

Comments on proposed Determination pursuant to Section 95 of the Communications Act 2006

by

GibFibre Limited (“GibFibre”)

1. Pursuant to its powers and obligations in Section 95 of the Communications Act 2006 (the “Act”) the Gibraltar Regulatory Authority (“GRA”) has issued a draft Determination having reached a conclusion as to how the dispute between GibFibre and Gibtelecom Limited (“Gibtelecom”) is to be resolved (the “dispute”). The dispute concerns SMP obligations imposed on Gibtelecom Notice no. 04/08 on Wholesale Fixed Markets on 11 August 2008.
2. The proposed Determination of the GRA is set out in its draft submission notice sent to GibFibre on Monday 24 June. GibFibre’s comments are as follows:
 - a. Whereas GibFibre is pleased that it has taken the stance it has particularly in relation to characterisation of Gibtelecom and Rockolo as part of a single economic unit and does not disagree with the core of the Determination set out in bold in Section 5 of the Determination Notice, it has a particular problem which it feels could and should be addressed in the Determination.
 - b. The comments made by the GRA in Sections 6.1 and 6.2 of the draft Determination concerning Transparency and Timely Process whilst they may not give rise to some form of enforcement action at the current time should be reflected in the precise nature of the Determination given.
 - c. Section 97(2)(c) of the Act states that GRA have a power:

“... to give a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by the authority;...”

This is a wide considerable power given to the GRA as to what it can order to be done when combined with the power given in Section 97(2)(b) concerning the fixing of terms and conditions.
 - d. As far as GibFibre is concerned notwithstanding the nature and comments in the draft Determination that Gibtelecom has not acted in a timely manner and prevaricates the Determination is not dealing with the practicalities of the situation. That means that without a firmer, more definitive, specific timetable there is considerable risk the matter will just be further dragged out. If, however, the precise timetable for action is set out in the Determination it would mean pursuant to the provisions of the Communications Act 2006 being, but not exclusively Section 97(8) and 97(10) that specific dates in the Determination could be enforced by GibFibre or criminal conviction sought in respect of a breach of the timetable.

Timetable sought

3. The first thing that GibFibre want in a timetable to be ordered, is a requirement that Gibtelecom enter into the Reference Leased Line Offering by a particular date. The form of the Reference Leased Line Offering should be that delivered to GibFibre on 1 December 2017 as modified by the Determination. Gibtelecom should have to enter into that agreement within 21 days of the date of this Determination.

Secondly, that the GRA determine that for the period of 3 months of the date of the Determination any dispute raised by GibFibre over the wording, meaning or intent of any provisions in the relevant contract may be referred to the GRA for settlement on an expedited basis.

Thirdly, notwithstanding the provisions of the relevant contract operation in the future, the initial request made by GibFibre to Gibtelecom in relation to the provision of the sale of leased line described in Section 5 of the Determination if made with reasonably necessary technical information shall be provisioned by Gibtelecom within 14 days of the request from GibFibre.

The reason in respect of the first request for the time period being 21 days is the appeal period under the Communications Act in respect of the Determination given. Presumably, if Gibtelecom wanted a stay of the order it would apply for interim measures pursuant to the Communications Act in an application for those at the same time as any leave for appeal was applied for.

Procedural timetable

4. Again, GibFibre would refer to Section 6.1 and 6.2 and the inordinate time taken by Gibtelecom to deal with issues relating to the Reference Leased Line Offering ("RLLO"). In the circumstances, GibFibre would hope that no comments concerning the draft determination received after 5 July will be taken into account and that by 19 July a full Determination should be made. This is to take account of the very considerable time lapses that have occurred so far.

Conclusions

5. GibFibre has had to wait for its wholesale leased lines because it has been subject to the procrastination and prevarication by Gibtelecom described in Section 6 of the Determination then by Gibtelecom making points which are totally without merit such as those relating to it and Rockolo not being part of a single economic unit. In that case and given the clear powers of the GRA then the Authority should set a timetable getting those first leased lines under way and into use to provide a level of competition which Gibraltar very badly needs and has been recognised by the business community and even the courts.