly bills going back 6 to 12 months is not practicable and presents many business problems. Gibtelecom also notes that the proposed reduction amount in each of the three mobile markets appear to be without sound analytical justification and validation.