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DETERMINATION C02/23

COMMUNICATIONS ACT 2006

DETERMINATION PURSUANT TO SECTION 95 OF THE COMMUNICATIONS ACT 2006

25th May 2023

Pursuant to its powers and obligations in section 95 of the Communications Act 2006 (“the Act”), the Gibraltar Regulatory Authority (“the GRA”), hereby issues this Determination, having reached its conclusion as to how a dispute between GibFibre Limited (“GibFibre”) and Gibtelecom Limited (“Gibtelecom”), is to be resolved (“the Dispute”).

1. Background

1.1 First Determination

On 16th July 2019, the GRA issued its Determination numbered C02/19 in resolution of the Dispute (“**the First Determination**”). Gibtelecom appealed against the First Determination, and by its Judgement¹ and consequent order dated 14th April 2023, the Supreme Court (“**the Court**”) allowed Gibtelecom’s appeal, quashed the First Determination and referred the matter to the GRA with a direction to reconsider it and adopt a decision in accordance with the findings of the Court in its said Judgment. This is the GRA’s decision taken pursuant to the Court’s direction.

¹ *Gibtelecom Limited v The Gibraltar Regulatory Authority and Gibfibre Limited*, 2023/GSC/017, Gibraltar Courts Service. <https://www.gcs.gov.gi/judgments/gibtelecom-limited-v-the-gibraltar-regulatory-authority-and-gibfibre-limited-2023gsc017-760>, accessed 24th May 2023.

1.2 Factual Background

Sections 1, 2 and 3 of the First Determination are incorporated into this Determination by reference verbatim, as if the same were herein set out seriatim.

2. The Dispute

2.1 Determination of the Dispute

The relief/remedy sought by GibFibre in the Dispute, namely, that Gibtelecom should grant it access, via a leased line from inside Rockolo Limited's data centre at Mount Pleasant to a point on the GibFibre's network to enable GibFibre, by means of such access, to provide electronic communications services to third-party owned servers hosted in that data centre ("**the Requested Access**"), outside the scope of the Act and the Communications (Access) Regulations 2006.

Accordingly, it is out with the powers of the GRA to direct or require Gibtelecom to provide the Requested Access to GibFibre because the data servers, to which access is sought by the Requested Access, lie beyond the Network Termination Point (as defined in the Act), and therefore beyond Gibtelecom's public electronic communications network (as defined in the Act) and, accordingly, any connection that Gibtelecom can be required to provide would not reach the data servers, which are within the private network in Rockolo's premises, and do not form part of a public network.

The GRA therefore DETERMINES that:

THE GRA DECLINES TO REQUIRE OR DIRECT GIBTELECOM TO PROVIDE THE REQUESTED ACCESS OR TO MAKE ANY OTHER DIRECTION, ON THE GROUNDS THAT IT DOES NOT HAVE THE POWER TO DO SO UNDER THE ACT OR THE COMMUNICATIONS (ACCESS) REGULATIONS 2006.

Having had determined the Dispute, and in accordance with section 97(8) of the Act, this Determination binds all the parties to the dispute.