

## **Statement Accompanying Determination C02/19**

**16<sup>th</sup> July 2019**

**The GRA has today, issued its determination (the "Determination"), pursuant to its powers and obligations in section 95 of the Communications Act 2006, (the "Act"), in respect of a dispute (the "Dispute"), between GibFibre Ltd ("GibFibre") and Gibtelecom Ltd ("Gibtelecom").**

### **Background**

On 13<sup>th</sup> February 2019, the Gibraltar Regulatory Authority (the "GRA") received a request for the resolution of a dispute from GibFibre, an authorised operator under the Act. GibFibre asserted that Gibtelecom had breached its obligations as imposed by the GRA, and in doing, was effectively not granting GibFibre the opportunity to enter into a wholesale leased line agreement. On 7<sup>th</sup> March 2019, and in accordance with its procedures, the GRA communicated to both Gibtelecom and GibFibre that it had accepted the request for resolving this dispute<sup>1</sup>.

On 24<sup>th</sup> June 2019, the GRA sent to both parties its Proposed Determination, with a view that an opportunity be provided to both parties, to make any representations by 5<sup>th</sup> July 2019. Both parties were advised that extensions for comments would not be granted, nor would comments received after 5<sup>th</sup> July 2019 be taken into consideration.

Comments were received from GibFibre on 28<sup>th</sup> June 2019 and from Gibtelecom on 5<sup>th</sup> July 2019 respectively. On 9<sup>th</sup> July 2019, the GRA advised both parties that in order to promote transparency within the dispute process, the GRA intended to publish Gibtelecom's and GibFibre's comments with respect to the Proposed Determination, and asked both parties to confirm if any of their respective submissions were confidential and whether the parties had any objection to these being published by the GRA. The GRA also advised that it would be taking into account replies received from both parties before deciding which course of action to take.

On 9<sup>th</sup> July 2019, GibFibre replied stating that it had no objections to the GRA publishing its response. On 10<sup>th</sup> July 2019, Gibtelecom replied stating that it had no objection, save to redact a reference to previous correspondence which remains the subject of legal proceedings.

The GRA has therefore, as accompaniments to this Statement and the Determination, published both responses.

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<sup>1</sup><https://www.gra.gi/communications/investigation/a-request-for-resolving-a-dispute-concerning-a-gibfibre-ltd-request-for-access-in-the-form-of-a-wholesale-leased-line>

## **Response to GibFibre's comments on the Proposed Determination**

The GRA notes that GibFibre is pleased with the Proposed Determination and is generally in agreement with it.

GibFibre has however, proposed that the Determination include a timetable requiring Gibtelecom to act in accordance with specified timelines in order that the matter not be "*further dragged out*". This specific matter had been considered prior to the issuing of the Proposed Determination and it was the GRA's view that specific timetables would not be laid out as part of the Determination. Imposing such requirements may be outside of the possibilities of either party and, more importantly, the GRA is mindful of not committing Gibtelecom or GibFibre to a timeline which one or both parties may not be able to meet.

However, the GRA has noted in the Determination the untimely manner in which Gibtelecom appears to have acted and will be monitoring the progress of this matter closely. In particular, and as GibFibre points out, the GRA is conscious of the obligation which the Determination imposes in accordance with section 97(8) of the Act and the consequences of non-compliance as per section 97(10). Furthermore, as is reflected in the Determination, the GRA considers its observations to be just that, but reserves the right to investigate the matter further.

The GRA is confident that Gibtelecom is in receipt of all the necessary information it requires to provide GibFibre with the necessary documentation to progress the granting of the wholesale leased line which GibFibre is seeking. The GRA expects that Gibtelecom will take heed of such obligation and act accordingly. Gibtelecom is in no position to delay the matter and is therefore expected to enter into a Reference Leased Line Offering ("RLLO") agreement with GibFibre.

Furthermore, the GRA notes that in accordance with Gibtelecom's Wholesale Leased Line Service Level Agreement, and the Wholesale Leased Line Process Manual, both of which are published on its website, a specific timeline exists for the process of the granting of wholesale leased lines.

In conclusion, therefore, the GRA has determined that the timetable proposed by GibFibre will not form part of the Determination.

## **Response to Gibtelecom's comments to Proposed Determination**

The GRA has noted Gibtelecom's response, and does not agree with its conclusions, nor is convinced by its arguments.

The main argument posed by Gibtelecom appears to focus around that provided for in Point 10 of the response. The fact that Gibtelecom fails "*to see how the current request is any different in substance*", is surprising and would appear to demonstrate a lack of understanding of the fundamental issues which have been addressed during the Dispute. Gibtelecom has argued that there is no difference between a request for a wholesale leased line to a specific location on Gibtelecom's network, which by definition can only be provided via Gibtelecom's network, and a request to physically place equipment inside the data centre with a view to thereon directly access hosted entities. The GRA notes this, however, its Determination remains unchanged.

The GRA is also surprised at Gibtelecom's Point 8 which states that the "*fact that Rockolo is Gibtelecom's subsidiary makes no difference*". In fact, this is fundamental to the matter as is explained in the Determination. Gibtelecom's attempt at dismissing the importance of this fact is also noted. However, the GRA continues to hold the firm view that such argument is meritorious.

**Conclusion**

Having taken account of the comments received by both parties and having made responses to each in this Statement, the GRA hereby publishes its Determination today, 16<sup>th</sup> July 2019.