

RETAIL FIXED ACCESS

RETAIL LOCAL CALLS

RETAIL INTERNATIONAL CALLS

Decision Notice

C02/22

25th March 2022

FOREWORD

In 2021, the GRA carried out a review of the retail fixed access & retail fixed calls markets and published Public Consultation C01/22 on the 7th February 2022.

By the close of the consultation period, the GRA received detailed responses from the two operators listed below:

- *Gibtelecom Ltd*
- *GibFibre Ltd.*

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1. INTRODUCTION

The main purpose of a market review is to identify the competitive conditions prevailing in a market by assessing systematically the competitive constraints that are faced by undertakings in the market. A market review commences by defining a market, which is then analysed to assess the degree of effective competition. The competition assessment determines whether any undertaking is found to have significant market power (SMP), which is held to be equivalent to the concept of dominance under competition law and is defined as the ability to behave independently of competitors, suppliers and ultimately businesses and consumers in that market. If there is no SMP, the market is effectively competitive and does not require ex-ante regulation¹. If there is SMP, then the market is not effectively competitive and ex-ante regulation should be imposed, at either the wholesale or the retail level, to counteract the potential negative effects of the anti-competitive measures that can result.

Each market review consists of three main components:

- Definition of the relevant market susceptible to ex-ante regulation
- Assessment of competition in each market, in order to identify competitive constraints and assess whether any undertaking(s) has SMP
- Assessment of the appropriate regulatory obligations which should be imposed, given a finding of SMP (*the GRA is obliged to impose some form of regulation where there is SMP*).

In order to identify markets that are susceptible to ex-ante regulation, the GRA applied the three criteria test which considers three questions regarding barriers to entry, tendency towards competition and competition law.

With the above in mind, on the **7th February 2022**, the GRA issued Public Consultation C01/22 on a review of the Retail fixed access, retail local calls and retail international calls markets. The closing date for submitting comments was 3pm on **7th March 2022**. By the close of the consultation period, the GRA received detailed responses from the two operators below:

- Gibtelecom Ltd ("Gibtelecom")
- GibFibre Ltd ("GibFibre")

The GRA thanks the respondents for their submissions. Having considered the views of the respondents, the GRA's final decisions in relation to the proposed removal of SMP obligations currently imposed on Gibtelecom in the three retail markets have been set out in section 4 of this document.

¹ Ex-ante regulation is the application of regulation before an abuse of power has necessarily occurred. The reasoning behind its application is that finding that an operator has SMP means that the operator is likely to have the incentive and motivation to behave in a way which exploits its market power to the detriment of competitors and ultimately to consumers. Ex-ante regulation can be contrasted with ex-post regulation, which investigates an incident which has already happened.

1.1 LEGISLATION

Sections 38 to 40 of the Communications Act 2006 (the "Act") set out the procedures with regards to persons with SMP, market definition, and market analysis and market power determinations respectively.

In particular, where markets are established as not effectively competitive, section 40(7) of the Act applies –

40(7) Where, as a result of a market analysis conducted pursuant to subsection (2)(b), the Authority determines that the relevant market is not effectively competitive, it shall-

(a) where no market power determination has previously been made in respect to that market or in respect to the person or combination of persons the Authority seeks to designate as having significant market power in that market-

(i) make a market power determination designating the person or combination of persons who have significant market power in that market; and

(ii) impose on that person or combination of persons such SMP obligations authorised by this Act as the Authority considers appropriate to impose on that person or combination of persons in respect to that market;

(b) where a market power determination has previously been made imposing SMP obligations in relation to that market and the Authority seeks to designate the same person or combination of persons as having significant market power in that market-

(i) make a market power determination confirming the previous designation;

(ii) maintain or amend, as the Authority considers appropriate, the SMP obligations imposed on that person or combination of persons under the previous designation in so far as such SMP obligations are authorised by this Act; and

(iii) impose on that person or combination of persons such further SMP obligations authorised by this Act as the Authority considers appropriate to impose on that person or combination of persons in relation to that market.

Given that this review assesses **retail markets only**, the corresponding retail SMP obligations are set pursuant to Regulation 14 of the Communications (Universal Service and Users' Rights) (the "Regulations") as follows:

14.(1) Where the Authority–

(a) determines, as a result of a market analysis carried out pursuant to section 40 of the Act, that a given retail market, identified in accordance with section 39 of the Act ("the specific retail market"), is not effectively competitive; and

(b) concludes that obligations imposed on a person under regulations 10 to 14 of the Access Regulations would not result in the achievement of the objectives set out in section 19 of the Act, it shall impose such regulatory obligations as it considers appropriate to achieve

those objectives on persons whom it has determined under section 40 of the Act as having significant market power in the specific retail market.

....

(3) An obligation imposed by the Authority pursuant to sub-regulation (1) may include a requirement to ensure that the person concerned does not–

(a) charge excessive prices;

(b) inhibit market entry or restrict competition by setting predatory prices;

(c) show undue preference to specific end-users; or

(d) unreasonably bundle services.

(4) The Authority may, in order to protect end-users' interests whilst promoting effective competition, require a person to whom sub-regulation (1) applies to comply with–

(a) retail price cap measures;

(b) measures to control individual tariffs; or

(c) measures to orient tariffs towards costs or prices on comparable markets.

Where markets are established as effectively competitive, section 40(5) of the Act applies

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40(5) Where, as a result of a market analysis conducted pursuant to subsection (2)(b), the Authority determines that the relevant market is effectively competitive, it shall –

(a) not impose any SMP obligations on any person or combination of persons in relation to that market;

(b) withdraw any SMP obligations which have been previously imposed on any person or combination of persons in relation to that market.

1.2 OVERVIEW OF PREVIOUS CONSULTATION

The GRA previously carried out a review of the retail fixed access, retail local and retail international calls markets in 2014² which designated Gibtelecom as having SMP in all three markets. This conclusion was also supported by the fact that Gibtelecom was the sole operator at the time, providing fixed access and telephony services to residential and business customers in Gibraltar.

During the consultation process, the GRA examined several key criteria, namely market shares, vertical integration, barriers to entry and countervailing buyer power. As a result of this, the GRA concluded that there was a need for ex-ante regulatory intervention in all

² Public Consultation 01/14, Response to Consultation C06/14 and Decision Notice C11/14.

markets identified and to this end, imposed obligations of transparency, non-discrimination, price control and cost accounting on Gibtelecom.

1.3 EXISTING SMP OBLIGATIONS

The only authorised operator designated with SMP in the three retail markets listed above is Gibtelecom.

Gibtelecom's current SMP obligations are as follows:

Retail Fixed Access

Transparency

Gibtelecom shall notify the GRA 45 days in advance of changes to terms and conditions, prices of new services and price increases.

Gibtelecom shall notify the GRA 30 days in advance for price reductions.

Gibtelecom shall publish changes to terms and conditions, information on increase to tariffs and information on prices for new services 30 days in advance. In terms of a decrease in tariffs, Gibtelecom shall be obliged to publish this information at least 14 days in advance.

Publication should be by prominent notice in the local press and on the company website.

Non-discrimination

Gibtelecom should not unduly discriminate between customers.

This does not prevent Gibtelecom from offering different terms and tariffs to different customer groups, but such differences must be objectively justifiable.

Accounting separation and cost accounting

Gibtelecom shall account separately for its retail fixed access to the public telephone network at a fixed location.

Gibtelecom shall prepare and submit to the GRA an audited accounting separation report every year starting 30th September 2014.

Furthermore, Gibtelecom shall ensure that:

- a) it operates and maintains a cost accounting system that complies with the specific requirements and guidelines issued by the GRA,
- b) it operates and maintains a cost accounting system suitable for ensuring compliance with Regulation 14 of the Universal Service and Users' Rights Regulations,

- c) it operates and maintains a cost accounting system which is annually verified by a qualified independent person,
- d) it publishes in its annual accounts a statement concerning its compliance with the cost accounting system it is required to operate,
- e) it maintains cost accounting systems which produce appropriate information to demonstrate compliance with cost-orientation.

Price control

With regards to the pre-notification of new prices, price increases and price reductions (whether permanent or temporary, for special offers, trials or promotions) referred to under the Transparency obligations, Gibtelecom shall provide sufficient cost data and analyses to demonstrate that the proposed prices are not anti-competitive, unduly discriminatory and that they comply with the principle of cost orientation.

Gibtelecom shall ensure that its prices are cost oriented.

Retail Fixed Local Calls

Transparency

Gibtelecom shall notify the GRA 45 days in advance of changes to terms and conditions, prices of new services and price increases.

Gibtelecom shall notify the GRA 30 days in advance for price reductions.

Gibtelecom shall publish changes to terms and conditions, information on increase to tariffs and information on prices for new services 30 days in advance.

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- d) it publishes in its annual accounts a statement concerning its compliance with the cost accounting system it is required to operate,
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Price control

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Gibtelecom shall charge its retail customers using a per-second billing format. The format shall require per-second billing to apply to all calls lasting more than one minute. Calls less than one minute are not subject to this obligation.

Gibtelecom shall ensure that its prices are cost oriented.

Retail Fixed International Calls

Transparency

Gibtelecom shall notify the GRA 45 days in advance of changes to terms and conditions, prices of new services and price increases.

Gibtelecom shall notify the GRA 30 days in advance for price reductions.

Gibtelecom shall publish changes to terms and conditions, information on increase to tariffs and information on prices for new services 30 days in advance.

In terms of a decrease in tariffs, Gibtelecom shall be obliged to publish this information at least 14 days in advance.

Publication should be by prominent notice in the local press and on the company website.

Non-discrimination

Gibtelecom should not unduly discriminate between customers.

This does not prevent Gibtelecom from offering different terms and tariffs to different customer groups, but such differences must be objectively justifiable.

Accounting separation and cost accounting

Gibtelecom shall account separately for its retail fixed access to the public telephone network at a fixed location.

Gibtelecom shall prepare and submit to the GRA an audited accounting separation report every year starting 30th September 2014.

Furthermore, Gibtelecom shall ensure that:

- a) it operates and maintains a cost accounting system that complies with the specific requirements and guidelines issued by the GRA,
- b) it operates and maintains a cost accounting system suitable for ensuring compliance with Regulation 14 of the Universal Service and Users' Rights Regulations,
- c) it operates and maintains a cost accounting system which is annually verified by a qualified independent person,
- d) it publishes in its annual accounts a statement concerning its compliance with the cost accounting system it is required to operate,
- e) it maintains cost accounting systems which produce appropriate information to demonstrate compliance with cost-orientation.

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Gibtelecom shall ensure that its prices are cost oriented.

1.4 DESCRIPTION OF THE MARKETS IN GIBRALTAR

Fixed access services in Gibraltar have been provided by the incumbent operator, Gibtelecom, via traditional copper means. Gibtelecom's decision to later deploy both "Fibre to the Node" (FTTN) and "Fibre to the Home" (FTTH) technologies has now resulted in greatly improved end-to-end fibre performance for homes and businesses across Gibraltar. In addition to the above, competition in this sector has developed gradually with two alternative operators, namely GibFibre and Broadband (Gibraltar) Ltd laying their own independent FTTH networks with an ever-increasing network reach now covering most of Gibraltar.

Broadband (Gibraltar) Ltd currently trades as two separate entities, namely "u-mee" & "Sapphire Networks" with u-mee providing a range of retail access and calls products to both residential and business customers whereas Sapphire Network's sole focus is providing retail access and telephony to corporate and enterprise customers who require strict service level agreements, flexible/bespoke solutions, increased connectivity and resilience as well as 24-hour support.

Sapphire Networks commenced offering fixed internet access services in July 2005 and later offered telephony services to the general public in October 2014. In addition to this, u-mee started offering internet access services in June 2015 and followed with telephony services shortly after in November 2015.

GibFibre also commenced offering a range of retail access products in 2015 to both residential and business customers alike. GibFibre then officially launched their telephony services as from early 2017, meaning that consumers can now avail themselves of a range of competitively priced retail access and calls services.

Considering the above, end users are now enjoying a large range of electronic communications services from several providers and at a variety of price points which range from high value, multi-service bundles to premium high-speed offerings. The positive effects of competition in the local telecoms market are now being seen more than ever with all local operators showing increased improvement and innovation for consumers and end users.

2. MARKET DEFINITIONS

The GRA has a duty to define relevant markets, and this is a prerequisite before assessing whether a particular market is characterised by effective competition or should be subject to ex-ante regulation. This market definition should be appropriate to national circumstances, the purpose of which is to set the boundaries within which competitive dynamics are analysed and systematically identifies direct and indirect competition constraints faced by providers of electronic communications networks and services that are present in the relevant market in question. These procedures will also facilitate the subsequent market analysis procedure.

According to European Union guidance, a relevant product market comprises of all products and/or services that are interchangeable or substitutable by the end-user due to the product's characteristics, price and intended use. The overall objective, therefore, is to identify whether companies are capable of constraining each other's behaviour and preventing the others from behaving independently of their competitors, customers and ultimately consumers within the defined market.

Hypothetical Monopolist Test

The market definition process is about identifying the boundaries of a market in order to correctly apply ex-ante regulation and the process involves considering constraints on both the demand and supply sides of a market, as well as their interaction and subsequent impact on an operator's price setting behaviour. Further to this, the existence of any demand and supply side substitution shall be determined through the hypothetical monopolist test. The test, used in competition analysis, seeks to define a market by establishing the closest substitute to the product being considered. The test identifies products as being substitutes by evaluating what would happen if there was a small but significant, lasting increase in the price of a given product, assuming that the prices of all other products remain constant.

Demand-side & Supply-side substitution

Demand-side substitution is used to measure the extent to which consumers are prepared to substitute other services or products for the service or product under investigation, whereas supply-side substitution indicates whether suppliers other than those offering the product or service in question would switch their line of production in the immediate to short term, to offer the relevant products or services without incurring considerable additional costs. If there is a lack of current or potential substitutability on either the demand or supply-side of a market, the overall scope of the market will need to be more tightly defined. If substitutability or its potential exists, a broader definition may be appropriate. The competitive status of each relevant market can then be considered.

Defined Markets

Pursuant to Public Consultation C01/22, the GRA proposed to define the following markets.

Product/Service Markets

- Retail fixed access.

- Retail fixed local calls.
- Retail fixed international calls.

Geographic Market

- The geographical boundary for all markets defined above is Gibraltar.

Three Criteria Test

In addition to identifying the boundaries of markets, a market may be considered to justify the imposition of regulatory obligations if all of the following criteria are met in accordance with section 40(7A) of the Act.

The three criteria are:

- high and non-transitory structural, legal or regulatory barriers to entry are present;
- there is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry;
- applicable competition law alone is insufficient to adequately address the identified market failure(s).

The **first criterion** relates to the presence of high and non-transitory barriers to entry. It seeks to establish whether, when, and to what extent market entry is likely to occur, and to identify the relevant factors for a successful entry into an electronic communications market. From a static point of view, two types of barriers to entry are particularly relevant, structural barriers and legal or regulatory barriers.

Structural barriers to entry derive from different cost or demand conditions that determine asymmetric conditions between incumbents and new entrants, impeding or preventing market entry of the latter. High structural barriers may also be found, for instance, when the market is characterised by absolute cost advantages or substantial economies of scale and/or network effects, capacity constraints and/or high sunk costs. Structural barriers can also exist where the provision of service requires a network component that cannot be technically duplicated or its duplication is not economically feasible.

Legal or regulatory barriers may have a direct effect on the conditions of entry and/or the positioning of operators on the relevant market. In regulated sectors, authorisation procedures, territorial restrictions, safety and security standards, and other legal requirements may deter or delay entry. Legal or regulatory barriers that are likely to be removed within the relevant time horizon of 5 years should not normally constitute a barrier to entry such as to fulfil the first criterion.

In innovation-driven markets characterised by ongoing technological progress, such as the electronic communications markets, barriers to entry may progressively become less relevant. In such markets, competitive constraints often come from threats exerted by

potential innovative competitors that are not currently in the market. Therefore, the possibilities to overcome barriers to entry within the relevant time horizon should also be taken into consideration when identifying the relevant markets for possible ex-ante regulation.

The **second criterion** addresses whether a market structure tends towards effective competition within the relevant time horizon, having regard to the state and prospect of infrastructure-based competition and other sources of competition behind the barriers to entry. An analysis of effective competition implies that the market will become effectively competitive absent ex-ante regulation within the period of review, or will do so after that period, provided that clear evidence of positive dynamics in the market is observable already within the period of review.

Even when a market is characterised by high barriers to entry, other structural factors in that market may indicate that the market still tends towards effective competition within the relevant time horizon. In markets where an increased number of networks can be expected on a forward-looking basis, the application of this criterion entails primarily examining the state and likely future development of infrastructure-based competition.

The decision to define a market as susceptible to ex-ante regulation should also depend on an assessment of the sufficiency of competition law to address adequately the market failures identified. This **third criterion** aims to assess the adequacy of competition law to tackle identified persistent market failure(s), in particular given that ex-ante regulatory obligations may effectively prevent competition law infringements. Competition law based interventions are likely to be insufficient where frequent and/or timely intervention is indispensable to redress persistent market failure(s). In such circumstances, ex-ante regulation should be considered an appropriate complement to competition law. In general, the application of general competition rules in markets characterised by sustainable and effective infrastructure-based competition should be sufficient.

The application of these three cumulative criteria should limit the number of regulated markets within the electronic communications sector and thereby contribute to reducing ex-ante sector-specific regulation progressively as competition in those markets develops. Failure to meet any of the three criteria would indicate that a market is not susceptible to ex-ante regulation. Therefore, if the GRA determines that one or more of such criteria have not been met because of specific circumstances applying to Gibraltar, the GRA may determine from the outset, that the market concerned is not a market susceptible to ex-ante regulation.

Results of Three Criteria Test

The assessment of the three criteria test in each of the following markets yielded the following results.

Retail Fixed Access

The GRA considered that the first criteria had not been met as high and non-transitory structural, legal or regulatory barriers to entry are not present.

The GRA was of the view that the second criteria had not been met in so far as the market structure is effectively competitive within the relevant time horizon, having regard to the state of infrastructure-based competition.

The GRA explained that the third criteria had not been met owing to the likelihood that competition law alone is sufficient to adequately address any potential market failure(s) that may arise.

The GRA therefore concluded that the market for retail fixed access is not susceptible to ex-ante regulation and as such, the GRA proposed not to take the analysis any further.

Retail Fixed Local Calls

The GRA considered that the first criteria had not been met as high and non-transitory structural, legal or regulatory barriers to entry are not present.

The GRA was of the view that the second criteria had not been met in so far as the market structure is effectively competitive within the relevant time horizon, having regard to the state of infrastructure-based competition.

The GRA explained that the third criteria had not been met owing to the likelihood that competition law alone is sufficient to adequately address any potential market failure(s) that may arise.

The GRA therefore concluded that the market for retail fixed local calls was not susceptible to ex-ante regulation and as such, the GRA proposed not to take the analysis any further.

Retail Fixed International Calls

The GRA considered that the first criteria had not been met as high and non-transitory structural, legal or regulatory barriers to entry are not present.

The GRA was of the view that the second criteria had not been met in so far as the market structure is effectively competitive within the relevant time horizon, having regard to the state of infrastructure-based competition.

The GRA explained that the third criteria had not been met owing to the likelihood that competition law alone is sufficient to adequately address any potential market failure(s) that may arise.

The GRA therefore concluded that the market for retail fixed international calls was not susceptible to ex-ante regulation and as such, the GRA proposed not to take the analysis any further.

3. RESPONSES TO CONSULTATION

The GRA has summarised the respondents' views and submissions under each of the questions posed in Public Consultation C01/22. After having considered these carefully, the GRA sets out its conclusions below.

Q1: Do you agree with the GRA's proposed market definitions?

Please give reasons for your answer.

Views of respondents

Gibtelecom agreed with the GRA's proposed market definitions and reiterated the fact that these market delineations had been in place since the GRA's previous retail fixed markets consultation and Decision notice of 2014.

In contrast, GibFibre did not agree with the GRA's proposed market definitions and stated that the correct market in a place the size of Gibraltar is that of a single electronic communications market for the provision of electronic communications services, since operators in Gibraltar bundle their services together for domestic consumption and provide a spectrum of services for larger business users. GibFibre claimed that the European Commission had not looked at such markets but commented that in very small areas such as Gibraltar, one must have regard to there being no more than a single overall market that encompasses all forms of delivery and access for electronic communications services. This includes fixed line services and access as well as mobile and international bandwidth services.

GibFibre explained that customers in the present day do not effectively see a difference between fixed and mobile access despite the fact that it is generally accepted by business customers that very high speeds can only be achieved by fixed systems. In respect of domestic customers, GibFibre stated that to separate their mobile usage from their fixed line usage would be purely artificial as they form part of the same market.

GibFibre further stated that it is easy to identify where operators may have an overall dominance across the market in cases where they may use profits from one area to cross subsidise another. The company claimed that this is how Gibtelecom was able to upgrade its fixed network, as the economics of upgrading such a system in the way they did would be unsustainable in most circumstances due to existing competition. GibFibre also stated that Gibtelecom dwarfs alternative operators in terms of its overall position in respect of the Gibraltar electronic communications markets and needs to be subject to SMP controls to prevent it abusing its position of SMP. GibFibre further added that this market power is reinforced by the fact that Gibtelecom is the only provider of mobile services and is also the most substantial provider of national bandwidth services as it restricts access to its data centres.

GibFibre concluded that the GRA needs to move to a more sophisticated approach and examine the totality of the market, given the increasing reliance on mobile amongst domestic users, especially data services therefore rendering the GRA's current analysis as unfeasible.

GRA's Position

The GRA acknowledges Gibtelecom's agreement with the proposed market definitions.

Additionally, the GRA notes that GibFibre does not agree with the GRA's proposed market definitions for various reasons as stated in its responses outlined above. However, the GRA will take this opportunity to explain why it must contest GibFibre's assertions, in particular when it states that the correct market definition for a place the size of Gibraltar should be that of a single electronic communications market, encompassing all electronic communications services. Gibraltar is in fact, a geographic market which is subsequently comprised of various individual products and services that are characterised depending on various parameters into separate and individual markets.

The GRA, in line with European Union recommendations, is of the view that the starting point of any analysis should be an assessment of relevant retail market(s), taking into account demand side and supply-side substitutability from the end-user's perspective based on existing market conditions and their likely development. This approach cannot effectively be applied to one single all-encompassing electronic communications market on a sector-wide basis, disregarding all specificity completely.

In accordance with European Union reference material and guidance, market power can only exist in relation to the supply or acquisition of a particular class of goods or services and dominance does not exist in the abstract, but in relation to a market. An assessment of dominance, therefore, comes from an operator having SMP in a given market, which has traditionally been defined as separate markets for individual products and services and has never been defined as a single electronic communications market, irrespective of whether these products and services are bundled together or not. Whilst the GRA acknowledges that Gibraltar is no longer in the European Union, in the interests of best regulatory practice, the GRA (in a similar way to the approach taken by the UK), is minded to continue to operate in this manner.

Furthermore, the relevant public consultation is an updated and continuing assessment of the state of competition in these markets today, as defined in the previous and still standing review. In 2014, and as GibFibre should be aware, Gibtelecom was found to have SMP in the retail fixed access, retail local and retail international calls markets³. As such, the GRA has defined the markets within the same parameters in order to reassess the competitive state of the market on a like-for-like basis.

With regards to GibFibre's suggestion that Gibtelecom is using profits from one area to cross subsidise another and upgrading its fixed network, this consultation process is not the correct mechanism under which these matters can be investigated nor resolved. The GRA takes note of GibFibre's comments, however, cannot address these concerns within the context of this review.

The GRA does not agree with GibFibre's claims that customers in the present day do not effectively see a difference between fixed and mobile access and that to separate a customer's mobile usage from their fixed usage would be purely artificial. The GRA notes that local operators are now providing fixed access via fibre broadband with symmetric upload and download speeds up to 2Gbps. However, it is the GRA's view that given the huge amount of data that is consumed in an average household today, doing so via a

³ Public Consultation 01/14, Response to Consultation C06/14 and Decision Notice C11/14.

mobile service would cost the same household far more in mobile data, whereas, in Gibraltar no provider limits the volume of bandwidth that can be downloaded via a fixed broadband service, regardless of its speed.

In practice, the maximum real-world download speeds offered by mobile services in Gibraltar are indeed very high and can, under the right conditions, offer an excellent online experience for the consumer. However, like all wireless solutions, mobile services can be negatively affected by external factors which may diminish or degrade their performance. Weak signals, which may be as a result of spectrum interference, congestion and even adverse weather conditions, have the ability to degrade the quality of a mobile service. This non-exhaustive list describes factors which distinguish mobile broadband from fixed broadband. In addition to there being excellent fixed broadband coverage in Gibraltar, the fixed broadband and mobile markets are different and distinct.

Consequently, the GRA is of the view that the existing mobile broadband offerings are not yet a realistic nor viable substitution in terms of functionality to compete with fixed access. It is noted that GibFibre accepts that, in a business customer scenario, the very high speeds required can only currently be achieved by fixed systems, a statement which the GRA fully agrees with.

Q2: Do you agree that the market for retail fixed access should no longer be subject to ex-ante regulation?

Please give reasons for your answer.

Views of respondents

Gibtelecom agrees with the GRA's proposal that the market for retail fixed access should no longer be subject to ex-ante regulation, subject to the following two points.

Firstly, the GRA would need to make it clear that the removal of the existing obligations on Gibtelecom would go hand in hand with the removal of the applicable provisions found in the GRA's Decision Notice C05/16 on Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail Price Notification. The Decision referred to contains obligations, in particular on the framework imposed on Gibtelecom for retail price variations, new services, and the tying/bundling of services that would need to be done away with in tandem with the removal of ex-ante obligations in the retail markets.

Secondly, Gibtelecom indicated that it may even be necessary to consider imposing SMP obligations on the other operators, in the event there is any further deterioration in the competitive levels of this market. However, Gibtelecom went on to acknowledge that the GRA specifically addresses this point under Section 4 of the public consultation.

GibFibre did not agree with the GRA's proposal that the market for retail fixed access should no longer be subject to ex-ante regulation and instead stated that it should be subject to regulation albeit as part of the overall regulation of the electronic communications market in Gibraltar.

GRA's Position

The GRA can confirm that the removal of the existing obligations on Gibtelecom would trigger the removal of the applicable provisions found in the GRA's Decision Notice C05/16 on Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail Price Notification. More specifically, the Retail Price Notification Framework (Section 7) which is only applicable where an operator has been found to have SMP in a retail market.

In respect to Gibtelecom's comments regarding the GRA's need to impose SMP obligations on other operators in the event there is any further deterioration in the competitive levels of the market, the GRA is unable to agree with this. There has been no deterioration in the competitive levels of the market. On the contrary, and at the time of writing, competition within this market has thrived and each of the operators in question have a considerably balanced share of the market. This point is further reinforced by the statistical data presented in section 3 of the GRA's Public Consultation C01/22.

In addition to the above and for the sake of clarity, if the GRA is to interpret Gibtelecom's comments to mean Gibtelecom is seeking confirmation from the GRA that it would impose SMP obligations on an alternative provider should a change in the levels of competition and dominance require this, the GRA confirms that it remains committed to monitor any progress or changes in these markets. To this end, the GRA intends to analyse future market trends and developments on an ongoing basis and remains committed to conducting any further analyses if there is any significant change in the competitive levels of the market.

With regards to GibFibre's comments in respect of Q2, please refer to the GRA's position under Q1.

Q3: Do you agree that the market for retail local calls should no longer be subject to ex-ante regulation?

Please give reasons for your answer.

Views of respondents

Gibtelecom agrees with the GRA's proposal that the market for retail local calls should no longer be subject to ex-ante regulation subject to the following two points.

Firstly, the GRA would need to make it clear that the removal of the existing obligations on Gibtelecom would go hand in hand with the removal of the applicable provisions found in the GRA's Decision Notice C05/16 on Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail Price Notification. The Decision referred to contains obligations, in particular on the framework imposed on Gibtelecom for retail price variations, new services, and the tying/bundling of services that would need to be done away with in tandem with the removal of ex-ante obligations in the retail markets.

Secondly, Gibtelecom indicated that it may even be necessary to consider imposing SMP obligations on the other operators, in the event there is any further deterioration in the competitive levels of this market. However, Gibtelecom went on to acknowledge that the GRA specifically addresses this point later under Section 4 of the public consultation.

GibFibre did not agree with the GRA's proposal that the market for retail local calls should no longer be subject to ex-ante regulation and instead stated that it should be subject to regulation albeit as part of the overall regulation of the electronic communications market in Gibraltar.

GRA's Position

With regards to Gibtelecom's comments, please refer to the GRA's position under Q2.

With regards to GibFibre's comments, please refer to the GRA's position under Q1.

Q4: Do you agree that the market for retail international calls should no longer be subject to ex-ante regulation?

Please give reasons for your answer.

Views of respondents

Gibtelecom agrees with the GRA's proposal that the market for retail international calls should no longer be subject to ex-ante regulation subject to the following two points.

Firstly, the GRA would need to make it clear that the removal of the existing obligations on Gibtelecom would go hand in hand with the removal of the applicable provisions found in the GRA's Decision Notice C05/16 on Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail Price Notification. The Decision referred to contains obligations, in particular on the framework imposed on Gibtelecom for retail price variations, new services, and the tying/bundling of services that would need to be done away with in tandem with the removal of ex-ante obligations in the retail markets.

Secondly, Gibtelecom indicated that it may even be necessary to consider imposing SMP obligations on the other operators, in the event there is any further deterioration in the competitive levels of this market. However, Gibtelecom went on to acknowledge that the GRA specifically addresses this point later under Section 4 of the public consultation.

GibFibre did not agree with the GRA's proposal that the market for retail international calls should no longer be subject to ex-ante regulation and instead stated that it should be subject to regulation albeit as part of the overall regulation of the electronic communications market in Gibraltar.

GRA's Position

With regards to Gibtelecom's comments, please refer to the GRA's position under Q2.

With regards to GibFibre's comments, please refer to the GRA's position under Q1.

Q5: Do you agree with the proposed notice period of 30 calendar days for the removal of all SMP obligations?

Please give reasons for your answer.

Views of respondents

Gibtelecom stated that it did not have any concerns with the proposed notice period of 30 calendar days for the removal of all SMP obligations.

GibFibre did not agree with the proposed notice period of 30 calendar days for the removal of all SMP obligations and reiterated their position that the GRA should be examining the imposition of SMP controls or obligations on a total single electronic communications market as described in their response to Q1 of the public consultation.

GRA's Position

The GRA notes that Gibtelecom does not have any concerns with the proposed notice period of 30 calendar days for the removal of all SMP obligations.

With regards to GibFibre's comments, please refer to the GRA's position under Q1.

4. REMOVAL OF SMP OBLIGATIONS

With reference to the evidence presented in the analyses conducted within Public Consultation C01/22 and the assessment above, the GRA concludes that each market is competitive and that no undertaking enjoys SMP in any of the identified retail markets.

The GRA considers that given the dynamic nature of the local retail fixed access, local and international calls market, it is important to monitor the progress and developments in these markets. To this end, the GRA intends to analyse future market trends and developments on an ongoing basis and remains committed to conducting any further analyses if there is any deterioration in the competitive level of the market.

Given these conclusions and considerations, the GRA does not deem it justifiable to mandate regulatory obligations on undertakings active in the retail fixed access markets, retail local calls market and the retail international calls market.

Therefore, pursuant to the provisions of section 40(5)(b) of the Act, the GRA hereby withdraws all existing SMP obligations on Gibtelecom in the markets defined above.

In accordance with the provisions of section 40(6A) of the Act as well as the need to ensure a smooth transition from a regulated market to a non-regulated market, the GRA shall ensure that the parties affected by the withdrawal of an SMP obligation receive an appropriate notice period. Therefore, the GRA shall adopt a notice period of 30 calendar days following the publication of the final decision notice concerning these markets.

The GRA believes that this notice period is justified and sufficient to allow all stakeholders to make necessary arrangements for the new regulatory approach to the retail markets identified in the market review.

The notice period for the removal of all SMP obligations shall be 30 calendar days following the publication of this final decision notice.

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