

16 September 2011

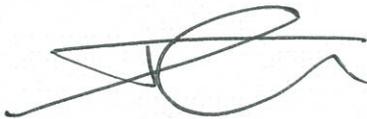
Gibraltar Regulatory Authority
Attn. Mr John Paul Rodriguez
Electronic Communications Regulatory Manager
Suite 603
Europort
Gibraltar

Dear *John Paul,*

Public consultation 04/11 – Changes to General Conditions

Enclosed please find Gibtelecom's response to the Authority's public consultation on Changes to General Conditions (Public Consultation 04/11).

Yours sincerely,



Dwayne Lara
Regulatory Manager

Enc.



Gibtelecom response to Public Consultation 04/11

Changes to General Conditions – Implementing the revised EU Framework

16 September 2011

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

Gibtelecom Response to GRA Public Consultation 04/11
Changes to General Conditions – Implementing the revised EU Framework.

Executive Summary

Gibtelecom notes that this public consultation attempts to address changes to general conditions applicable to entities providing electronic communications networks and services in Gibraltar as part of the transposition of the revised European Union (EU) telecoms framework into local law earlier in the year.

The Authority stresses that the implementation of the proposed amendments is a requirement and that little discretion is afforded in terms of making the changes. Gibtelecom nevertheless welcomes the Authority's stated objective, as set out in law, that any modifications to general conditions must be objectively justifiable in relation to the networks or services to which the modification relates, and proportionate to what the modification is intended to achieve.

Gibtelecom notes that the Authority is proposing to make some changes to definitions affecting the general conditions. This is to ensure compatibility with the substantive changes in the revised EU Directives. Whilst the Company recognises the Authority's rationale for relying on the definitions set out in the Act, and thus avoid duplication of terms, its proposals could give rise to clarity and transparency issues. Gibtelecom finds that it would be of benefit to at least have a schedule setting out what definitions have been removed from the original general conditions. However, where Gibtelecom is most concerned is with the lack of consultation on this specific matter. In the public consultation the Authority does not seem to seek out the views of stakeholders with regards to the changes in definitions. The Authority merely states its position that the changes to definitions are being carried out. The Company feels that discussion is important on the subject as not only are definitions being removed (where these appear in the Act), but more importantly, given their intimate relationship with the contents of the general conditions, definitions are being added (where they do not appear in the Act). It would also have been helpful if the Authority had provided a separate annex highlighting the proposed changes across the original general conditions as part of this public consultation.

There is some confusion with the varying definitions being applied to the different types of users of communications services. Although the Authority goes some way in trying to define these according to the general condition to which they apply, the differences between end-user; consumer; subscriber and other types of "users" could cause some ambiguity. This could have wider implications for proper compliance under the law.

Gibtelecom has extensive comments on the proposed requirement to provide emergency organisations with caller location information. There are currently no systems or mechanisms in place to handle this, and the Company is of the view that enforcing these obligations could be disproportionate and not in keeping with the fundamental intentions of changes to general conditions.

Gibtelecom also believes there are many unknowns with regards the new contract information, notification and transparency requirements. The Company has serious doubts on the wider applicability of the proposed maximum contract periods, and the changes to the information provided in agreements.

The Company is committed to ensuring equivalent access to users and supports the reasonable application of the Authority's proposals in this regard.

As far as the new number portability requirements are concerned, Gibtelecom comments on the caveats surrounding the one day porting requirement, as well as the workings of a compensation scheme for porting delays.

Finally, Gibtelecom has some doubts on the applicability of the new requirement to ensure access to all numbers in the EU, but particularly to the ETSN and UIFN, as well as 116000.

Response to questions

Q1. Do you agree with the Authority's proposal to add CEPT to the list of standardisation bodies?

Yes

Q2. Do you agree with the Authority's proposals to extend the requirements of General Condition 3 beyond "fixed locations" and to require undertakings to "take all necessary measures" to maintain their networks and services and access to emergency services?

Gibtelecom broadly agrees with the proposed changes, as the Company already ensures the proper and effective functioning of its fixed and mobile networks. This is primarily driven by substantial investments in infrastructure and equipment, as a result of customer demand, but also paralleled by regulatory requirements. Gibtelecom therefore believes that the proposed new wordings that "The Undertaking shall take *all necessary measures* [emphasis added]..." and "...the fullest possible..." would add little perceived value to the existing text.

Gibtelecom understands that the Authority is proposing to amend general condition 3 to mirror the current wording of Article 23 of the revised universal service directive¹, but not to require any substantial modifications to current practice. The Authority also states that it "...expects the revised text to have relatively minor impacts on undertakings."² With this in mind, the Company questions whether the inherent subjective nature of the new added text could open up the possibility for placing more onerous and unrealistic obligations on undertakings. If this were to be the case, and any such additional obligations are imposed, Gibtelecom considers that these could go against the proportionality test required of any proposed modification to general conditions. This view is supported by the Authority under section 3.6 of their public consultation.

Q3. Do you agree with the Authority's proposals for emergency call numbers – which includes amending the definition of undertaking and requiring that location information is provided free of charge, as soon as the call reaches the emergency organisations and is accurate and reliable (in line with our proposed criteria)?

Gibtelecom welcomes the Authority's decision to retain the 'technical feasibility' assessment in terms of compliance with this general condition, as this is an area which is subject to a number of challenges. In such a small territory like Gibraltar, it is questionable whether the

¹ Directive 2002/22/EC on universal service and users' rights relating electronic communications networks and services

² Section 3.6 of Public Consultation 04/11

benefits of providing caller location information as soon as the call reaches the emergency organisations outweigh the costs associated with providing this service. Having said this, the Company will endeavour to continue working on how the level of information provided to emergency services can be developed. Gibtelecom has the following comments under this question.

To the extent technically feasible

It is not currently technically feasible for Gibtelecom to provide caller location information, and in real time, to the relevant emergency service (ES). This was the position prior to the introduction of the new telecoms legislation, which also included technical feasibility caveats. There are currently no technical, operational, administrative or logistical systems in place to provide the emergency services with the required data. To be able to do so would require significant investment and time, which Gibtelecom considers would be disproportionate and against the objectives of the proposed changes to general condition 4. The following would need to be addressed and in some cases clarified by the Authority. The Company would like to point out that the issues highlighted below may also apply to other authorised undertakings in Gibraltar.

1. How would the ES receive the caller location information?
 - 1.1. At the moment the ES agent handling the call would be able to see, for instance through a display attached to their telephone, the calling line identification of the calling number, where this has not been withheld (ex-directory), but would not receive details about the caller's whereabouts. Introducing such additional data would require individual communications links between the Gibtelecom switches and ESs through which location information could be transported. Additionally, the ESs would have to install and setup dedicated displays to be able to read the data being received.
2. How would this work commercially and where would the burden / responsibility of ensuring the relevant information systems and infrastructure are in place and maintained lie?
 - 2.1. It may be easier, and more efficient, to have the caller location information being relayed to the ES receiving the call by call centre agents, such as through Gibtelecom's Network Operations Centre (NOC). Of course, this would be dependant on having the necessary systems and training in place to be able to do so. Such a call centre agent would need to be available 24 hours a day, seven days a week, and would release the required location information upon request by the ES.
3. In the case of fixed line numbers, Gibtelecom's information systems would need to be able to interrogate the billing platform with the aim of paring this with the calling line identification of the caller (which is contained within raw call data records) so that the full postal address can be sent across to the ES. This would require the Company drafting in external expertise to assess whether this could be done, and at what cost.

Redacted

4. How would the ESs receive location details where callers are withholding their numbers, and without infringing any of the (enhanced) data protection safeguards?
 - 4.1. At the moment, as the Authority is aware, it is not possible for Gibtelecom's fixed switch to selectively 'debar' withheld numbers on a case-by-case basis. Again, Gibtelecom would have to bring in external expertise to try to determine whether this could be done, and at what costs / timescales. Based on initial discussions with suppliers, enabling such a facility would require an update to the switch. From experience, the Company can say that such updates require significant investment and take time.
 - 4.2. The Company currently has plans to changeover its current fixed switching equipment (which is over 20 years old) with more modern next generation facilities. It is expected that this new equipment would have a greater capability to selectively debar numbers, amongst other features that could possibly assist in providing, or at least improving, the call data to be sent across to ESs.
5. How would ES's receive caller location information from callers making the emergency call from within a private exchange?
 - 5.1. It is usual for extension numbers for calls made within a private exchange to have the calling line identification withheld when making external calls, with only the exchange's main (primary) number showing up on a display. The person responsible for configuring a private network operated by an enterprise on which the call originates may not provide the undertaking with the CLI or caller location information. If that caller's terminal equipment is located within a private exchange covering a wide area, then the postal address of the primary number, which might be registered to a different location to where the call is being made, would serve little purpose in determining the whereabouts of the caller.
6. In the case of mobile numbers, the Authority is proposing that, where technically feasible, the coordinates of the base station which is hosting the call, as well as, where available, an indication of the radius of coverage of the cell. Gibtelecom would like to point out that it would in any case be impracticable and disproportionate to request having greater accuracy, such as the coordinates of mobile handsets, than that being proposed. This is because it would be down to the handsets themselves to transmit their location data, through possibly the use of global positioning systems (GPS). As the Authority should be aware, the majority of handsets do not have the capabilities required to perform such a function.

Gibtelecom notes that in the draft amended general conditions supplied as an annex to the public consultation, the Authority refers to undertakings providing the coordinates of the cell³ which is hosting the call, and not the base station as is mentioned in this public consultation. Can the Authority clarify the exact proposed requirement (that is to say, if it is the coordinates of the base station, or the cell that are being sought)? Notwithstanding, Gibtelecom is unsure how this would work, given that an emergency call does not necessarily mean that the caller is immobile or stationary. For instance, a caller could in effect, find him/herself in an emergency whilst travelling in a vehicle. This would mean that whilst in operation, the actual call could be handed over from one base station/cell to another and so on until the call terminates. How would this work in reality

³ Draft amended general condition 4.4(b)

(and assuming providing such information is possible), would the ES be required to receive the first registered location, multiple locations, or the last?

As an observation, the size of Gibraltar will in all probability render the provision of cell coverage data meaningless. A typical cell could cover an area of between 600 to 900m in radius, meaning that there is a real possibility that a caller could be making the call from either side of the Rock (e.g. east or west) or maybe even from neighbouring Spain. This is compounded by the fact that as a result of the peculiar and unique topography of the Rock, many areas are illuminated by more than one cell, making location data doubly impracticable.

Free of charge

Gibtelecom notes that the proposal is to provide location information to the authority handling the call free of charge. Gibtelecom interprets this as having to *send* the location details free of charge. Whilst Gibtelecom is supportive of this initiative, it has to question who will front the not insignificant costs of putting in the pre-required systems in place. The Company, and presumably other undertakings, would find it difficult, from a commercial perspective, to agree to having to expend the necessary financial and other resources in this matter. Gibtelecom would also like to clarify that the provisioning of location data, free of charge, would be without prejudice to any type of wholesale agreements, for instance interconnection, between the different undertakings involved.

"As soon as"

The Authority is proposing that location information must be provided "as soon as" the call reaches the authority handling the call. This would be when the call is answered by the ES.

Gibtelecom would have firm reservations with this proposed requirement, which would mean providing the ESs with caller location information in real time. This is not technically possible. Gibtelecom would need to look at its switching and mediation (the equipment that resides between the switch and billing system and analyses call data) devices to ascertain what updates would be required to enable real time postings that could be transported in a suitable format to the ES. This would be done in conjunction with the equipments' suppliers and other external experts.

As the Authority points out⁴, there are certain types of call, for example from foreign roamers (overseas mobile customers using the Gibtelecom network) where caller location information is not usually available as soon as the call reaches the ES. This is due to significant technical issues which may require standardisation or international cooperation. Gibtelecom notes that the Authority then states that they propose addressing this issue when considering detailed accuracy and reliability criteria. However, it appears that this additional information or consideration on this specific point is not being made available within the public consultation. Can Gibtelecom assume that this has been an oversight on the part of the Authority, or if this guidance will be issued at some point?

Gibtelecom also has concerns surrounding whether the proposed changes essentially requires undertakings to install real-time updates to their systems. As for the new requirement to provide caller location information in general, this would not be technically feasible. For example, there could be an instance where a new customer (who has been provided with a new line / SIM card) could dial an ES very shortly afterwards. Caller location

⁴ Public consultation 04/11 Section 4.15

information may not be available as soon as the call is answered by the ES as this information may not yet have been uploaded to the relevant information systems. Gibtelecom seeks clarity that this would not be the case.

"Accuracy and reliability of location information"

As highlighted above, there may be instances (for example calls made within private exchanges) where it may be technically unfeasible to obtain accurate and reliable caller location information. Gibtelecom would like to point out that another such instance could be end-users making emergency calls whilst registered with a femtocell or picocell. With this newer technology, the end-user would not be hosted by a traditional mobile cell, and it would therefore be technically impossible to determine the location of that caller.

With regards to changing the definition of 'undertaking' to now include all providers of electronic communications services, rather than just providers of publicly available telephone services, will this change now mean end-users using VoIP services, such as the current 889; 881; 882 et al, are able to call emergency services using these 'access' codes? In addition, how would local providers of 'call-shop' services be affected by this change? Would they also now be required to transport caller location information?

Q4. Do you agree with our proposed approach to contract related requirements relating to the provision of additional information, the length of contracts and the conditions for termination?

Gibtelecom's comments under this question are as follows.

Definitions

Gibtelecom is of the view that it would be beneficial to have greater clarity on the scope and implications of the changes to general condition 9. There now seems to be an array of definitions used such as 'consumer', 'subscriber', 'end-user' and so on. Although the draft general conditions go some way to defining each of these, the Company believes that uncertainty is being introduced as a result of the many varying types of 'users', and what measures apply to each.

Additionally, there appears to be some inconsistency in definitions between the different regulatory instruments. For instance, the Authority's public consultation states that the new requirement to have initial commitment periods not exceeding 24 months only applies to residential customers. It does so on the basis that this is what is mandated through Article 30(5) of the Universal Service Directive⁵. Yet, Article 30(5) of the Universal Service Directive refers to 'consumers', and so do the draft revised general conditions⁶. On the other hand, the Communications (Universal service and users' rights) regulations 2006⁷ refers to subscribers.

Additional information

Gibtelecom has reservations that the Authority is proposing that changes required under the draft general condition 9.2 are to be introduced as from 25 May 2011. The Authority also proposes that "*any contract between the Undertaking and a Consumer concluded before*

⁵ Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services

⁶ Notice 1/2011 (draft), general condition 9.4

⁷ Communications (Universal service and users' rights) regulations 2006, sub-regulation 26(12)(a)

*26th May 2011 shall specify the following minimum requirements...*⁸ Gibtelecom notes that this is the day when the new EU communications legislation was to have been transposed into member states national law, and that this is most probably the reason why the Authority has selected it as the 'cut off' date. However, Gibtelecom firmly believes that it would be unreasonable to expect such a measure to be introduced, retrospectively, as from or before this date, as the public consultation process has not yet concluded. At the very least, implementation of any proposed changes should only occur once the subsequent decision has been communicated by the Authority after the consultation has closed, and the new general conditions introduced.

Gibtelecom is also deeply concerned that including this additional information in contracts, and communicating these to a substantial customer base would be a complex, costly and substantial exercise. The Authority should be aware that it would not only be a matter of inserting new text under the existing terms and conditions and/or contracts, but that a suitable communications plan must be designed and executed so that customers are made aware of the changes. There also needs to be some clarity from the Authority as to which customers actually need to be contacted.

As a valid notification outlet, Gibtelecom considers that it would be right and more practicable to have the option of publishing the new information on a dedicated page on its website, with customers being directed to this page and informed that the new information would form part of their contract.

With regards traffic shaping information, Gibtelecom does not currently carry out any subscriber network traffic profiling with the intention of balancing network loads or prioritising services. In any event, the Company believes that the proposed requirements for this additional information would be best met by reference out from the subscriber's contract to a dedicated webpage on the Gibtelecom website. This approach would also facilitate the requirement to issue such information to end-users on request.

Withdrawal from contracts

Gibtelecom supports the Authority's inclusion of a 'material detriment' reference as this would avoid frivolous requests by customers to withdraw from contracts.

Gibtelecom notes that the Authority does not consider that a notification which asks subscribers to regularly check an undertaking's website for possible changes to their contracts is acceptable. The Company assumes that this refers only to asking customers to take a proactive approach in visiting an undertaking's website, and not to actually publish the notification on a dedicated webpage, where subscribers would be directed when there is a change to terms. Gibtelecom finds that in this day and age, it would be perfectly acceptable to use a website as a legitimate and interactive communications tool.

As for the new proposed requirement to have contracts with maximum initial commitment periods, Gibtelecom believes that the facility to withdraw from contracts, without a termination charge, when there has been a change to terms, should only apply to standard contracts. The Company has contracts with a number of bigger businesses who prefer having bespoke contracts as these afford greater certainty and more attractive prices. It is Gibtelecom's view that extending the "withdrawal provisions" to non-standard contracts would open the door to customers exiting contracts at no cost, if they consider any changes as materially detrimental.

⁸ Notice 1/2011 (draft), general condition 9.2, last paragraph.

Maximum term of initial contracts

Gibtelecom assumes that it is not the intention of the proposal to have a type of contract whose duration does not exceed 12 months that these automatically terminate on expiration of the contract term, but rather that the customer has the ability to terminate such a contract at the end of its 12 month period without payment of any termination charges. The Company also finds that there is little guidance in the way of determining what services would be covered by the 12 month contract requirement.

As for our comments under the "Additional Information" section above, the Company notes that in the draft revised general conditions, the Authority is proposing that undertakings apply the new requirement to have an initial commitment period not exceeding 24 months for contracts as from 25 May 2011. In Gibtelecom's view it would be unreasonable for the Authority to suggest contracts such a date as the public consultation process is still running and no ultimate decision has yet been taken. Doing so would be tantamount to retrospective application of a provision that is yet unknown and unclear to the industry. Gibtelecom therefore suggests that the introduction of any of the measures being proposed in the public consultation only be applied at minimum at a date after the implementation of the new general conditions.

The Company is unclear as to the meaning of 'initial commitment period'. Gibtelecom offers a wide range of services and products, with agreements / contracts for each. Many of these agreements are with bigger businesses who often request longer term, 'non-standard' contracts to benefit from more attractive prices. In the majority of cases, the duration of these longer-term contracts invariably exceed the 24 month maximum initial commitment period now being proposed by the Authority. Gibtelecom therefore has serious reservations about having such an obligation imposed as this could curtail its business activities and the level of products and services it offers. Furthermore, the Company's reading of the text of the proposed general condition 9.4 is that clauses seeking compensation (early termination charges) for contracts over 24 months will not be allowed, unless such compensation relates to terminating the contract before the expiration of the initial 24 months. As inferred above, Gibtelecom can offer bigger business more attractive prices because these customers prefer committing to longer term contracts. Currently, in the event a customer decides to terminate the contract before the agreed time, Gibtelecom would adjust the amounts due to reflect the true period of usage (and even then, the Company applies discounts which reduce the amounts due, effectively meaning that customers could potentially end up paying less than would be calculated for the period of use), and not a "penalty". In this way, the customer ends up paying for the usage of the services provided during the life of the contract, and in most cases, even less. Gibtelecom does not therefore consider this as a compensatory mechanism, or an early termination charge, as the customer is not being penalised for exiting the contract before the previously agreed time. The Authority will therefore note that the Company does not invoke any punitive measures designed to ensure customers are unreasonably tied in to longer term contracts. With the new proposals it appears that undertakings will no longer be able to seek any type of "compensation". Of course, this is unless the 24 month initial commitment period only applies to residential customers as put forward in the public consultation.

Can the Authority please clarify if this is the case, as well as explaining what is meant by having an initial commitment period not exceeding 24 months; how this relates to early termination charges; and how this provision would work in practice?

Disincentives against contract termination

Gibtelecom agrees that conditions or procedures for contract termination should not act as a disincentive to customers switching provider.

Q5. Do you agree with our proposal to ensure equivalent access to the emergency services for disabled users?

Gibtelecom is committed to ensuring reasonable equivalent access to its services. The Company already provides a number of products and services designed to meet the needs of disabled users, and in particular for those groups identified by the Authority as part of Gibtelecom's universal service obligations (i.e. users with hearing-impairments; users with limited dexterity or mobility; and users with restricted vision) requiring specific measures. In addition, Gibtelecom also increased the number of payphone units with dedicated disabled and wheelchair access as part of the Company's extensive payphones refurbishment programme. Furthermore, customers with special needs can contact us or call in at Gibtelecom's customer service centre at 15/21 John Mackintosh Square where Company personnel can assist with any specific request they may have.

Gibtelecom therefore agrees and supports the proportionate and reasonable application of the Authority's proposals. Gibtelecom also notes that the proposed changes would impose the obligation to ensure equivalent access to emergency services to all providers of publicly available telephone services, not just the designated universal service provider.

Q6. Do you agree with our proposals on conditions for transferring the rights of telephone numbers?

In its statement that "*It is current practice for the transfer of rights of use of allocated Gibraltar telephone numbers to take place through sub-allocation...*"⁹ it is assumed that the Authority is referring to the current practice of sub-allocating numbers to service providers, such as to premium rate services (horoscopes, competitions and the like), and not to other undertakings (for instance other authorised network operators) outside a standard subscriber relationship. Having said this, Gibtelecom notes the Authority's proposed explicit inclusion of transfer of rights of use of telephone numbers, and under which conditions, as required by the revised Authorisation Directive. These rights were available under the previous Authorisation Directive, in fact they are covered in some part by the Authority's Notice on Number Conventions 1/2010 of 29 January 2010, but were not openly obvious through the general conditions at the time.

The revised Authorisation Directive also stipulates that the conditions under which transfers can take place must be defined. In its public consultation, the Authority has laid down and defined what these are. However, Gibtelecom would like to point out that with a transfer of rights, comes a transfer of responsibility. If a sub-allocated number is somehow misused, for whatever reason, the responsibility for such misuse rests with the person that has been sub-allocated that number, and not the original owner of the number (range).

Gibtelecom would also like make the observation that it could now be inherently more difficult for the Authority to administer the Gibraltar numbering plan efficiently, given that number range allocation may not necessarily represent the original allocations. In addition, how would the Authority determine that sub-allocated numbers are being used effectively and efficiently?

⁹ Public consultation 04/11, section 7.5

Q7. Do you agree with our proposals on the one working day requirements?

Gibtelecom agrees with the Authority's proposal on the one working day requirement, as this is already mandated through the Authority's Direction A01/2010 of 9 November 2010. Gibtelecom nevertheless has the following comments, or would like to reiterate points that have previously been recorded with the Authority.

1. In its Direction A01/2010, the Authority states that the one day requirement starts from the moment an agreement is concluded with the subscriber (an exception is afforded to multi-line portings). However, Gibtelecom believes that the Authority must clarify that an agreement to port is only concluded after the consumer protection / verification measures have been completed and any necessary line provisioning, particularly for fixed number porting (FNP), has taken place. Gibtelecom is compelled to point out that in areas that are not currently served by alternative undertakings, it may be necessary to enter and conclude unbundling agreements prior to FNP taking place. This could take some time, but it is assumed that this will be taken into account and explained to the customer by the recipient operator, who will only then conclude an agreement to port once all the necessary measures have been put into place.
2. The Authority must also clarify that, in cases where a porting date has been fixed between the customer and undertaking, the one day porting requirement would only apply as from the agreed porting date.
3. In addition, where there is a requirement to port a large quantity of numbers for a large or complex business customer, it may not be possible to complete porting within one working day. These types of 'bulk porting' would be managed through an agreed schedule in accordance with the needs of the subscriber and it is assumed that the undertakings would not be in breach of the one day requirement if it is agreed with the subscriber that porting may take longer. Gibtelecom notes that under Direction A01/2010, the Authority allows a four week period for such portings to take place, but only for fixed line number blocks.
4. Business customers could also request porting out of normal business hours, as this would avoid any disruption to their business and afford a seamless transition from one undertaking to another. The Authority should note that this would be done on a 'best efforts' basis and a guarantee that the undertaking can meet the customer's out of hours requirement should not be assumed. In this case, the undertaking and the subscriber would discuss having the port rescheduled for another date and time.

Q8. Do you agree with our proposed approach to the porting compensation scheme requirement?

The Authority's Direction A01/2010 is silent on any compensation scheme but Gibtelecom notes that this proposed change to general condition 18 is as a result of revisions to the universal service directive. Gibtelecom is supportive of having an appropriate porting compensation scheme, however, given the many parties involved in a porting transaction, care must be taken to ensure a clear, straightforward process. Gibtelecom sets out below some questions with the intention of raising some of the issues that would need to be resolved beforehand, possibly with the Authority's guidance.

1. What is the scope of the compensation scheme?
 - 1.1. Gibtelecom believes that the scope of the compensation scheme has not been properly defined. For instance, it is not clear what would be covered by the scheme as the meanings of "abuse" and "delay" have not being defined. In addition, would the compensation scheme only cover instances of loss of service as a result of abuse or delay in the porting process, or would it also cover loss of service as a result of delays or faults in provisioning, for example?
2. Who would the customer submit their claim to?
 - 2.1. The porting process is complex, and it is perfectly feasible that delays may arise for a variety of reasons. The customer should be clear to whom they should submit a claim, and should not be caught up in any disagreements between operators as to where the problem lies. Customers must also be clear under what circumstances they can submit a claim and how they would go about it.
3. What happens where more than one party contributed to a delay, or fault?
4. Who would pay out compensation in instances where it was difficult to determine who was responsible for a delay or abuse of porting?
5. How would compensation be paid out?
 - 5.1. It is usual for credits to be applied to a customer's account as part of service level agreements or whenever a service has not been provided. However, how would this work in practise considering that the donor operator, who is losing the customer, would no longer hold that customer's account to be able to apply the credit?
6. What would happen in cases where compensation is not paid out, or the customer is not happy with the level of compensation?
 - 6.1. What recourse would customers have?

Q9. Do you agree with our proposed approach on requirements relating to ensuring access to all numbers within the Community and calling the hotline for missing children on 116000?

In a small place like Gibraltar, the distinction between geographic and non-geographic numbers, as they are known elsewhere, is not that clear. Nevertheless, Gibtelecom believes there are within the Gibraltar numbering plan different types of numbers or access codes which may be impacted by the new proposed requirements of general condition 20.

Gibtelecom welcomes the continuing caveat that access to numbers by end-users in any part of the European Community would be limited on grounds of technical and economic feasibility. The Authority should also clarify that this requirement should not apply to numbers that are designated for national use only, such as emergency service and other national short code numbers.

As the Authority is aware, all numbers are not the same, with charging and business models varying between different types (e.g. premium rate numbers). The Company agrees that access to these numbers shall also be limited for commercial reasons.

With regards the proposed requirement to make access available to numbers from the European Telephone Numbering Space (ETNS), Gibtelecom notes that this project run into some difficulties at EU level and was eventually dropped. Gibtelecom understands that there are currently no plans by the EU to resurrect the ETNS and the Company therefore questions the value of including a reference to the scheme under the general conditions. Irrespective of the numbering schemes being considered, Gibtelecom believes these should be based on commercial models and arrangements. This would by definition include calls to Universal International Freephone Numbers (UIFN). The Company understands that access to UIFNs is enabled on a country-by-country basis by the communications provider hosting that customer's UIFN. As such, undertakings cannot be expected to provide access as suggested by the revised general condition. Gibtelecom would consider such a scenario to fall under the auspices of "technically and economically" feasible.

As the Authority points out, 116000 is already in operation in Gibraltar. The Company asks if it is the Authority's proposal to make access available to callers from outside Gibraltar, and within the EU community, or, as is more realistic, to ensure access by local end-users. Gibtelecom considers 116000 (and other numbers under this range) range as being national in scope and asks under what circumstances might a caller from outside Gibraltar have a need to call this number, given that 116000 is mandated to be available in all member states. Furthermore, it would not be technically feasible to open up 116000 for international incoming calls. This is as a result of the digit analysis that would need to take place at switching level in order to efficiently route calls to the hotline from abroad. The Authority should note that the deeper the level of digit analysis required, such as in the case of 116000, the more switching resources are consumed. The Authority will recall discussions held a number of years ago at the time of the numbering changeover to 200xxxxx and 0034, when the issue of analysing telephone numbers was raised. Having said this, as long as it is technically and commercially viable, Gibtelecom does not foresee any issues with the Authority's proposal to include a reference to ensure that end-users can access this hotline for missing children, at national level.

One point that is mentioned in the public consultation, is covered by a change in the draft revised general conditions, but does not form part of an actual question by the Authority, is the matter of blocking access to calls and services where justified by reasons of fraud and misuse. The Company notes that the Universal Service Directive stipulates that "*Member States shall ensure that the **relevant authorities** [emphasis added] are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse...*"⁴⁰. This provision has been transposed in Gibraltar as "*A person providing a public communications network and/or a publicly available electronic communications service, shall, at the request of a **law enforcement agency** [emphasis added] in Gibraltar, block, on a case by case basis, access to numbers or services where this is justified by reasons of fraud or misuse.*"⁴¹. Gibtelecom believes that a definition of who is a "relevant authority" has been provided throughout the new law, and in any case, this is usually considered to be a national regulatory authority, and not law enforcement agencies. In the UK for example, it is OFCOM who administers this particular provision.

Whilst Gibtelecom generally supports anti-fraud initiatives, these must be accompanied by the necessary checks and balances. Gibtelecom strongly believes that any procedure to request blocking of a number, where this is possible on technical grounds, should include having a transparent, clearly defined and structured oversight process to ensure that the

⁴⁰ Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Article 28(2)

⁴¹ Communications (Universal service and users' rights) Regulations 2006, sub-regulation 24(3).

necessary data protection, fundamental human and other end-user rights are respected and not curtailed. With this in mind, Gibtelecom proposes to require some kind of judicially-supported consent before it actions the blocking of a particular number. This would also avoid so called "fishing expeditions" by law enforcement agencies and minimise any potential wasteful use of Company resources.

Gibtelecom also finds that there is also no clear definition of "fraud" or more importantly in this case, "misuse". The Company believes that these should be made clear from the outset to avoid any confusion or ambiguity in the exercise of this provision.

End of Gibtelecom submission