



GIBRALTAR REGULATORY
AUTHORITY

Wholesale voice call termination on individual mobile networks

Wholesale SMS termination on individual mobile networks

Decision Notice C10/15

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Executive Summary

The communications regulatory framework requires the Gibraltar Regulatory Authority (the Authority) to define relevant markets susceptible to *ex ante* regulation, appropriate to national circumstances in accordance with the market definition procedure outlined in the Framework Directive¹. In addition, the Authority is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive and, having identified competition problems, propose appropriate regulatory measures.

On 17th June 2015, the Authority issued a national consultation on wholesale mobile call termination and wholesale SMS termination on individual mobile networks, (public consultation C03/15). The consultation period ended on 16th July 2015.

After the consultation period and having considered the views of all respondents, the Authority set out in a Response to Consultation² its conclusions regarding the market review process including its SMP obligations and subsequent notification to the European Commission ("the Commission"), BEREC and other NRA's in accordance with Article 7 of the Framework Directive³. The Commission later issued a request for information⁴ to which the Authority replied⁵. On 23rd September 2015, the Commission published its comments pursuant to Article 7(3) of the Framework Directive.

¹ DIRECTIVE 2002/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) OJ [2002] L 108/33.

² Response to Consultation C05/15.

³ See footnote 1 above.

⁴ Request for information pursuant to Article 5(2) of Directive 2002/21/EC on cases GI/2015/1774-1775.

⁵ Gibraltar Regulatory Authority's response to the European Commission's request for information pursuant to Article 5(2) of Directive 2002/21/EC on cases GI/2015/1774-1775.

1. Introduction

1.1 Background

The European regulatory framework for electronic communications networks and services is a set of five Directives⁶:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the Framework Directive)⁷
- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (the Access Directive)⁸
- Directive 2002/20/EC on the authorisation of electronic communications networks and services (the Authorisation Directive)⁹
- Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (the Universal Service Directive)¹⁰
- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (the Privacy Directive)¹¹.

These five Directives were implemented as part of the Communications Act 2006¹² (the Act). The legislation enables the Authority to carry out reviews of competition in relevant electronic communications markets to ensure that regulation remains appropriate in the light of changing market conditions, otherwise known as market reviews.

⁶ As Amended in 2009.

⁷ See footnote 1 above.

⁸ DIRECTIVE 2002/19/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) OJ [2002] L 108/7.

⁹ DIRECTIVE 2002/20/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) OJ [2002] L 108/21.

¹⁰ DIRECTIVE 2002/22/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) OJ [2002] L 108/51.

¹¹ DIRECTIVE 2002/58/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) OJ [2002] L 201/37.

¹² Communications Act 2006, Act No. 15, 2006. Please note this legislation implemented the latest regulatory reform package of 2009.

1.2 Market review methodology

In conducting a market review, the Authority must take account of the SMP procedures in the Act, sections 38-41, (the SMP procedures) as well as the provisions dealing with co-operation with the European Commission, BEREC¹³ and the regulatory authorities in the Member States, sections 22-24.

Section 39 of the Act requires the Authority to take due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of the provisions of a European Community instrument. Therefore, the Authority should take due account of the European Commission Recommendation of 9th October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex-ante regulation in accordance with Directive 2002/21/EC (the Recommendation).

Once the Authority has defined relevant markets, it shall analyse the state of competition within these markets to determine whether they are effectively competitive or not. Where markets are deemed to be effectively competitive or will become effectively competitive within the lifetime of the review, any existing regulation must be withdrawn¹⁴. Where markets are deemed to be uncompetitive, the Authority must consider appropriate regulatory obligations on any undertaking which has significant market power.

The main purpose of a market review is to identify the competitive conditions prevailing in a market by assessing systematically the competitive constraints which 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.

In accordance with European Commission Guidelines, the market analysis procedure is prospective – that is, it must be forward-looking.

The market review comprised 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
- Where market power is identified, consideration of the appropriate SMP obligations in relation to that market.

The Authority took account of the approach recommended by the European Commission, and also considered the various guidelines and recommendations published by the European Commission, as well as the experience of other European NRAs.

¹³ Body of European Regulators of Electronic Communications.

¹⁴ Please note that regulation at retail level may depend on regulation at the wholesale level.

1.3 Market review procedure

The Authority collected market data from the various providers of electronic communications networks and services in order to carry out its market definition and market analysis, based on established economic and legal principles, and taking the utmost account of the Recommendation and the Guidelines.

The market review drew on a wide range of data and information to reach its conclusions. The Authority utilised data supplied by industry and also referred to comparative data from other jurisdictions.

On 17th June 2015, the Authority issued a national consultation on wholesale mobile call termination and wholesale SMS termination on individual mobile networks, (public consultation C03/15). The consultation period ended on 16th July 2015.

After the consultation period and having considered the views of all respondents, the Authority set out in a Response to Consultation¹⁵ its conclusions regarding the market review process including its SMP obligations and subsequent notification to the European Commission ("the Commission"), BEREC and other NRA's in accordance with Article 7 of the Framework Directive¹⁶. The Commission later issued a request for information¹⁷ to which the Authority replied¹⁸.

On 23rd September 2015, the Commission issued its final comments¹⁹ regarding cases GI/2015/1774-1775.

In accordance with Section 22 of the Act the Authority has taken the utmost regard of these comments in this decision.

1.4 SMP designations

Gibtelecom and Eazitelecom were found to have 100% market share on the market below:

- Wholesale voice call termination on individual mobile networks.

1.5 Comments from the European Commission

On 8th September 2015, the Authority received a request for information²⁰ pursuant to the Article 5(2) of Directive 2002/21/EC from the Commission. On 9th September

¹⁵ Response to Consultation 05/15.

¹⁶ See footnote 1 above.

¹⁷ Request for information pursuant to Article 5(2) of Directive 2002/21/EC on cases GI/2015/1774-1775.

¹⁸ Gibraltar Regulatory Authority's response to the European Commission's request for information pursuant to Article 5(2) of Directive 2002/21/EC on cases GI/2015/1774-1775.

¹⁹ The Commission's comments pursuant to Article 7(3) of Directive 2002/21/EC on cases GI/2015/1774-1775.

2015, the Authority replied to the Commission and gave its position²¹ concerning the wholesale mobile termination and wholesale SMS termination markets in Gibraltar.

On 23rd September 2015, based on the additional information provided, the Commission published its comments²² in a letter pursuant to Article 7(3) of Directive 2002/21/EC on cases GI/2015/1774-1775.

1.6 Structure of the SMP obligations

Wholesale voice call termination on individual mobile networks

The Authority designates Gibtelecom as having SMP in the market for wholesale voice call termination on its own mobile network in Gibraltar.

The following obligations will apply to Gibtelecom in this market:

- Transparency
- Non-discrimination
- Accounting separation
- Access
- Cost accounting
- Price controls.

The Authority designates Eazitelecom as having SMP in the market for wholesale voice call termination on its own mobile network in Gibraltar.

The following obligations will apply to Eazitelecom in this market:

- Non-discrimination
- Access
- Price controls.

These obligations are considered to be appropriate, proportionate and justified, in light of the competition problems identified.

1.7 Structure of this document

The rest of the decision is structured as follows:

²⁰ Request for information pursuant to Article 5(2) of Directive 2002/21/EC on cases GI/2015/1774-1775.

²¹ Gibraltar Regulatory Authority's response to the European Commission's request for information pursuant to Article 5(2) of Directive 2002/21/EC on cases GI/2015/1774-1775.

²² The Commission's comments pursuant to Article 7(3) of Directive 2002/21/EC on cases GI/2015/1774-1775.

Chapter 2 presents the European Commission's comments.

Chapter 3 provides for the designation of SMP on specific undertakings.

Chapter 4 specifies the obligations applicable to the SMP designated operators in the relevant markets.

2. European Commission's comments

On 8th September 2015, the Authority received a request for information²³ pursuant to Article 5(2) of Directive 2002/21/EC²⁴ from the European Commission to which the Authority replied.

On 23rd September 2015, based on the Authority's additional information provided, the Commission published its comments in a letter pursuant to Article 7(3) of Directive 2002/21/EC on cases GI/2014/1775-1775. The EC's comments are summarised below.

No Comments

The Commission examined the notifications and had no comments.

²³ Request for information pursuant to Article 5(2) of Directive 2002/21/EC on cases GI/2015/1774-1775.

²⁴ See footnote 1 above.

3. Designation of undertakings with SMP

Having regard to the sections above, in particular sections 2 and 3, and in accordance with the Access Regulations²⁵, the Authority is of the view that:

- Gibtelecom shall be designated as having SMP in the market for wholesale voice call termination on its own mobile network.
- Eazitelecom shall be designated as having SMP in the market for wholesale voice call termination on its own mobile network.

A reference in this section to any given undertaking shall be taken to include any and all undertakings which are affiliated with, or controlled by, the undertaking in question.

²⁵ Communications Access Regulations 2006.

4. SMP Obligations

Wholesale mobile termination

Gibtelecom SMP obligations

Transparency

Gibtelecom shall make public the terms and conditions of its wholesale mobile call termination services in a Reference Interconnection Offer (RIO). The RIO shall include appropriate technical specifications, and shall explain the mechanism for publishing charges.

The terms and conditions applicable to wholesale mobile call termination services may be subject to amendment and/or direction by the GRA.

Gibtelecom shall be obliged to notify the GRA 45 days in advance of changes to terms and conditions and price increases. In addition, the Authority proposes the same obligation to apply to prices of new services.

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

Gibtelecom shall also be obliged to publish changes to terms and conditions, information on increase to tariffs and information on prices for new services 30 days in advance. Publication shall include direct notification to all other operators in the market.

In terms of a decrease in tariffs, Gibtelecom shall be obliged to publish this information at least 14 days in advance. Publication shall include direct notification to all other operators in the market.

Non discrimination

Gibtelecom shall not unduly discriminate between wholesale customers.

Gibtelecom shall apply equivalent conditions in equivalent circumstances to other persons providing equivalent services.

Gibtelecom shall provide services and information to others under the same conditions, and of the same quality, as it provides to itself, its subsidiaries and partners.

Accounting separation

Gibtelecom shall account separately for its wholesale mobile termination business.

In addition, Gibtelecom shall prepare and submit to the Authority an audited Accounting Separation Report every year on 30th September.

Access

Gibtelecom shall meet reasonable requests for access to, and use of, specific network elements and associated facilities in situations where the Authority considers that denial of such access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

Gibtelecom shall be required:

- a. to negotiate in good faith with undertakings requesting access;
- b. not to withdraw access to facilities already granted;
- c. to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services;
- d. to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;
- e. to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; and
- f. to interconnect networks or network facilities.

Gibtelecom shall be required, if the Authority is of the view this will promote effective competition, to provide co-location or other forms of facility sharing, including duct, building or mast sharing.

Regulation 13(2)(3) of the Access Regulations provides that the Authority may attach conditions to ensure that requests for access are made and responded to in a fair and reasonable manner, and that compliance is timely. In the event of a dispute between an entity and Gibtelecom regarding the reasonableness of the entity's request for access to wholesale voice call origination services, the Authority shall intervene if either party writes to the Authority seeking intervention. The Authority shall determine whether the request is reasonable within a period of 60 days following receipt of a written request for intervention. The Authority shall be guided by Regulation 13(1) "Obligations of access to and use of specific network facilities" of the Communications (Access) Regulations 2006 when assessing whether an access request is reasonable.

Price control and Cost accounting

Cost Accounting

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 from time to time;

b) it operates and maintains a cost accounting system suitable for ensuring compliance with Regulation 14 of the Access 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 Controls

The Authority has set the following rates²⁶ for wholesale mobile call termination:

Date	Wholesale mobile call termination rate (€cents/m)	Wholesale mobile call termination rate (p/m)
1 st December ²⁷ 2015 onwards ²⁸	0.9201 ²⁹	0.6721

²⁶ Rates were set in €cent per minute, calculation of pence per minute (ppm) is at exchange rate (provided by oanda.com) at time of publication of Response to Consultation C05/15, 27th August 2015.

²⁷ Please note this date has been amended from the original date (1st September 2015) as contained in Response to Consultation C05/15 due to this Decision Notice being published in October 2015.

²⁸ The mobile termination rate will be in force until further reviewed by the Authority. This period will usually be three years depending on local market conditions.

²⁹ This figure has been calculated as the average termination rate between Member States which have implemented a BU-LRIC model. The Member States are Austria, Belgium, Denmark, Greece, France, Croatia, Hungary, Italy, Poland, Portugal, Sweden and UK as stipulated by the BEREC MTR Benchmark Report (as of January 2015).

Eazitelecom SMP obligations

Non-discrimination

Eazitelecom shall be subject to an obligation to not unduly discriminate between wholesale customers.

Eazitelecom shall apply equivalent conditions in equivalent circumstances to other persons providing equivalent services.

Eazitelecom shall be obliged to provide services and information to others under the same conditions, and of the same quality, as it provides to itself, its subsidiaries and partners.

Access

Eazitelecom shall meet reasonable requests for access to, and use of, specific network elements and associated facilities in situations where the Authority considers that denial of such access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

Eazitelecom shall be required:

- a. to negotiate in good faith with undertakings requesting access;
- b. not to withdraw access to facilities already granted;
- c. to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services;
- d. to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;
- e. to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; and
- f. to interconnect networks or network facilities.

Eazitelecom may be required, if the Authority is of the view this will promote effective competition, to provide co-location or other forms of facility sharing, including duct, building or mast sharing.

Regulation 13(2)(3) of the Access Regulations provides that the Authority may attach conditions to ensure that requests for access are made and responded to in a fair and reasonable manner, and that compliance is timely. In the event of a dispute between an entity and Eazitelecom regarding the reasonableness of the entity's request for access to wholesale voice call origination services, the Authority shall intervene if either party writes to the Authority seeking intervention. The Authority shall determine whether the request is reasonable within a period of 60 days following receipt of a written request for intervention. The Authority shall be guided

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Eazitelecom shall ensure that:

- a) it operates and maintains a cost accounting system that complies with the specific requirements and guidelines issued by the GRA from time to time;
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- 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;
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³¹ Please note this date has been amended from the original date (1st September 2015) as contained in the Response to Consultation due to this Decision Notice being published in October 2015.

³² The MTR will be in force until further reviewed by the Authority. This period will usually be three years depending on local market conditions.

³³ This figure has been calculated as the average termination rate between Member States which have implemented a BU-LRIC model. The Member States are Austria, Belgium, Denmark, Greece, France, Croatia, Hungary, Italy, Poland, Portugal, Sweden and UK as stipulated by the BEREC MTR Benchmark Report (as of January 2015).