

GRA Statement Establishing the Scope of the Dispute

7th March 2019

A request for resolving a dispute concerning a GibFibre Ltd ("GibFibre") request for access in the form of a Wholesale Leased Line ("WLL") to customers located at a data centre in Mount Pleasant, Gibraltar.

Details of Dispute

On 11th August 2008, the Gibraltar Regulatory Authority (the "GRA") published Decision Notice No. 04/08 on Wholesale Fixed Markets. The GRA found Gibtelecom to have Significant Market Power ("SMP") in the relevant market, namely; *"Wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity"*. Consequently, SMP obligations of Transparency, Non-Discrimination, Accounting Separation, Access and Price Control and Cost Accounting in this market were imposed on Gibtelecom.

GibFibre, an authorised person under the Communications Act 2006 (the "Act"), has provided information which appears to show that Gibtelecom is in breach of its SMP obligations by not granting GibFibre WLL services. GibFibre has requested access to the equipment of high data-consumption entities which are hosted in a data centre located at Mount Pleasant (the "Data Centre"). The Data Centre is operated by Rockolo Limited (a wholly-owned subsidiary of Gibtelecom).

After examining the evidence it has received, the GRA is of the view that commercial negotiations between the parties have failed.

The Scope of the Dispute

The GRA understands that GibFibre has been attempting to enter into a Reference Leased Lines Offer ("RLLO") agreement with Gibtelecom in order to purchase WLL services from Gibtelecom. It is through this WLL service that GibFibre intends to provide its services to the customers located in the Data Centre.

GibFibre claims that the lack of access to high data customers is affecting its business and is of the view that Gibtelecom should remedy this breach by entering into a WLL contract to facilitate delivery of WLL from a point within the Data Centre, to a point on GibFibre's network.

GibFibre alleges that the obligations in paragraph 3.5 of Decision Notice 04/08 have been, and continue to be, breached in that Gibtelecom is refusing to enter into a RLLO agreement.

This dispute concerns allegations by GibFibre that Gibtelecom did not act in accordance with its obligations to act in a transparent and non-discriminatory manner, as well as not complying with its obligation to provide access to GibFibre.

The GRA recognises that, on the face of the referral, there appears to be a dispute between the parties that commercial negotiations have failed to resolve. In resolving disputes, GRA must act in a manner which is consistent with the GRA's General Functions and Objectives, pursuant to sections 18 and 19 of the Act

Procedural matters

The GRA must act within the procedures outlined in its own guidelines for handling disputes. The GRA's guidelines may be found on the GRA website <https://www.gra.gi/communications/complaints>.

The GRA will allow five working days from the publishing of this statement for interested parties to comment on the scope of this dispute

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