



GIBRALTAR REGULATORY
AUTHORITY

REVIEW OF CONDITIONS

Decision Notice

C07/21

29th November 2021

FOREWORD

In line with the new communications regulatory framework, the Authority wishes to assess, update and exercise its powers with regards to the imposition and modification of conditions attached to a general authorisation.

Furthermore, the Authority will also be imposing conditions which may be attached to rights of use for numbering resources.

The Authority will therefore impose changes to the conditions currently in place in Notice C08/17.

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1. INTRODUCTION

The Gibraltar Regulatory Authority (the "Authority") is responsible for the regulation of the electronic communications sector in Gibraltar in accordance with the Communications Act 2006 (the "Act") and its accompanying regulations.

In January 2018, the Authority published a Notice on General Conditions, Notice No. C08/17, pursuant to Section 12 of the Act and Regulation 17 of the Communications (Authorisation and Licensing) Regulations 2006 (the "Regulations"). Regulation 17 of the Regulations grant the Authority powers to set conditions as listed in the Schedule to the Regulations.

The Authority also has the power to modify conditions under the provisions of regulation 18 of the Regulations provided that any modification is objectively justifiable in relation to the networks or services to which the modification relates and is proportionate to what the modification is intended to achieve. Whenever the Authority intends to make a modification, it shall comply with the public consultation procedure unless the proposed modification is minor and has been agreed with the operators concerned.

Under the provisions of the Regulations, any person may provide an electronic communications network and/or service, as long as they have notified the Authority in advance. Operators are free to commence operations once a completed notification form has been received, but operations are subject to the conditions which may be attached to a general authorisation, to rights of use for numbering resources and rights of use for radio spectrum.

A general authorisation means the legal framework established under and pursuant to the Act, ensuring rights for the provision of electronic communications networks or electronic communications services or both and laying down sector-specific obligations that may apply to all or to specific types of electronic communications networks and electronic communications services.

According to the Authority's Register of Authorised Persons, the following operators hold a general authorisation to provide electronic communications networks and services:

- GIBFIBRE LTD (Gibfibrespeed).
- BROADBAND GIBRALTAR LTD (Trading as u-mee and Sapphire Networks).
- GIBTELECOM LTD.
- EAZI TELECOM LTD (Trading as Limba).

2. BACKGROUND

On 24th December 2020, Her Majesty's Government of Gibraltar published a new legislative package which included amendments to the Communications Act 2006, Communications (Access) Regulations 2006, Communications (Authorisation and Licensing) Regulations 2006, Communications (Personal Data and Privacy) Regulations 2006 and the Communications (Universal Service and Users' Rights) Regulations 2006.

The new electronic communications regime transposed EU Directive 2018/1972 of 11th December 2018 establishing the European Electronic Communications Code (the "Code"). The Code will improve competition, drive innovation, and will boost consumer rights. Its main provisions are:

- **Clear rules:** the same rules will apply all over Europe;
- **Higher quality of services:** the Code will foster competition for investments, in particular in very high-capacity networks such as 5G networks, meaning higher connection speeds and better coverage;
- **Consumer protection:** the Code will benefit and protect consumers, irrespective of whether end-users communicate through traditional means such as calls and SMS, or web-based services;
- **Equality of treatment of all players in the telecom services sector:** whether traditional or web-based, the Code will clarify the definition of electronic communication services.

The same provisions apply in Gibraltar despite it exiting the European Union with the United Kingdom on 31st January 2020.

On 22nd June 2021, the Authority published public consultation C02/21 on a review of the Conditions. The closing date for submitting comments was 23rd July 2021. By the close of the consultation period, the Authority received detailed responses from the two operators below:

- GIBTELECOM LTD
- GIBFIBRE LTD.

The Authority thanks the respondents for their submissions and proposes to amend and replace some Conditions as explained in the following section. **The final decisions can be found in Annex A of this document.**

3. RESPONSES TO CONSULTATION

The Authority has summarised the respondent's views and submissions under each of the proposed Conditions below and after having considered these carefully, the Authority sets out its conclusions accordingly. Gibtelecom also provided some initial remarks, and these have also been addressed directly below.

For the complete list of final Conditions, please refer to Annex A.

Gibtelecom's general remarks

Gibtelecom made some enquiries on the definitions proposed in relation to the new Conditions. Furthermore, the company requested clarification on the newly proposed set of fifteen conditions and more specifically whether these would replace the extant set of twenty-one General Conditions and their corresponding requirements.

Authority's position

The Authority would like to clarify that the proposed set of definitions in relation to the newly amended Conditions would replace the old definitions as contained in Notice C08/17. There are also definitions contained under every specific Condition to inform readers that those specific definitions apply only to that Condition and not necessarily to the entire document.

The Authority can also confirm that the final list of fifteen Conditions as set out in this document will replace the twenty-one General Conditions entirely, including their requirements. Further to this Decision Notice, the Authority will be publishing a new Notice on Conditions.

CONDITIONS ATTACHED TO A GENERAL AUTHORISATION

CONDITION 1

1. ACCESS

1.1

Undertakings shall negotiate Access agreements or amendments to existing agreements with other Undertakings for the purpose of providing Publicly Available Electronic Communications Services, within a reasonable period. The reasonable period shall be reviewed upon receipt of a reasonable request for Access.

A reasonable request shall encompass all the information necessary, available to the Undertaking, to enable the requested party to make a full determination of whether Access is available and may include, but not limited to, information on the type of Access, specific network elements, locations, and relevant services to be provided etc.

1.2

Any information which is acquired by either party during the process of negotiating Access arrangements, shall be treated as confidential and must only be used for the purpose for which it was supplied, in particular, information which, if shared, could provide any other party (i.e., other departments, subsidiaries or partners) with a competitive advantage.

1.3

1.2 above does not apply to the submission of information to the Authority, where the Authority requires that information in order to carry out its functions.

1.4

For the purpose of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

Q1. Do you agree with the imposition of Condition 1? If not, please provide reasons.

Views of Respondents

Gibtelecom agreed with the imposition of Condition 1.

GibFibre expressed a concern with the regulation of access and in particular with the wording used by the Authority i.e. the judging or deciding upon what is a “reasonable period”. They considered that undefined or loosely defined time periods for the taking of action simply provides opportunities for prevarication and a failure to meet obligations.

Authority’s Position

The Authority notes Gibtelecom’s agreement with the imposition of Condition 1.

With regards to GibFibre’s comments, the Authority acknowledges their concerns in relation to any potential delays any operator may encounter when negotiating access agreements. However, given that the circumstances surrounding every access discussion between operators is different, the Authority is hesitant to set a timeframe within which to complete these. By implementing a reasonable period, the Authority is free to assess each situation under its own merits in order to aid its decision-making process. If the Authority were to gather evidence showing that negotiations have been delayed without reasonable justification, it would act accordingly to enforce the Condition.

CONDITION 2

2. STANDARDISATION AND SPECIFIED INTERFACES

2.1

The Undertaking shall comply with the relevant standards or specifications adopted by the European Commission for -

- (a) facilitating service interoperability;
- (b) securing freedom of choice for users;
- (c) providing services, technical interfaces or network functions;
- (d) providing End to End Connectivity; and
- (e) facilitation of provider switching and portability of numbers and identifiers.

2.2

Where no standards or specifications have been adopted, the Undertaking shall take full account of any relevant standards and/or specifications adopted by the European Standards Organisations.

2.3

In the absence of such standards and/or specifications referred to in paragraph 2.1 and 2.2 above, the Undertaking shall take full account of international standards or specifications adopted by the International Standards Organisations.

2.4

In the absence of such standards and/or specifications referred to in paragraphs 2.1, 2.2 and 2.3 above, the Undertaking shall take full account of any other standards specified by the Authority.

2.5

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

Q2. Do you agree with the imposition of Condition 2? If not, please provide reasons.

Views of Respondents

GibFibre agreed with the imposition of Condition 2.

Gibtelecom explained that they were generally content with the imposition of the condition,

but they questioned the reference to standards published by the European Commission at a time when Gibraltar no longer forms part of the European Union. Furthermore, they enquired as to what mechanisms the Authority could introduce to ensure that points a) through e) of Condition 2.1 are measured appropriately against these standards.

Authority's Position

The Authority notes both operators' general agreement with the imposition of Condition 2.

Even though Gibtelecom is correct in saying that Gibraltar no longer forms part of the European Union, the Communications Act 2006 still refers to international and European standards in this context. The Authority is also of the view that the standards and specifications as specified in condition 2 should comply with European standards given that these are the usual working practices adopted in Gibraltar both in the communications sector and others.

CONDITION 3

3. PROPER AND EFFECTIVE FUNCTIONING OF THE NETWORK

3.1

The Undertaking shall take all necessary measures to maintain, to the greatest extent possible -

(a) the proper and effective functioning of the Public Electronic Communications Network provided by it at all times, in particular when Access and/or Interconnection is being provided to other Undertakings; and

(b) in the event of catastrophic network breakdown or in cases of force majeure the fullest possible availability of the Public Electronic Communications Network and any Publicly Available Electronic Communications Services;

(c) uninterrupted access to Emergency Organisations in instances where an Undertaking provides Publicly Available Telephone Services and other Publicly Available Electronic Communications Service(s) which are intended, but are not limited to, facilitate access to such organisations.

3.2

The Undertaking shall ensure that any restrictions imposed by it on Access to and use of a Public Electronic Communications Network provided by it on the grounds of ensuring compliance with paragraph 3.1 above are proportionate, non-discriminatory and based on objective criteria identified in advance.

3.3

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

Q3. Do you agree with the imposition of Condition 3? If not, please provide reasons.

Views of Respondents

GibFibre considered that the second phrase in Condition 3.1(a) starting “...in particular...” is unnecessary and simply flagged an invitation to make difficulties in respect of access.

Gibtelecom had no comments with regards to this specific condition.

Authority’s Position

The Authority does not agree with GibFibre’s comment in relation to the specific wording used under Condition 3.1(a). In fact, the Authority’s view is that the wording, “...in particular...” actually strengthens the Condition in respect of the proper and effective functioning of the network when access is being provided.

This means that, not only do undertakings have a responsibility to make sure their network is operating effectively but especially so when providing access to other operators. This will ensure that interoperability between the relevant undertakings is protected and safeguarded to the greatest extent possible in a world where information and data is vital for a successful and prosperous society.

CONDITION 4

4. EMERGENCY PLANNING

4.1

Subject to paragraph 4.3, the Undertaking shall, on the request of and in consultation with –

(a) the authorities responsible for Emergency Organisations; and

(b) such departments of Her Majesty’s Government of Gibraltar as the Minister may from time to time direct for the purposes of this Condition,

make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in Disasters.

4.2

Subject to paragraph 4.3, the Undertaking shall, on request by any person as is designated for the purpose in any such arrangements, implement those arrangements in so far as is reasonable and practicable to do so.

4.3

Nothing in this Condition precludes the Undertaking from –

(a) recovering the costs incurred in making or implementing any such arrangements; or

(b) making the implementation of any such arrangements conditional upon being indemnified by the person for whom the arrangements are to be implemented for all costs incurred as a consequence of the implementation.

4.4

Any Undertaking providing mobile Number-Based Interpersonal Communications Services shall transmit public warnings to its End-Users when public warning systems regarding imminent or developing Disasters are in place.

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

Q4. Do you agree with the imposition of Condition 4? If not, please provide reasons.

Views of Respondents

GibFibre agreed with the imposition of Condition 4.

Gibtelecom agreed with the imposition but asked that, in the event it were required, whether further guidance or direction would be provided by the Authority with regards to the application, operation and the meeting of costs of Condition 4.4.

Authority's Position

The Authority notes the general agreement from both operators regarding the imposition of Condition 4.

If any Undertaking were to implement any public warning systems regarding imminent or developing Disasters, the application, operation, and costs associated with such systems would be borne by the Undertaking concerned.

CONDITION 5

5. INTERCONNECTION

5.1

Undertakings shall negotiate Interconnection agreements or amendments to existing agreements with other Undertakings for the purpose of providing Publicly Available

Electronic Communications Services, within a reasonable period. The reasonable period shall be reviewed upon receipt of a reasonable request for Interconnection.

A reasonable request shall encompass all the information necessary, available to the Undertaking, to enable the requested party to make a full determination of whether Interconnection is available and may include, but is not limited to, information on the type of Interconnection, specific network elements, locations, and relevant services to be provided etc.

5.2

Any information which is acquired by either party during the process of negotiating Interconnection arrangements, shall be treated as confidential and must only be used for the purpose for which it was supplied, in particular, information which, if shared, could provide any other party (i.e. other departments, subsidiaries or partners) with a competitive advantage.

5.3

5.2 above does not apply to the submission of information to the Authority, where the Authority requires that information in order to carry out its functions.

5.4

For the purpose of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network.

Q5. Do you agree with the imposition of Condition 5? If not, please provide reasons.

Views of Respondents

Gibtelecom agreed with the imposition of Condition 5.

GibFibre expressed the same concern as mentioned under Condition 1 with respect to the use of “reasonable period” and how undefined periods of time could prove detrimental when negotiating access agreements.

Authority’s Position

The Authority acknowledges Gibtelecom’s agreement with the imposition of this Condition.

With respect to GibFibre’s comments, the Authority would like to direct the operator to its final remarks under Condition 1. The Authority echoes its sentiments in relation to Condition 5 above on interconnection.

CONDITION 6

6. EMERGENCY CALL NUMBERS

6.1

The Undertaking shall ensure that any End-User can access Emergency Organisations by using the emergency call numbers "112", "190" and "199" at no charge and, in the case of a Pay Telephone, without having to use coins or cards.

6.2

The Undertaking shall, to the extent technically and economically feasible make accurate and reliable Caller Location Information available for all calls to the emergency call numbers "112", "190" and "199", at no charge to the Emergency Organisations handling those calls, at the time the call is answered by those organisations.

6.3

Where an Undertaking provides Publicly Available Telephone Services:

(a) at a fixed location, the Caller Location Information must, at least, accurately reflect the fixed location of the End-User's terminal equipment including the postal address; and

(b) using a Mobile Network, the Caller Location Information must include, at least, the Cell Identification of the cell from which the call is being made.

6.4

For the purposes of this Condition,

"Undertaking" means a person who provides Publicly Available Telephone Services.

Q6. Do you agree with the imposition of Condition 6? If not, please provide reasons.

Views of Respondents

Gibtelecom agreed with the imposition of Condition 6.

GibFibre stated that the requirement under 6.3(a) may not be practicable. With the growing preponderance of Voice over Internet Protocol (VoIP) fixed location calls it was concerned that it may only be able to give the address of the subscriber rather than where the location of the end-user's terminal equipment is at any given time.

Authority's Position

The Authority acknowledges Gibtelecom's agreement with the imposition of Condition 6.

Regarding GibFibre's comments, the Authority wishes to clarify that, for the purposes of this Condition, where Publicly Available Telephone Services, whether VoIP or any other type

of telephony services, are provided at a fixed location, the Caller Location Information of the End-User's terminal equipment will be considered to be in the same location as the End-User's address.

CONDITION 7

7. TRANSPARENCY AND PUBLICATION OF INFORMATION

7.1

In order to ensure that all End-Users are able to make informed choices, Undertakings shall ensure that transparent, adequate and up to date information is published on the following –

- (a) Contact details of the Undertaking;
- (b) Description, scope and main characteristics of each service provided;
- (c) Information and tariffs of the services offered, all types of usage charges including charges for access and maintenance and costs with respect to terminal equipment;
- (d) After-sales, maintenance and customer services offered and their contact details;
- (e) Standard contract conditions, including contract duration, charges due on early termination of the contract, rights related to the termination of bundled offers or of elements thereof, and procedures and direct charges related to the portability of numbers and other identifiers, if relevant;
- (f) If the person is a provider of Number-Based Interpersonal Communications Services, information on access to emergency services and caller location, or any limitation on the latter. If the person is a provider of Number-Independent Interpersonal Communications Services, information on the degree to which access to emergency services may be supported or not;
- (g) Details of products and services, including any functions, practices, policies and procedures and alterations in the operation of the service, specifically designed for End-Users with disabilities.

7.2

The information contained in 7.1 above shall be set out in a clear, comprehensive and easily accessible manner including an accessible format for End-Users with disabilities and does not include information on bespoke services.

7.3

Publication of the information shall be effected by:

- (a) sending a copy of such information or any appropriate parts of it to any End-User or Consumer who may reasonably request such a copy; and

(b) placing a copy of such information on any relevant website operated or controlled by the Undertaking, or, where no such website exists, placing a copy of such information in every office and outlet of the Undertaking such that it is readily available for inspection free of charge by members of the general public during office hours.

7.4

In instances where a transparency Significant Market Power (SMP) obligation requiring an Undertaking to provide advanced notification to the Authority is not imposed, an Undertaking shall:

(a) Notify the Authority of any changes to terms and conditions, price increases, price reductions and introduction of new services before or on the actual date of publication.

The terms and conditions, price increases, price reductions and new services above shall be made with reference to Publicly Available Electronic Communications Services.

7.5

For the purposes of this Condition,

“Undertaking” means a person who provides Publicly Available Electronic Communications Services.

Q7. Do you agree with the imposition of Condition 7? If not, please provide reasons.

Views of Respondents

GibFibre expressed a view that Condition 7.1(b) and 7.1(c) should refer to all services provided. They explained that this condition would fulfil not only a consumer protection role but also provide information on competition in the market place and therefore ensure all services have their terms and conditions including pricing appear on their website.

Gibtelecom mainly agreed with the imposition of this Condition due to the legal requirements brought about by the introduction of the European Electronic Communications Code (EECC). However, with regards to the notification requirement concerning the introduction or changes to non-SMP products/services under Condition 7.4, the company felt that it was not in keeping with the spirit and core tenets of communications ex-ante legislation. They added that Gibtelecom does not, in principle, have any problems with notifying the Authority but they did not believe that this requirement should not be enacted through a Condition given the consequences of not meeting the Condition for whatever reason.

Authority's Position

The Authority would like to clarify that Condition 7.1(b) and 7.1(c) refers specifically to electronic communications services provided and offered yet does not include bespoke services. This is because bespoke services are not necessarily standard products and may change in any way at short notice. Given that these are not firm and established products,

the Condition does not require Undertakings to provide information on them. This is the same position adopted in other jurisdictions such as in the United Kingdom.

In terms of the requirements under Condition 7.4, the Authority proposed this Condition in order to supervise and monitor any electronic communications products and services that operators were bringing to market. Previous to the imposition of this Condition, the Authority would only become aware of certain products well after, in certain cases, they were being provided to customers. Any potential damage done due to anti-competitive issues such as unfair terms and conditions and predatory pricing, would therefore have taken effect before the Authority would be able to act. By implementing the notification requirements under Condition 7.4, the Authority can regulate in an ex-ante manner and be more proactive in protecting the general public.

CONDITION 8

8. ITEMISED BILLS

8.1

The Undertaking shall provide to each of its Subscribers, free of charge, a basic level of itemised billing.

The itemised bill shall allow verification and control of the charges incurred in using Internet Access Services, Voice Communications Services or Number-Based Interpersonal Communications Services in order to adequately monitor a Subscriber's usage and expenditure.

8.2

The Undertaking shall provide to each of its Subscribers, on request, and either at no extra charge or for a reasonable fee, additional levels of detail on a Subscriber's bill such as, but not limited to, the duration of the services charged and the Telephone Number of the called party unless the End-User has requested that information not to be included.

8.3

The Undertaking shall ensure that calls which are free of charge to that Subscriber, including calls to helplines, shall not be identified in the Subscriber's itemised bill.

8.4

The Undertaking shall not be subject to this Condition in respect of any Subscriber where:

- (a) it provides the services outlined in 8.1 to the Subscriber on a pre-paid basis; and
- (b) the Subscriber has an alternative means, free of charge, of adequately monitoring the Subscriber's usage and expenditure.

8.5

For the purposes of this Condition:

“Undertaking” means a person who provides Publicly Available Electronic Communications Services.

Q8. Do you agree with the imposition of Condition 8? If not, please provide reasons.

Views of Respondents

Both operators agreed with the imposition of Condition 8.

Authority’s Position

The Authority acknowledges that both operators agree with the imposition of Condition 8.

CONDITION 9

9. NON-PAYMENT OF BILLS

9.1

Where the Subscriber has not paid the Undertaking all or part of a bill for Publicly Available Electronic Communications Services provided by the Undertaking, any measures taken by the Undertaking to effect payment or disconnection shall:

- (a) be proportionate and not unduly discriminatory;
- (b) give due warning to the Subscriber beforehand of any consequent service interruption or disconnection; and
- (c) except in cases of fraud, persistent late payment or non-payment, confine any service interruption to the service concerned, as far as technically feasible.

9.2

The Undertaking shall publish details of measures it may take to effect payment or disconnection in accordance with 9.1 above by:

- (a) sending a copy of such information or any appropriate parts of it to any Subscriber who may request such a copy; and
- (b) placing a copy of such information on any relevant website operated or controlled by the Undertaking.

9.3

For the purposes of this Condition:

“Undertaking” means a person who provides Publicly Available Electronic Communications Services.

Q9. Do you agree with the imposition of Condition 9? If not, please provide reasons.

Views of Respondents

Gibtelecom agreed with the imposition of Condition 9.

GibFibre has no objection to the imposition of Condition 9 although in their view, the last line in Condition 9.1 should read "...to enforce payment..." rather than to "...effect payment".

Authority's Position

The Authority notes Gibtelecom's agreement with the imposition of Condition 9.

The Authority has no regulatory objection to GibFibre's change in wording from "...to effect payment..." to "...enforce payment" and so will be making the necessary changes by amending both Condition 9.1 and 9.2 respectively.

CONDITION 10

10. CODE OF PRACTICE FOR THE HANDLING OF COMPLAINTS AND DISPUTE RESOLUTION

10.1

The Undertaking shall implement and publish a Code of Practice which sets out the procedures it shall apply for the handling of complaints and resolving of disputes it may have with its Consumers and other End-Users in relation to the provision of Publicly Available Electronic Communications Services.

10.2

The Code of Practice shall include the following information -

- (a) a first point of contact for complainants;
- (b) a means of recording complaints;
- (c) a time frame within which the person concerned shall respond to complaints;
- (d) the procedures for resolving disputes;
- (e) the remedies and redress available in respect of matters that form the subject matter of a complaint or dispute;
- (f) appropriate cases where reimbursement of payments and payments in settlement of losses incurred will be made; and

(g) retention of records of complaints (including copies of the complaint, any response thereto, any determination in respect of the complaint and any documentation considered in the course of such determination) for a period of not less than one year following the resolution of the complaint or the dispute, as the case may be.

10.3

The Code of Practice shall be drafted in plain English which is easy to understand. The Code of Practice shall be offered, free of charge to any Consumer or End-User involved in a complaint or dispute. The Code of Practice shall also be published on the Undertaking's website.

10.4

The Authority may from time to time, review and amend, as it considers appropriate, an Undertaking's Code of Practice until it is satisfied that the procedures set out in the Code of Practice are, amongst other things, simple, not financially burdensome on the Consumer or End-User and allow any party to settle their dispute fairly, promptly and in a transparent and non-discriminatory manner.

10.5

Failing resolution of a dispute, the Undertaking shall comply with the procedures established from time to time by the Authority, and any final decision taken by the Authority or an independent person appointed by the Authority, for the resolution of disputes between the Undertaking and its Consumers and other End-Users in relation to the provision of Publicly Available Electronic Communications Services.

10.6

For the purposes of this Condition,

"Undertaking" means a person who provides Publicly Available Electronic Communications Services.

Q10. Do you agree with the imposition of Condition 10? If not, please provide reasons.

Views of Respondents

Gibtelecom had no specific comments on the imposition of this Condition.

GibFibre agreed with the Authority's proposal in this respect. Nevertheless, in respect to Condition 10.4 they stated that, "the wording should be amended so that the Authority may 'direct' review and amendment by the Undertaking as appropriate". They added that the Undertaking's Code of Practice should remain under that Undertaking's control.

Authority's Position

The Authority notes that Gibtelecom has no specific comments on Condition 10.

In relation to GibFibre's feedback, the Authority acknowledges that any changes to the Code of Practice shall be carried out by the Undertaking concerned and not the Authority. However, in order to ensure compliance with the necessary requirements, the Authority is able to use regulatory means at its disposal to ensure that Undertakings make the appropriate modifications in order to facilitate the complaint and dispute handling process and protect consumers.

The Authority will be amending Condition 10 accordingly.

CONDITION 11

11. MEASURES FOR END-USERS WITH DISABILITIES

11.1

The Undertaking shall ensure that disabled End-Users have access to emergency services equivalent to that enjoyed by other End-Users.

11.2

The Undertaking shall ensure, through accessible formats which address different types of disabilities, that End-Users are adequately informed about the existence of all the emergency numbers including the use of the single European emergency number '112'.

11.3

The Undertaking shall ensure that any End-User of its services who is so visually impaired or otherwise disabled as to be unable to use a printed Directory, can access, free of charge, Directory Information and Directory Enquiry Facilities in a form which is appropriate to meet their needs. The Undertaking shall ensure that such a Directory Enquiry Facility is capable of connecting such an End-User to a requested Telephone Number at the request of that End-User.

11.4

The Undertaking shall provide a priority Fault Repair Service as promptly as practicable to any Subscriber with disabilities who has a genuine need for an urgent repair. Charges for a priority Fault Repair Service shall not exceed the Undertaking's standard charge for a Fault Repair Service.

11.5

The Undertaking shall ensure that those Subscribers who are dependent on the telephone, are able to participate in a scheme to safeguard telephone services to such Subscribers. The scheme shall:

(a) enable such Subscribers to give prior notification to the Undertaking of a nominee to whom –

(i) that Subscriber's telephone bill shall initially be sent; or

- (ii) any enquiry to establish why a telephone bill has not been paid shall be made;
- (b) permit the nominee to pay that Subscriber's bill on their behalf;
- (c) require the nominee to give prior consent to the Undertaking to act in such capacity;
- (d) not require the nominee to accept liability to pay the telephone bills of that Subscriber;
and
- (e) be provided at no cost to such a Subscriber.

11.6

The Undertaking shall take all reasonable steps to ensure that the services which it provides in order to comply with the Conditions contained in paragraphs 11.1 to 11.5 above are widely publicised, taking into consideration the need to disseminate information in appropriate formats through appropriate channels for disabled End-Users.

11.7

For the purposes of this Condition,

"Undertaking" means a person who provides Publicly Available Telephone Services.

Q11. Do you agree with the imposition of Condition 11? If not, please provide reasons.

Views of Respondents

Both Gibtelecom and GibFibre agreed with the imposition of Condition 11.

Authority's Position

The Authority acknowledges that both operators agree with the imposition of Condition 11.

CONDITION 12

12. ACCESS TO NUMBERS AND SERVICES

12.1

The Undertaking shall ensure, where technically and economically feasible, that End-Users are able to:

- (a) access and use services using Non-geographic Numbers within the European Union which the Undertaking Adopts;
- (b) access all Telephone Numbers provided in the European Union, regardless of the technological devices used by the Undertaking, including those in the Gibraltar Numbering Plan and the national numbering plan of European Member States, those from the European

Telephone Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN).

12.2

12.1 shall not apply where a called Subscriber has chosen for commercial reasons to limit access to calling parties located in specific geographical areas.

12.3

The Undertaking shall, where requested by or on behalf of the relevant authority, block, on a case by case basis, access to numbers or services where it is justified by reasons of fraud or misuse. The Undertaking shall also withhold relevant Interconnection or other service revenues if requested to do so by a relevant authority.

12.4

The Undertaking shall ensure that any End-User can access a hotline for missing children by using the number "116000".

12.5

For the purposes of this Condition,

"Undertaking" means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

Q12. Do you agree with the imposition of Condition 12? If not, please provide reasons.

Views of Respondents

GibFibre agreed with the imposition of Condition 12 and added that the first line in Condition 12.3 should be a reference to "a" relevant Authority and not "the" relevant Authority.

Gibtelecom questioned the validity and application of Condition 4.1 as it refers to an Undertaking adopting numbers within the European Union. They asked how, in practice, an undertaking in Gibraltar can adopt numbers within the EU.

Authority's Position

The Authority takes note of GibFibre's feedback and will be amending the wording in Condition 12.3 to "a" relevant Authority instead of "the" relevant Authority.

Gibtelecom refers to Condition "4.1.", but the Authority will be responding to Gibtelecom's comments as if they were made in relation to Condition "12.1". It refers to the Authority's position under Condition 2 and further adds that the legislation in this case, also refers to the European Union in the context of accessing numbers and services.

CONDITIONS ATTACHED TO RIGHTS OF USE FOR NUMBERING RESOURCES

CONDITION 13

13. ALLOCATION, ADOPTION AND USE OF TELEPHONE NUMBERS

13.1

An Undertaking shall not Adopt Telephone Numbers from the Gibraltar Numbering Plan unless:

(a) the Telephone Numbers have been allocated to the Undertaking; or

(b) the Undertaking has been authorised (either directly or indirectly) to Adopt those Telephone Numbers by the person allocated those Telephone Numbers.

13.2

The Undertaking may only use (or, where specified, Adopt) a Telephone Number listed in the Gibraltar Numbering Plan where such use or Adoption is in accordance with the designation attributed to that Telephone Number in that Plan.

13.3

The Undertaking shall have a Numbering Plan for such Telephone Numbers as the Authority may allocate to it from time to time. Except where the Authority otherwise consents in writing, such Numbering Plan shall be consistent with the Gibraltar Numbering Plan. When applying for Telephone Numbers, the Undertaking shall provide such details of its Numbering Plan to the Authority as are relevant to the application.

13.4

The Undertaking shall install, maintain and adjust its Public Electronic Communications Network so that it routes Signals and otherwise operates in accordance with the Gibraltar Numbering Plan and any allocation of Telephone Numbers made by the Authority from time to time.

13.5

Where Telephone Numbers have been allocated to the Undertaking, that Undertaking shall secure that such Telephone Numbers are Adopted or otherwise used effectively and efficiently.

13.6

The Undertaking shall not unduly discriminate against another Undertaking in relation to its Adoption or use of Telephone Numbers for purposes connected with the use by that other Undertaking, or its customers, of any Electronic Communications Network or Electronic Communications Service.

13.7

When applying for an allocation or reservation of Telephone Numbers, the Undertaking shall:

- (a) use an appropriate application form as directed by the Authority from time to time as it thinks fit;
- (b) provide such information as is required by such application form; and
- (c) provide to the Authority, on request, any other information considered by the Authority to be relevant to the application, and the supply of which does not place an undue burden on the Undertaking.

13.8

Without prejudice to the other grounds set out in regulation 15(2) of the Regulations, it is hereby declared that the Authority may withdraw an allocation of Telephone Numbers from an Undertaking where:

- (a) the Undertaking has not Adopted those Telephone Numbers within six months, or such other period as the Authority may from time to time direct, from the date on which the Telephone Numbers were allocated, or
- (b) in relation to an allocation of a series of Telephone Numbers, the Undertaking has not Adopted those Telephone Numbers to any significant extent within six months, or such other period as the Authority may from time to time direct, from the date on which the series of Telephone Numbers was allocated.

13.9

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

Q13. Do you agree with the imposition of Condition 13? If not, please provide reasons.

Views of Respondents

Gibtelecom agreed with the imposition of Condition 13.

GibFibre agreed with the imposition of Condition 13 although they stated that Condition 13.8 should be drafted as an instruction and not as a declaration.

Authority's Position

The Authority acknowledges the general agreement of both operators with regards to Condition 13.

In respect to GibFibre's comments, the Authority agrees with their proposed amendment in that the Condition should not be drafted as a declaration. The Condition shall be amended accordingly.

CONDITION 14

14. NUMBER PORTABILITY

14.1

Undertakings shall provide Number Portability upon request.

14.2

Where an End-User terminates a contract with an Undertaking, that Undertaking shall be able to port the End-User's number to another Undertaking for a period of one month after the date of termination.

14.3

Any charges between Undertakings, related to the provision of Number Portability shall be cost-oriented and no direct charges shall be applied to End-Users.

14.4

The Undertaking shall adequately inform and protect the End-User throughout the porting process.

14.5

For the purposes of this Condition,

"Undertaking" means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

Q14. Do you agree with the imposition of Condition 14? If not, please provide reasons.

Views of Respondents

Gibtelecom agreed with the imposition of Condition 14.

GibFibre did not object to the imposition of Condition 14.1 but commented that this Condition should reflect Article 30 of the Universal Service Directive which requires operators to,

"(a) Set a minimum time limit of one working day from the moment of concluding an Operator Change Agreement to the moment when the number is activated by another Operator;

(b) Not exceed one working day's loss of service during the process of changing Operator; and

(c) Carry out the process within the shortest possible time."

They added that the company had experienced difficulties in this area and that reflecting Article 30 accurately would be of considerable assistance.

Authority's Position

The Authority notes Gibtelecom's agreement with the imposition of Condition 14.

In response to GibFibre's comments, the Authority notes the reference to Article 30 of the Universal Service Directive. To this end, while these specific provisions are not contained in this condition, the Authority directs the company to Regulation 26 of the Communications (Universal Service and User's Rights) Regulations 2006.

Regulation 26 contains provisions which address GibFibre's concerns. If any operator experiences difficulties regarding the number portability process, they should contact the Authority for assistance.

CONDITION 15

15. PROVISION OF DIRECTORY INFORMATION

15.1

Where the Undertaking has been allocated Telephone Numbers in accordance with Condition 13, it shall meet all reasonable requests from any person to make available the Directory Information of:

- (a) its Subscribers who have been assigned those Telephone Numbers; and
- (b) any other End-User assigned a Telephone Number originally allocated to the Undertaking,

for the purposes of the provision of Directories and Directory Enquiry Facilities.

15.2

Where the Undertaking has been authorised (either directly or indirectly) to use Telephone Numbers allocated to another person, it shall on request supply to:

- (a) the person who was originally allocated such Telephone Numbers; or
- (b) if different from the above, the person who authorised the use of such Telephone Numbers by it, the Directory Information of the Undertaking's Subscribers and of any other End-User assigned a Telephone Number from such Telephone Numbers.

15.3

Where the Undertaking is requested to supply Directory Information in accordance with paragraphs 15.1 or 15.2, it shall do so on terms which are fair, cost-oriented and non-discriminatory, and in a format which is agreed between the Undertaking and the person requesting the information.

15.4

This Condition applies subject to the requirements of the relevant data protection legislation.

15.5

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

Q15. Do you agree with the imposition of Condition 15? If not, please provide reasons.

Views of Respondents

Both Gibtelecom and GibFibre agreed with the imposition of Condition 15.

Authority's Position

The Authority acknowledges that both operators agree with the imposition of Condition 15.

ANNEX A: DECISIONS

CONDITION 1

1. ACCESS

1.1

Undertakings shall negotiate Access agreements or amendments to existing agreements with other Undertakings for the purpose of providing Publicly Available Electronic Communications Services, within a reasonable period. The reasonable period shall be reviewed upon receipt of a reasonable request for Access.

A reasonable request shall encompass all the information necessary, available to the Undertaking, to enable the requested party to make a full determination of whether Access is available and may include, but not limited to, information on the type of Access, specific network elements, locations and relevant services to be provided etc.

1.2

Any information which is acquired by either party during the process of negotiating Access arrangements, shall be treated as confidential and must only be used for the purpose for which it was supplied, in particular, information which, if shared, could provide any other party (i.e., other departments, subsidiaries or partners) with a competitive advantage.

1.3

1.2 above does not apply to the submission of information to the Authority, where the Authority requires that information in order to carry out its functions.

1.4

For the purpose of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

CONDITION 2

2. STANDARDISATION AND SPECIFIED INTERFACES

2.1

The Undertaking shall comply with the relevant standards or specifications adopted by the European Commission for -

(a) facilitating service interoperability;

- (b) securing freedom of choice for users;
- (c) providing services, technical interfaces or network functions;
- (d) providing End to End Connectivity; and
- (e) facilitation of provider switching and portability of numbers and identifiers.

2.2

Where no standards or specifications have been adopted, the Undertaking shall take full account of any relevant standards and/or specifications adopted by the European Standards Organisations.

2.3

In the absence of such standards and/or specifications referred to in paragraph 2.1 and 2.2 above, the Undertaking shall take full account of international standards or specifications adopted by the International Standards Organisations.

2.4

In the absence of such standards and/or specifications referred to in paragraphs 2.1, 2.2 and 2.3 above, the Undertaking shall take full account of any other standards specified by the Authority.

2.5

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

CONDITION 3

3. PROPER AND EFFECTIVE FUNCTIONING OF THE NETWORK

3.1

The Undertaking shall take all necessary measures to maintain, to the greatest extent possible –

(a) the proper and effective functioning of the Public Electronic Communications Network provided by it at all times, in particular when Access and/or Interconnection is being provided to other Undertakings; and

(b) in the event of catastrophic network breakdown or in cases of force majeure the fullest possible availability of the Public Electronic Communications Network and any Publicly Available Electronic Communications Services;

(c) uninterrupted access to Emergency Organisations in instances where an Undertaking provides Publicly Available Telephone Services and other Publicly Available Electronic Communications Service(s) which are intended, but are not limited to, facilitate access to such organisations.

3.2

The Undertaking shall ensure that any restrictions imposed by it on Access to and use of a Public Electronic Communications Network provided by it on the grounds of ensuring compliance with paragraph 3.1 above are proportionate, non-discriminatory and based on objective criteria identified in advance.

3.3

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

CONDITION 4

4. EMERGENCY PLANNING

4.1

Subject to paragraph 4.3, the Undertaking shall, on the request of and in consultation with –

(a) the authorities responsible for Emergency Organisations; and

(b) such departments of Her Majesty’s Government of Gibraltar as the Minister may from time to time direct for the purposes of this Condition,

make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in Disasters.

4.2

Subject to paragraph 4.3, the Undertaking shall, on request by any person as is designated for the purpose in any such arrangements, implement those arrangements in so far as is reasonable and practicable to do so.

4.3

Nothing in this Condition precludes the Undertaking from –

(a) recovering the costs incurred in making or implementing any such arrangements; or

(b) making the implementation of any such arrangements conditional upon being indemnified by the person for whom the arrangements are to be implemented for all costs incurred as a consequence of the implementation.

4.4

Any Undertaking providing mobile Number-Based Interpersonal Communications Services shall transmit public warnings to its End-Users when public warning systems regarding imminent or developing Disasters are in place.

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

CONDITION 5

5. INTERCONNECTION

5.1

Undertakings shall negotiate Interconnection agreements or amendments to existing agreements with other Undertakings for the purpose of providing Publicly Available Electronic Communications Services, within a reasonable period. The reasonable period shall be reviewed upon receipt of a reasonable request for Interconnection.

A reasonable request shall encompass all the information necessary, available to the Undertaking, to enable the requested party to make a full determination of whether Interconnection is available and may include, but not limited to, information on the type of Interconnection, specific network elements, locations and relevant services to be provided etc.

5.2

Any information which is acquired by either party during the process of negotiating Interconnection arrangements, shall be treated as confidential and must only be used for the purpose for which it was supplied, in particular, information which, if shared, could provide any other party (i.e. other departments, subsidiaries or partners) with a competitive advantage.

5.3

5.2 above does not apply to the submission of information to the Authority, where the Authority requires that information in order to carry out its functions.

5.4

For the purpose of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network.

CONDITION 6

6. EMERGENCY CALL NUMBERS

6.1

The Undertaking shall ensure that any End-User can access Emergency Organisations by using the emergency call numbers "112", "190" and "199" at no charge and, in the case of a Pay Telephone, without having to use coins or cards.

6.2

The Undertaking shall, to the extent technically and economically feasible make accurate and reliable Caller Location Information available for all calls to the emergency call numbers "112", "190" and "199", at no charge to the Emergency Organisations handling those calls, at the time the call is answered by those organisations.

6.3

Where an Undertaking provides Publicly Available Telephone Services:

(a) at a fixed location, the Caller Location Information must, at least, accurately reflect the fixed location of the End-User's terminal equipment including the postal address; and

(b) using a Mobile Network, the Caller Location Information must include, at least, the Cell Identification of the cell from which the call is being made.

6.4

For the purposes of this Condition,

"Undertaking" means a person who provides Publicly Available Telephone Services.

CONDITION 7

7. TRANSPARENCY AND PUBLICATION OF INFORMATION

7.1

In order to ensure that all End-Users are able to make informed choices, Undertakings shall ensure that transparent, adequate and up to date information is published on the following –

(a) Contact details of the Undertaking;

(b) Description, scope and main characteristics of each service provided;

(c) Information and tariffs of the services offered, all types of usage charges including charges for access and maintenance and costs with respect to terminal equipment;

(d) After-sales, maintenance and customer services offered and their contact details;

(e) Standard contract conditions, including contract duration, charges due on early termination of the contract, rights related to the termination of bundled offers or of elements thereof, and procedures and direct charges related to the portability of numbers and other identifiers, if relevant;

(f) If the person is a provider of Number-Based Interpersonal Communications Services, information on access to emergency services and caller location, or any limitation on the latter. If the person is a provider of Number-Independent Interpersonal Communications Services, information on the degree to which access to emergency services may be supported or not;

(g) Details of products and services, including any functions, practices, policies and procedures and alterations in the operation of the service, specifically designed for End-Users with disabilities.

7.2

The information contained in 7.1 above shall be set out in a clear, comprehensive and easily accessible manner including an accessible format for End-Users with disabilities and does not include information on bespoke services.

7.3

Publication of the information shall be effected by:

(a) sending a copy of such information or any appropriate parts of it to any End-User or Consumer who may reasonably request such a copy; and

(b) placing a copy of such information on any relevant website operated or controlled by the Undertaking, or, where no such website exists, placing a copy of such information in every office and outlet of the Undertaking such that it is readily available for inspection free of charge by members of the general public during office hours.

7.4

In instances where a transparency Significant Market Power (SMP) obligation requiring an Undertaking to provide advanced notification to the Authority is not imposed, an Undertaking shall:

(a) Notify the Authority of any changes to terms and conditions, price increases, price reductions and introduction of new services before or on the actual date of publication.

The terms and conditions, price increases, price reductions and new services above shall be made with reference to Publicly Available Electronic Communications Services.

7.5

For the purposes of this Condition,

“Undertaking” means a person who provides Publicly Available Electronic Communications Services.

CONDITION 8

8. ITEMISED BILLS

8.1

The Undertaking shall provide to each of its Subscribers, free of charge, a basic level of itemised billing.

The itemised bill shall allow verification and control of the charges incurred in using Internet Access Services, Voice Communications Services or Number-Based Interpersonal Communications Services in order to adequately monitor a Subscriber's usage and expenditure.

8.2

The Undertaking shall provide to each of its Subscribers, on request, and either at no extra charge or for a reasonable fee, additional levels of detail on a Subscriber's bill such as, but not limited to, the duration of the services charged and the Telephone Number of the called party unless the End-User has requested that information not to be included.

8.3

The Undertaking shall ensure that calls which are free of charge to that Subscriber, including calls to helplines, shall not be identified in the Subscriber's itemised bill.

8.4

The Undertaking shall not be subject to this Condition in respect of any Subscriber where:

- (a) it provides the services outlined in 8.1 to the Subscriber on a pre-paid basis; and
- (b) the Subscriber has an alternative means, free of charge, of adequately monitoring the Subscriber's usage and expenditure.

8.5

For the purposes of this Condition:

"Undertaking" means a person who provides Publicly Available Electronic Communications Services.

CONDITION 9

9. NON-PAYMENT OF BILLS

9.1

Where the Subscriber has not paid the Undertaking all or part of a bill for Publicly Available Electronic Communications Services provided by the Undertaking, any measures taken by the Undertaking to enforce payment or disconnection shall:

- (a) be proportionate and not unduly discriminatory;
- (b) give due warning to the Subscriber beforehand of any consequent service interruption or disconnection; and
- (c) except in cases of fraud, persistent late payment or non-payment, confine any service interruption to the service concerned, as far as technically feasible.

9.2

The Undertaking shall publish details of measures it may take to enforce payment or disconnection in accordance with 9.1 above by:

- (a) sending a copy of such information or any appropriate parts of it to any Subscriber who may request such a copy; and
- (b) placing a copy of such information on any relevant website operated or controlled by the Undertaking.

9.3

For the purposes of this Condition:

“Undertaking” means a person who provides Publicly Available Electronic Communications Services.

CONDITION 10

10. CODE OF PRACTICE FOR THE HANDLING OF COMPLAINTS AND DISPUTE RESOLUTION

10.1

The Undertaking shall implement and publish a Code of Practice which sets out the procedures it shall apply for the handling of complaints and resolving of disputes it may have with its Consumers and other End-Users in relation to the provision of Publicly Available Electronic Communications Services.

10.2

The Code of Practice shall include the following information –

- (a) a first point of contact for complainants;
- (b) a means of recording complaints;
- (c) a time frame within which the person concerned shall respond to complaints;
- (d) the procedures for resolving disputes;

(e) the remedies and redress available in respect of matters that form the subject matter of a complaint or dispute;

(f) appropriate cases where reimbursement of payments and payments in settlement of losses incurred will be made; and

(g) retention of records of complaints (including copies of the complaint, any response thereto, any determination in respect of the complaint and any documentation considered in the course of such determination) for a period of not less than one year following the resolution of the complaint or the dispute, as the case may be.

10.3

The procedures set out in the Code for the handling of complaints and for the resolution of disputes shall be simple, inexpensive and shall enable disputes to be settled fairly, promptly and in a transparent and non-discriminatory manner.

10.4

The Code of Practice shall be drafted in plain English which is easy to understand and shall be offered, free of charge to any Consumer or End-User involved in a complaint or dispute. The Code of Practice shall also be published on the Undertaking's website.

10.5

The Undertaking shall submit to the Authority, for the Authority's approval, the code of practice they intend to implement and shall not apply or publish the code until such time as it has been approved by the Authority. This Condition also applies to any modifications or additions proposed by the Undertaking after it has been approved by the Authority.

10.6

Failing resolution of a dispute, the Undertaking shall comply with the procedures established from time to time by the Authority, and any final decision taken by the Authority or an independent person appointed by the Authority, for the resolution of disputes between the Undertaking and its Consumers and other End-Users in relation to the provision of Publicly Available Electronic Communications Services.

10.7

For the purposes of this Condition,

"Undertaking" means a person who provides Publicly Available Electronic Communications Services.

CONDITION 11

11. MEASURES FOR END-USERS WITH DISABILITIES

11.1

The Undertaking shall ensure that disabled End-Users have access to emergency services equivalent to that enjoyed by other End-Users.

11.2

The Undertaking shall ensure, through accessible formats which address different types of disabilities, that End-Users are adequately informed about the existence of all the emergency numbers including the use of the single European emergency number '112'.

11.3

The Undertaking shall ensure that any End-User of its services who is so visually impaired or otherwise disabled as to be unable to use a printed Directory, can access, free of charge, Directory Information and Directory Enquiry Facilities in a form which is appropriate to meet their needs. The Undertaking shall ensure that such a Directory Enquiry Facility is capable of connecting such an End-User to a requested Telephone Number at the request of that End-User.

11.4

The Undertaking shall provide a priority Fault Repair Service as promptly as practicable to any Subscriber with disabilities who has a genuine need for an urgent repair. Charges for a priority Fault Repair Service shall not exceed the Undertaking's standard charge for a Fault Repair Service.

11.5

The Undertaking shall ensure that those Subscribers who are dependent on the telephone, are able to participate in a scheme to safeguard telephone services to such Subscribers. The scheme shall:

(a) enable such Subscribers to give prior notification to the Undertaking of a nominee to whom -

(i) that Subscriber's telephone bill shall initially be sent; or

(ii) any enquiry to establish why a telephone bill has not been paid shall be made;

(b) permit the nominee to pay that Subscriber's bill on their behalf;

(c) require the nominee to give prior consent to the Undertaking to act in such capacity;

(d) not require the nominee to accept liability to pay the telephone bills of that Subscriber; and

(e) be provided at no cost to such a Subscriber.

11.6

The Undertaking shall take all reasonable steps to ensure that the services which it provides in order to comply with the Conditions contained in paragraphs 11.1 to 11.5 above are widely publicised, taking into consideration the need to disseminate information in appropriate formats through appropriate channels for disabled End-Users.

11.7

For the purposes of this Condition,

“Undertaking” means a person who provides Publicly Available Telephone Services.

CONDITION 12

12. ACCESS TO NUMBERS AND SERVICES

12.1

The Undertaking shall ensure, where technically and economically feasible, that End-Users are able to:

(a) access and use services using Non-geographic Numbers within the European Union which the Undertaking Adopts;

(b) access all Telephone Numbers provided in the European Union, regardless of the technological devices used by the Undertaking, including those in the Gibraltar Numbering Plan and the national numbering plan of European Member States, those from the European Telephone Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN).

12.2

12.1 shall not apply where a called Subscriber has chosen for commercial reasons to limit access to calling parties located in specific geographical areas.

12.3

The Undertaking shall, where requested by or on behalf of a relevant authority, block, on a case-by-case basis, access to numbers or services where it is justified by reasons of fraud or misuse. The Undertaking shall also withhold relevant Interconnection or other service revenues if requested to do so by a relevant authority.

12.4

The Undertaking shall ensure that any End-User can access a hotline for missing children by using the number “116000”.

12.5

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

CONDITION 13

13. ALLOCATION, ADOPTION AND USE OF TELEPHONE NUMBERS

13.1

An Undertaking shall not Adopt Telephone Numbers from the Gibraltar Numbering Plan unless:

- (a) the Telephone Numbers have been allocated to the Undertaking; or
- (b) the Undertaking has been authorised (either directly or indirectly) to Adopt those Telephone Numbers by the person allocated those Telephone Numbers.

13.2

The Undertaking may only use (or, where specified, Adopt) a Telephone Number listed in the Gibraltar Numbering Plan where such use or Adoption is in accordance with the designation attributed to that Telephone Number in that Plan.

13.3

The Undertaking shall have a Numbering Plan for such Telephone Numbers as the Authority may allocate to it from time to time. Except where the Authority otherwise consents in writing, such Numbering Plan shall be consistent with the Gibraltar Numbering Plan. When applying for Telephone Numbers, the Undertaking shall provide such details of its Numbering Plan to the Authority as are relevant to the application.

13.4

The Undertaking shall install, maintain and adjust its Public Electronic Communications Network so that it routes Signals and otherwise operates in accordance with the Gibraltar Numbering Plan and any allocation of Telephone Numbers made by the Authority from time to time.

13.5

Where Telephone Numbers have been allocated to the Undertaking, that Undertaking shall secure that such Telephone Numbers are Adopted or otherwise used effectively and efficiently.

13.6

The Undertaking shall not unduly discriminate against another Undertaking in relation to its Adoption or use of Telephone Numbers for purposes connected with the use by that other Undertaking, or its customers, of any Electronic Communications Network or Electronic Communications Service.

13.7

When applying for an allocation or reservation of Telephone Numbers, the Undertaking shall:

- (a) use an appropriate application form as directed by the Authority from time to time as it thinks fit;
- (b) provide such information as is required by such application form; and
- (c) provide to the Authority, on request, any other information considered by the Authority to be relevant to the application, and the supply of which does not place an undue burden on the Undertaking.

13.8

Without prejudice to the other grounds set out in regulation 15(2) of the Regulations, the Authority may withdraw an allocation of Telephone Numbers from an Undertaking where:

- (a) the Undertaking has not Adopted those Telephone Numbers within six months, or such other period as the Authority may from time to time direct, from the date on which the Telephone Numbers were allocated, or
- (b) in relation to an allocation of a series of Telephone Numbers, the Undertaking has not Adopted those Telephone Numbers to any significant extent within six months, or such other period as the Authority may from time to time direct, from the date on which the series of Telephone Numbers was allocated.

13.9

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

CONDITION 14

14. NUMBER PORTABILITY

14.1

Undertakings shall provide Number Portability upon request.

14.2

Where an End-User terminates a contract with an Undertaking, that Undertaking shall be able to port the End-User’s number to another Undertaking for a period of one month after the date of termination.

14.3

Any charges between Undertakings, related to the provision of Number Portability shall be cost-oriented and no direct charges shall be applied to End-Users.

14.4

The Undertaking shall adequately inform and protect the End-User throughout the porting process.

14.5

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

CONDITION 15

15. PROVISION OF DIRECTORY INFORMATION

15.1

Where the Undertaking has been allocated Telephone Numbers in accordance with Condition 13, it shall meet all reasonable requests from any person to make available the Directory Information of:

- (a) its Subscribers who have been assigned those Telephone Numbers; and
- (b) any other End-User assigned a Telephone Number originally allocated to the Undertaking,

for the purposes of the provision of Directories and Directory Enquiry Facilities.

15.2

Where the Undertaking has been authorised (either directly or indirectly) to use Telephone Numbers allocated to another person, it shall on request supply to:

- (a) the person who was originally allocated such Telephone Numbers; or
- (b) if different from the above, the person who authorised the use of such Telephone Numbers by it, the Directory Information of the Undertaking’s Subscribers and of any other End-User assigned a Telephone Number from such Telephone Numbers.

15.3

Where the Undertaking is requested to supply Directory Information in accordance with paragraphs 15.1 or 15.2, it shall do so on terms which are fair, cost-oriented and non-discriminatory, and in a format which is agreed between the Undertaking and the person requesting the information.

15.4

This Condition applies subject to the requirements of the relevant data protection legislation.

15.5

For the purposes of this Condition,

“Undertaking” means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Services.

DEFINITIONS

"Access" means the making available of facilities or services or both by one person to another person, under defined conditions, whether on either an exclusive or non-exclusive basis, for the purpose of providing Electronic Communications Services, including when they are used for the delivery of information society services or broadcast content services, and which may cover access to -

(a) network elements and associated facilities, which may involve the connection of Apparatus, by fixed or non-fixed means (in particular, access to the local loop and to facilities or services necessary to provide services over the local loop);

(b) physical infrastructure including buildings, ducts and masts;

(c) relevant software systems including operational support systems;

(d) information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing;

(e) number translation or systems offering equivalent functionality;

(f) fixed and mobile networks, in particular for roaming;

(g) conditional access systems for digital television services;

(h) virtual network services.

"Adopt" or "Adoption" (and cognate expressions) means an undertaking doing any of the following in relation to a number allocated (whether or not to that undertaking) –

(a) assigning or transferring that number to a particular customer or piece of Apparatus;

(b) using that number for identifying a service or route used by that Undertaking or by any of his customers;

(c) using that number for identifying a communication as one to be transmitted by that undertaking;

(d) designating that number for use in selecting a service or the required elements or characteristics of a service;

(e) authorising the use of that number by others for any of the purposes mentioned in the definition of "Telephone Number" below.

"Apparatus" includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable.

"Caller Location Information" means, in a public mobile network, the data processed, derived from network infrastructure or handsets, indicating the geographic position of an

End-User's mobile terminal equipment, and, in a public fixed network, the data about the physical address of the network termination point.

"Cell Identification" means the identity of the cell from which a mobile telephony call originated or in which it terminated.

"Code of Practice" means a code of practice approved from time to time by the Authority in accordance with regulation 29 of the Communications (Universal Services and Users' Rights) Regulations 2006.

"Condition" means a condition in the schedule.

"Consumer" means any natural person who uses or requests a Publicly Available Electronic Communications Service for purposes which are outside that person's trade, business or profession.

"Directory" means, without prejudice to regulation 4 of the Communications (Universal Services and Users' Rights) Regulations 2006, a printed or electronic document containing Directory Information on Subscribers of Publicly Available Telephone Services in Gibraltar which is made available to members of the public.

"Directory Enquiry Facility" means, without prejudice to regulation 4 of the Communications (Universal Services and Users' Rights) Regulations 2006, Directory Information provided by means of an Electronic Communications Service.

"Directory Information" means, without prejudice to regulation 4 of the Communications (Universal Services and Users' Rights) Regulations 2006, in the case of a Directory, the name and address of the Subscriber and the Telephone Number assigned to the Subscriber for their use of Publicly Available Telephone Services and, in the case of a Directory Enquiry Facility, shall be either a Telephone Number of the Subscriber or information that such a Telephone Number of the Subscriber may not be supplied.

"Disaster" includes any major incident having a significant effect on the general public.

"Electronic Communication" means a communication for transmission by means of an Electronic Communications Network.

"Electronic Communications Network" means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

"Electronic Communications Service" means a service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using Electronic Communications Networks and services, the following types of services -

(a) internet access service;

(b) interpersonal communications service; and

(c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting.

“Emergency Organisation” means -

(a) the public police, fire and ambulance services in Gibraltar; and

(b) any other organisation, as directed from time to time by the Minister as providing a vital service relating to the safety of life in emergencies.

“End to End Connectivity” means the facility –

(a) for different End-Users of the same Public Electronic Communications Service to be able to communicate with each other; and

(b) for the End-Users of different such services to be able, each using the service of which he is the End-User, to communicate with each other.

“**End-User**” means a user not providing a public Electronic Communications Network or a Publicly Available Electronic Communications Service.

“**European Standards Organisations**” means the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC), and the European Telecommunications Standards Institute (ETSI).

“**Fault Repair Service**” means a service consisting of such repair, maintenance, adjustment or replacement of any part of the Undertaking’s Electronic Communications Network, or such repair or adjustment of any connected or connectable network, or such repair or replacement for any Apparatus for which the Undertaking has undertaken the responsibility for repair and maintenance, as is necessary to restore and maintain a sufficient service.

“**Gibraltar Numbering Plan**” means the electronic communications numbering, addressing and naming plan published by the Minister from time to time pursuant to section 35(4) of the Act.

“**Interconnection**” means the linking (whether directly or indirectly by physical or logical means or by a combination of physical and logical means) of one Public Electronic Communications Network to another for the purpose of enabling the persons using one of them to be able to –

(i) communicate with users of the other one; or

(ii) to make use of services provided by means of the other one (whether by the provider of that network or by another person).

“**International Standards Organisations**” means the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations

(CEPT), the International Organisation for Standardisation (ISO) and the International Electrotechnical Committee (IEC).

“Internet Access Service” means a Publicly Available Electronic Communications Service that provides access to the Internet, and thereby connectivity to virtually all end points of the Internet, irrespective of the network technology and terminal equipment used.

“Mobile Network” means either the GSM (Global System for Mobile communications as defined by the European Telecommunications Standards Institute) or UMTS (Universal Mobile Telecommunications System as defined by the European Telecommunications Standards Institute) networks or any other standard for mobile communications that is, or may be, adopted in Gibraltar.

“Number-Based Interpersonal Communications Service” means an interpersonal communications service which connects with publicly assigned numbering resources, namely, a number or numbers in the Gibraltar Numbering Plan or international numbering plans, or which enables communication with a number or numbers in the Gibraltar Numbering Plan or in an international numbering plan.

“Number-Independent Interpersonal Communications Service” means an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in the Gibraltar Numbering Plan or international numbering plans, or which does not enable communication with a number or numbers in the Gibraltar Numbering Plan or in an international numbering plan.

“Number Portability” means the requirement that all End-Users with numbers from the Gibraltar Numbering Plan, who so request can retain their numbers independently of the person providing the service shall apply -

- (a) in the case of geographic numbers, at a specific location; and
- (b) in the case of non-geographic numbers, at any location.

“Pay-Telephone” means a telephone for the use of which the means of payment may include one or more of the following –

- (i) coins;
- (ii) credit cards;
- (iii) debit cards; and
- (iv) pre-payment cards, including cards for use with dialling codes.

For the avoidance of any doubt, references to a Pay Telephone include references to a Public Pay Telephone.

“Public Electronic Communications Network” means an Electronic Communications Network provided, wholly or mainly, for the purpose of securing the provision of Electronic Communications Services available to the public which support the transfer of information between network termination points.

“Public Pay-Telephone” means a telephone available to the general public for the use of which the means of payment may include one or more of the following-

- (a) coins;
- (b) credit cards;
- (c) debit cards; and
- (d) pre-payment cards, including cards for use with dialling codes.

“Publicly Available Electronic Communications Service” means an Electronic Communications Service available to members of the public.

“Publicly Available Telephone Service” means a service available to the public for originating and receiving, directly or indirectly, domestic and/or international calls through a number or numbers in Gibraltar’s Numbering Plan or in an international telephone numbering plan.

“Signal” means -

- (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
- (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of Apparatus.

“Subscriber” means a person who is party to a contract with a provider of Publicly Available Electronic Communications Services for the supply of those services.

“Telephone Number” means, subject to any direction issued by the Minister pursuant to section 35(10) of the Act, any number, including data of any description, that is used (whether or not in connection with telephony) for any one or more of the following purposes -

- (a) identifying the destination for, or recipient of, an Electronic Communication;
- (b) identifying the origin, or sender, of an Electronic Communication;
- (c) identifying the route for an Electronic Communication;
- (d) identifying the source from which an Electronic Communication or an Electronic Communications Service may be obtained or accessed;
- (e) selecting the service that is to be obtained or accessed, or required elements or characteristics of that service; or
- (f) identifying the person by means of whose network or service an Electronic Communication is to be transmitted, or treated as transmitted.

“Voice Communications Service” means a Publicly Available Electronic Communications Service for originating and receiving, directly or indirectly, national or international calls, or

both through a number or numbers in the Gibraltar Numbering Plan or in an international numbering plan.

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