



Review of General Conditions

Response to Public Consultation and Decision C07/17

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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 Gibraltar and EU legislation.

In October 2011 the Authority published a Notice on General Conditions, No. 08/2011, pursuant to Regulation 17 of the Communications (Authorisation and Licensing) Regulations 2006 (the Regulations). Regulation 17 sets out the Authority's powers to set conditions to a General Authorisation.

A "General Authorisation" is defined as the legal framework established under and pursuant to the Communications Act 2006 (the Act) ensuring rights for the provision of electronic communications networks or electronic communications services or both and laying down the conditions and, where applicable, the specific obligations for such provision.

Regulation 17 of the Regulations also provides that a General Condition is a condition listed in Part A of the Schedule to the Regulations and that every communications provider holding a General Authorisation shall comply with the conditions applicable to them.

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 procedure¹ unless the proposed modification is minor and has been agreed with the licensees concerned.

On 7th July 2017, the Authority published consultation C04/17 on a review of the General Conditions. The closing date for submitting comments was 7th August 2017.

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

- Gibtelecom
- Gibfibrespeed.

The Authority thanks the respondents for their submissions and proposes to amend some of the General Conditions as explained in the following section. The final decisions can be found in Annex A of this document. All General Conditions which are not referred to in this public consultation shall remain as currently drafted².

¹ Section 13 of the Communications Act 2006.

² Unless otherwise notified by the Authority.

2. Responses to consultation

The Authority has summarised the respondent's views and submissions in this section and having considered these carefully, the Authority sets out its conclusions and position accordingly.

For ease of reference, the Authority has only listed the proposed amendments below (in italics). The text in italics will either represent a re-wording of the current general condition or will be completely new text. Some amendments are of a minor nature, whilst others contain updated text in line with the Act and accompanying Regulations and serve to streamline the entire document.

2.1 PROPOSED AMENDMENT TO GENERAL CONDITION 1

1. General Access and Interconnection

1.1 (a) *Undertakings shall negotiate Access and/or Interconnection agreements or amendments to existing agreements with other undertakings for the purpose of providing publicly available electronic communications services within a reasonable period.*

(b) *Any information which is acquired by either party during the process of negotiating Access and/or 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.*

(c) *1.1(b) 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.*

1.2 For the purpose of this Condition,

(a) *"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–*

(i) *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);*

(ii) *physical infrastructure including buildings, ducts and masts;*

(iii) *relevant software systems including operational support systems;*

- (iv) *information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing;*
 - (v) *number translation or systems offering equivalent functionality;*
 - (vi) *fixed and mobile networks, in particular for roaming;*
 - (vii) *conditional access systems for digital television services;*
 - (viii) *virtual network services;*
- (b) *"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);*
- (c) *"Undertaking" means a person who provides a public electronic communications network and/or publicly available electronic communications service.*

Q1. Do you agree with the proposed amendment to General Condition 1? If not, please explain why?

Views of Respondents

Gibtelecom acknowledges that the proposed text amending the definition of "Undertaking" under General Condition 1 seems to extend the availability of interconnection facilities. Gibtelecom then goes on to highlight the fact that Regulation 5 of the Communications (Access) Regulations provides that only "operators" have rights and obligations with respect to interconnection matters and that the definition of an operator only extends to a person providing or authorised to provide a public electronic communications network.

Gibtelecom argues that typically, a provider of only electronic communications services would not operate an electronic communications network and therefore questions how in this case, such a provider would be able to "interconnect" to an electronic communications network.

Gibfibre speed welcomes the fact that the GRA have proposed to increase the scope of the General Condition in this regard. However, Gibfibre speed feels that it is

unnecessary to further define Access and Interconnection as these are clearly established in the Communications Act 2006.

The Authority's position

The Authority acknowledges that the proposed definition of "Undertaking" extends to a person who provides an electronic communications service, however the definition of "Interconnection", as contained in the proposed amendment, only applies to providers of an electronic communications network. This means that providers of electronic communications services are only able to negotiate access under these proposed conditions and therefore the General Condition should be read as such.

PROPOSED AMENDMENT TO GENERAL 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;*
 - (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 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 service.*

Q2. Do you agree with the proposed amendment to General Condition 3? If not, please explain why?

Views of Respondents

Gibtelecom is content with the Authority's proposed changes to the text of this General Condition as proper and effective functioning of the network is something that the company takes "extremely seriously" and in their view, these changes will bring certain definitions and operations up to date in line with current industry practice.

Gibfibrespeed agrees and has no objection to the proposed changes.

The Authority's position

The Authority maintains that the proposed amendments to General Condition 3, as highlighted above, are necessary in order to ensure the proper and effective functioning of the network.

PROPOSED AMENDMENT TO GENERAL CONDITION 4

4. Emergency call numbers

- 4.1 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.
- 4.2 The Undertaking shall, to the extent technically 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.
- 4.3 Where an Undertaking provides an electronic communications service:
 - (a) at a fixed location, the Caller Line 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.
- 4.4 For the purposes of this Condition,
 - (a) "Caller Location Information" means any data or information processed in an Electronic Communications Network indicating the geographic position of the terminal equipment of a person initiating a call;
 - (b) *"Cell Identification" means the identity of the cell from which a mobile telephony call originated or in which it terminated;*

- (c) "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;
- (d) "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.

- (e) For the purposes of this Condition, "Undertaking" means a person who provides *a publicly available electronic communications service or publicly available telephone services*.

Q3. Do you agree with the proposed amendment to General Condition 4? If not, please explain why?

Views of Respondents

Gibtelecom agrees with the proposed changes, whilst adding that the Authority should consider tightening or clarifying the definition of the electronic communications services that would be subject to this condition. For instance, the requirement to provide access to the emergency service numbers 112, 190 and 199; and caller line or location information may not be possible for all different types of electronic communications services.

Gibfibre speed raises the concern that in recent years technology has provided that all calls have more or less become voice over internet protocol, meaning that the device used in effect may be in a place other than the billed address for the service provided.

Gibfibre speed state that proposed condition 4.2 should include some sort of stipulation that it is to "apply to the extent technically and economically feasible."

The Authority's position

With reference to the provision of caller location information, the Authority makes clear provisions for technologies which cannot provide this level of information.

Under 4.2 its states that;

"The Undertaking shall, to the extent *technically feasible* make accurate and reliable Caller Location Information available..."

This means that if the technology is unable to provide that level of detail then the undertaking would not have to provide this information.

The Authority has no objection in extending this provision to include economic feasibility as well, due to the fact that in some cases, undertakings may find it very costly to invest in systems which provide location information. However, should the need arise, the Authority shall require justification from any undertaking if it were to claim that it cannot technically or economically provide Caller Location Information.

PROPOSED AMENDMENT TO GENERAL CONDITION 5

5. Emergency planning

5.1 Subject to paragraph 5.3, the Undertaking shall, on the request of and in consultation with -

- (a) the authorities responsible for emergency organisations; and
- (b) such departments of the Gibraltar Government 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.

5.2 Subject to paragraph 5.3, 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.

5.3 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.

5.4 For the purposes of this Condition:

- (a) "Disaster" includes any major incident having a significant effect on the general public; and for this purpose a major incident includes any incident of contamination involving radioactive substances or other toxic materials ;
- (b) "Undertaking" means a person who provides a *public electronic communications network and/or publicly available electronic communications service*.

Q4. Do you agree with the proposed amendment to General Condition 5? If not, please explain why?

Views of Respondents

Gibtelecom has no comments on the Authority's proposed revisions to the text of this General Condition.

Gibfibrespeed has no comments on the Authority's proposed revisions to the text of this General Condition.

The Authority's position

The Authority will proceed with the proposed changes to General Condition 5 as highlighted above.

PROPOSED AMENDMENT TO GENERAL CONDITION 10

10. Transparency and publication of Information

- 10.1 *Without prejudice to Regulation 18 of the Communications (Universal Service and Users' Rights) Regulations 2006, Undertakings shall ensure that transparent, comparable, adequate and up to date information on applicable tariffs and prices, any charges due on the termination of a contract and standard terms and conditions in respect of access to and use of public electronic communications networks and/or publicly available electronic communications services, is available to end users and consumers in accordance with the requirements of paragraphs 10.2 and 10.3.*
- 10.2 *The information shall be set out in a clear, comprehensive and easily accessible manner and the Authority may specify by notice, additional requirements regarding the form in which such information is to be published.*
- 10.3 The published information shall include the following:
 - (a) the Undertaking's name and Head Office address;
 - (b) a description of the services offered; including -

- (c) *scope of services offered;*
- (d) *standard tariffs indicating the services provided and the content of each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment;*
- (e) compensation and refund policies, including specific details of any compensation or refund schemes offered;
- (f) types of maintenance service offered;
- (g) *standard contract conditions, including any minimum contractual period, termination of the contract and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.*
- (h) dispute resolution mechanisms, including those developed by the Undertaking.

10.4 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 normal office hours.

10.5 Changes of terms and notification to the Authority

In instances where a transparency 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 are made with reference to publicly available electronic communications services.

10.6 For the purposes of this Condition:

- (a) "Head Office" means an Undertaking's registered office and such other of its offices as the Authority may from time to time direct;

- (b) "Undertaking" means a person who provides a *public electronic communications network and/or publicly available electronic communications service*.

Q5. Do you agree with the proposed amendment to General Condition 10? If not, please explain why?

Views of Respondents

Gibtelecom is concerned with the proposed new requirement to notify the Authority of changes to terms and conditions; price increases; reductions; and introduction of new services for non-SMP services or products and has also expressed concern regarding the legal foundation behind the proposal.

Gibtelecom believes this to be tantamount to an SMP notification/transparency obligation being imposed on service/network providers for non-regulated activities, and without going through the established SMP review process.

Gibfibre speed does not agree with the proposed changes to general condition 10.1 and believes that it should be exempt from having to deliver information about bespoke individually negotiated contract processes.

Gibfibre speed is of the opinion that there should only be a requirement to disclose bespoke terms on those who have SMP. As the general condition already provides for a differentiation in the way in which it works related to an operator with an SMP finding, Gibfibre speed is of the view that this should be extended so that bespoke negotiated contracts should not have to be disclosed (except to the Authority if requested) by persons who do not have significant market power (SMP).

Gibfibre speed argues that failure to do this will permit a dominant incumbent to be able to react to bespoke contract pricing in a way which could prompt it to predatory prices in respect of large projects.

The Authority's position

With regard to Condition 10.5, the Authority would like to clarify that the primary purpose of this condition is to remedy the current state of affairs, whereby the Authority is not informed in a timely manner of changes in service offerings, provision of new services or withdrawal of services.

The Authority is of the view that the proposed extension of this Condition, builds on the current condition and addresses the potential communication failings outlined by the Authority above. Furthermore, Condition 10.5, affords Undertakings the liberty and discretion to communicate any changes captured by this Condition to the Authority, at any time before or on the date of launch.

This condition is without prejudice to any SMP obligations an operator may be subject to.

The legal basis for the proposed change to the General Condition can be found in the conditions section of the Communications (Authorisation and Licensing) Regulations 2006.

Please note that this condition only relates to all publicly available electronic communications services being notified to the Authority and not other operators or the general public.

PROPOSED AMENDMENT TO GENERAL CONDITION 13

13. Non-payment of bills

13.1 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.

13.2 The Undertaking shall publish details of measures it may take to effect payment or disconnection in accordance with paragraph 13.1 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.

13.3 For the purposes of this Condition:

- (a) "*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.
- (b) "*Undertaking*" means a person who provides publicly available telephone service and other publicly available electronic communications service.

Q6. Do you agree with the proposed amendment to General Condition 13? If not, please explain why?

Views of Respondents

Gibtelecom has no comments on the Authority's proposed revisions to the text of this General Condition.

Gibfibrespeed has no comments on the Authority's proposed revisions to the text of this General Condition.

The Authority's position

The Authority will proceed with the proposed changes to General Condition 13 as highlighted above.

PROPOSED AMENDMENT TO GENERAL CONDITION 14

14. Code of practice for the handling of complaints and dispute resolution

14.1 *Without prejudice to Regulation 29 of the Communications (Universal Service and Users' Rights) Regulations 2006, 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.*

14.2 The Code of Practice shall include (at least) where such *Consumers and other End Users* may avail themselves of the information required to be published under Condition 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.*

14.3 *Without prejudice to Regulation 29 of the Communications (Universal Service and Users' Rights) Regulations 2006, 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.*

14.4 *Without prejudice to Regulation 29 of the Communications (Universal Service and Users' Rights) Regulations 2006, and 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*.*

14.5 For the purposes of this Condition:

- (a) *"Code of Practice" means a code of practice approved from time to time by the Authority for the purpose of this Condition in accordance with regulation 29 of the Universal Services Regulations;*
- (b) *"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;*
- (c) *"End User" means a user not providing a public electronic communications network or a publicly available electronic communications service;*
- (d) *"Undertaking" means a person who provides publicly available electronic communications service.*

Q7. Do you agree with the proposed amendment to General Condition 14? If not, please explain why?

Views of Respondents

Gibtelecom has no comments on the Authority's proposed revisions to the text of this General Condition.

Gibfibrespeed acknowledges the Authority's wish to prevent an undertaking's code of practice from being financially burdensome on a consumer. However Gibfibrespeed feels it is quite a "draconian power" for the Authority to be able to rewrite the code of practice should it feel the need to and expressed concerns regarding the regulator determining terms and conditions of a "consumer contract".

The Authority's position

The Authority notes Gibfibrespeed's concern with regards to the Authority's proposal to review and amend an undertakings code of practice. However, it is the Authority's view that in order to exercise its powers in promoting competition and protecting consumers, the Authority needs to have the ability of amending the Code of Practice (should this be required) if it considers that its contents may adversely affect or be harmful to any consumer.

For the avoidance of doubt, General Condition 14 does not deal with consumer contracts.

REVISION OF GENERAL CONDITION 18

The Authority had not proposed any amendments to the current General Condition (found in Notice 08/2011) relating to Number Portability, and as a result, was not consulted upon. However, it was subsequently brought to the Authority's attention that the procedures described in the current condition no longer reflected the Number Portability process established in Gibraltar and was therefore incorrect.

Given that this was found to be the case, the Authority subsequently informed all authorised undertakings by email of this and gave them an opportunity to provide comments in respect of the proposed number portability General Condition found directly below.

Having taken the utmost account of the comments received, the Authority has updated the proposed General Condition to reflect of the current number portability process in Gibraltar and to bring it in line with the EU Directives. The final version of this General Condition can be found in Annex A.

PROPOSED AMENDMENT TO GENERAL CONDITION 18

18. NUMBER PORTABILITY

- 18.1 The Undertaking shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms, including charges, to any of its Subscribers who so request.
- 18.2 Subscribers who have concluded an agreement to port a number to a new Undertaking shall have that number activated within one working day.
- 18.3 Porting originations shall be initiated and controlled by the Recipient Operator. The Subscriber requesting porting shall at no time be required to contact the Donor Operator to process any part of physical number porting.
- 18.4 A Subscriber who wants to port their number needs to open an account with the Recipient Operator and therefore needs to have contact with the Recipient Operator.
- 18.5 In fixed number portability, the Subscriber shall:
 - (a) open an account with the new (Recipient) Operator (the subscriber may already have an active account with the Recipient Operator prior to the porting request) and use an existing number that they are already using with the old (Donor) Operator;
 - (b) request the new Operator to port their number with the old Operator and, close the account where applicable and
 - (c) request the Operators to change their routing arrangements so that calls will be routed to the new Operator.
- 18.6 In mobile number portability, the Subscriber shall:
 - (a) open an account with the new (Recipient) Operator (the subscriber may already have an active account with the Recipient Operator prior to the porting request) and install their new SIM but using an existing number that they are already using with the old (Donor) Operator;

- (b) request the new Operator to port their number with the old Operator and close the account where applicable and
 - (c) request the Operators to change their routing arrangements so that calls will be routed to the new Operator.
- 18.7 In both fixed and mobile number portability, incoming communications, including calls, SMS and MMS, to the Subscriber's number are terminated on the Recipient Operator.
- 18.8 Undertakings shall comply with Direction Notice's A01/2010 and A01/2012 on Number Portability issued to providers of Public Electronic Communications Networks.
- 18.9 For the purposes of this Condition:
 - (a) "Donor Operator" means an Undertaking whose subscriber numbers are in the process of being, or have been passed or ported to a Recipient Operator;
 - (b) "Number Portability" means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber-
 - (i) in the case of Geographic Numbers, at a specific location; or
 - (ii) in the case of Non-geographic Numbers, at any location, provided that such retention of a Telephone Number is in accordance with the Gibraltar Numbering Plan;
 - (c) "Recipient Operator" means an Undertaking to whom subscriber number are in the process of being, or have been passed or ported from a Donor Operator;
 - (d) "Subscriber" means any person who is party to a contract with the provider of Publicly Available Telephone Services for the supply of such services in Gibraltar;
 - (e) "Undertaking" means a person who provides a Public Electronic Communications Network and/or Publicly Available Electronic Communications Service.

3. Annex A: Decisions

List of General Conditions

The following list below represents the newly imposed General Conditions by taking the utmost account of operator comments during the consultation process. As previously mentioned, all other General Conditions which have not been consulted upon will remain the same.

The General Conditions will come into force on the date of publication of the amended Notice on General Conditions shortly.

All interested parties will be notified when the Notice is published on the Authority's website.

3.1 GENERAL CONDITION 1

1. General Access and Interconnection

- 1.1 (a) Undertakings shall negotiate Access and/or Interconnection agreements or amendments to existing agreements with other undertakings for the purpose of providing publicly available electronic communications services within a reasonable period.
 - (b) Any information which is acquired by either party during the process of negotiating Access and/or 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.
 - (c) 1.1(b) 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.
- 1.2 For the purpose of this Condition,
- (a) "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—
 - (i) 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);

- (ii) physical infrastructure including buildings, ducts and masts;
- (iii) relevant software systems including operational support systems;
- (iv) information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing;
- (v) number translation or systems offering equivalent functionality;
- (vi) fixed and mobile networks, in particular for roaming;
- (vii) conditional access systems for digital television services;
- (viii) virtual network services;

(b) "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);

(c) "Undertaking" means a person who provides a public electronic communications network and/or publicly available electronic communications service

3.2 GENERAL 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;
- (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 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 service.

3.3 GENERAL CONDITION 4

4. Emergency call numbers

- 4.1 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.
- 4.2 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.
- 4.3 Where an Undertaking provides an electronic communications service:
- (a) at a fixed location, the Caller Line 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.
- 4.4 For the purposes of this Condition,
- (a) "Caller Location Information" means any data or information processed in an Electronic Communications Network indicating the geographic position of the terminal equipment of a person initiating a call;
 - (b) "Cell Identification" means the identity of the cell from which a mobile telephony call originated or in which it terminated;
 - (c) "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;

- (d) "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.

- (e) For the purposes of this Condition, "Undertaking" means a person who provides a publicly available electronic communications service or publicly available telephone services.

3.4 GENERAL CONDITION 5

5. Emergency planning

5.1 Subject to paragraph 5.3, the Undertaking shall, on the request of and in consultation with -

- (a) the authorities responsible for emergency organisations; and
- (b) such departments of the Gibraltar Government 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.

5.2 Subject to paragraph 5.3, 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.

5.3 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.

- 5.4 For the purposes of this Condition:
- (a) "Disaster" includes any major incident having a significant effect on the general public; and for this purpose a major incident includes any incident of contamination involving radioactive substances or other toxic materials ;
 - (b) "Undertaking" means a person who provides a public electronic communications network and/or publicly available electronic communications service.

3.5 GENERAL CONDITION 10

10. Transparency and publication of Information

- 10.1 Without prejudice to Regulation 18 of the Communications (Universal Service and Users' Rights) Regulations 2006, Undertakings shall ensure that transparent, comparable, adequate and up to date information on applicable tariffs and prices, any charges due on the termination of a contract and standard terms and conditions in respect of access to and use of public electronic communications networks and/or publicly available electronic communications services, is available to end users and consumers in accordance with the requirements of paragraphs 10.2 and 10.3.
- 10.2 The information shall be set out in a clear, comprehensive and easily accessible manner and the Authority may specify by notice, additional requirements regarding the form in which such information is to be published.
- 10.3 The published information shall include the following:
- (a) the Undertaking's name and Head Office address;
 - (b) a description of the services offered; including –
 - (c) scope of services offered;
 - (d) standard tariffs indicating the services provided and the content of each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment;
 - (e) compensation and refund policies, including specific details of any compensation or refund schemes offered;
 - (f) types of maintenance service offered;
 - (g) standard contract conditions, including any minimum contractual period, termination of the contract and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.

- (h) dispute resolution mechanisms, including those developed by the Undertaking.

10.4 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 normal office hours.

10.5 Changes of terms and notification to the Authority

In instances where a transparency 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 are made with reference to publicly available electronic communications services.

10.6 For the purposes of this Condition:

- (a) "Head Office" means an Undertaking's registered office and such other of its offices as the Authority may from time to time direct;
- (b) "Undertaking" means a person who provides a public electronic communications network and/or publicly available electronic communications service.

3.6 GENERAL CONDITION 13

13. Non-payment of bills

13.1 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.
- 13.2 The Undertaking shall publish details of measures it may take to effect payment or disconnection in accordance with paragraph 13.1 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.
- 13.3 For the purposes of this Condition:
- (a) "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.
 - (b) "Undertaking" means a person who provides publicly available telephone service and other publicly available electronic communications service.

3.7 GENERAL CONDITION 14

14. Code of practice for the handling of complaints and dispute resolution

- 14.1 Without prejudice to Regulation 29 of the Communications (Universal Service and Users' Rights) Regulations 2006, 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.
- 14.2 The Code of Practice shall include (at least) where such Consumers and other End Users may avail themselves of the information required to be published under Condition 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.
- 14.3 Without prejudice to Regulation 29 of the Communications (Universal Service and Users' Rights) Regulations 2006, 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.

14.4 Without prejudice to Regulation 29 of the Communications (Universal Service and Users' Rights) Regulations 2006, and 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.

14.5 For the purposes of this Condition:

(a) "Code of Practice" means a code of practice approved from time to time by the Authority for the purpose of this Condition in accordance with regulation 29 of the Universal Services Regulations;

(b) "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;

(c) "End User" means a user not providing a public electronic communications network or a publicly available electronic communications service;

(d) "Undertaking" means a person who provides publicly available electronic communications service.

3.8 GENERAL CONDITION 18

18. Number Portability

18.1 The Undertaking shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms, including charges, to any of its Subscribers who so request it.

18.2 Subscribers who have concluded an agreement to port a number to a new Undertaking shall have that number activated within one working day.

18.3 Porting requests shall be initiated and controlled by the Recipient Operator. Unless the request is rejected, the Subscriber requesting porting shall at no time be required to contact the Donor Operator to process any part of physical number porting.

18.4 A Subscriber who wants to port their number needs to open an account, if one does not already exist, with the Recipient Operator and therefore needs to have contact with the Recipient Operator.

18.5 In both fixed and mobile number portability, the Subscriber shall:

- (a) open an account with the new (Recipient) Operator (the subscriber may already have an active account with the Recipient Operator prior to the porting request) use an existing number that they are already using with the old (Donor) Operator;
 - (b) request the new Operator to port their number with the old Operator and, close the account where applicable and
 - (c) request the Operators to change their routing arrangements so that calls will be routed to the new Operator.
- 18.6 In both fixed and mobile number portability, incoming communications, including calls, SMS and MMS, to the Subscriber's number are terminated on the Recipient Operator.
- 18.7 Disconnected or withdrawn numbers are to be returned to the original donor operator and the operator who currently holds the ported number shall inform the original donor of this.
- 18.8 Undertakings shall comply with Direction Notice's A01/2010 and A01/2012 on Number Portability.
- 18.9 For the purposes of this Condition:
- (a) "Donor Operator" means an Undertaking whose Subscriber numbers are in the process of being, or have been passed or ported to a Recipient Operator;
 - (b) "Number Portability" means a facility whereby Subscribers who so request can retain their telephone number on a public telephone network, independently of the person providing the service at the network termination point of a Subscriber-
 - (i) in the case of geographic numbers, at a specific location; or
 - (ii) in the case of non-geographic numbers, at any location, provided that such retention of a telephone number is in accordance with the Gibraltar Numbering Plan;
 - (c) "Recipient Operator" means an Undertaking to whom subscriber number are in the process of being, or have been passed or ported from a Donor Operator;
 - (d) "Subscriber" means any person who is party to a contract with the provider of publicly available telephone services for the supply of such services in Gibraltar;
 - (e) "Undertaking" means a person who provides a public electronic communications network and/or a publicly available electronic communications service.