

Wholesale call origination on the public telephone network provided at a fixed location

Wholesale call termination on individual public telephone networks provided at a fixed location

Decision Notice C11/15

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Executive Summary

The communications regulatory framework requires the Gibraltar Regulatory Authority (GRA) 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 GRA 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 10th June 2015, the Authority issued a national consultation on wholesale call origination on the public telephone network provided at a fixed location and wholesale call termination on individual public telephone networks provided at a fixed location, (public consultation C02/15). The consultation period ended on 10th 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. On 17th 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 C04/15.

³ See footnote 1 above.

1. Introduction

1.1 Background

The European regulatory framework for electronic communications networks and services is a set of five Directives⁴:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the Framework Directive)⁵
- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (the Access Directive)⁶
- Directive 2002/20/EC on the authorisation of electronic communications networks and services (the Authorisation Directive)⁷
- Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (the Universal Service Directive)⁸
- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (the Privacy Directive)⁹.

These five Directives were implemented as part of the Communications Act 2006¹⁰ (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.

⁴ As Amended in 2009.

⁵ See footnote 1 above.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ 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, BEREC¹¹ 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 withdrawn¹². 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.

¹¹ Body of European Regulators of Electronic Communications.

¹² 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 10th June 2015, the Authority issued a national consultation on wholesale call origination on the public telephone network provided at a fixed location and wholesale call termination on individual public telephone networks provided at a fixed location, (public consultation C02/15). The consultation period ended on 10th July 2015.

After the consultation period and having considered the views of all respondents, the Authority set out in a Response to Consultation¹³ 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 Directive¹⁴.

On 17th September 2015, the Commission issued its final comments¹⁵ regarding cases GI/2015/1771-1772.

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 was found to have 100% market share on the market below:

- Wholesale call termination on individual public telephone networks provided at a fixed location.

¹³ Response to Consultation C04/15.

¹⁴ See footnote 1 above.

¹⁵ The Commission's comments pursuant to Article 7(3) of Directive 2002/21/EC on cases GI/2015/1771-1772.

1.5 Comments from the European Commission

On 17th September 2015, the Commission published its comments¹⁶ pursuant to Article 7(3) of the Framework Directive with regards to wholesale call origination on the public telephone network provided at a fixed location and wholesale call termination on individual public telephone networks provided at a fixed location in Gibraltar.

1.6 Structure of the SMP obligations

Wholesale call termination on individual public telephone networks provided at a fixed location

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

The following obligations will apply to Gibtelecom in this market:

- Transparency
- Non-discrimination
- Accounting separation
- Access
- Cost accounting
- 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:

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.

¹⁶ The Commission's comments pursuant to Article 7(3) of Directive 2002/21/EC on cases GI/2015/1771-1772.

2. European Commission's comments

On 17th September 2015, the Commission published its comments¹⁷ pursuant to Article 7(3) of the Framework Directive with regards to wholesale call origination on the public telephone network provided at a fixed location and wholesale call termination on individual public telephone networks provided at a fixed location in Gibraltar.

No Comments

The Commission examined the notifications and had no comments.

¹⁷ The Commission's comments pursuant to Article 7(3) of Directive 2002/21/EC on cases GI/2015/1771-1772.

3. Designation of undertakings with SMP

Having regard to the sections above, in particular sections 2 and 3, and in accordance with the Access Regulations¹⁸, the Authority is of the view that:

- Gibtelecom should be designated as having SMP in the wholesale market for call termination on its own public telephone network provided at a fixed location.

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.

¹⁸ Communications Access Regulations 2006.

4. SMP Obligations

Wholesale fixed termination

Gibtelecom SMP obligations

Transparency

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

The terms and conditions applicable to wholesale fixed 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 GRA 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 fixed call termination business.

In addition, Gibtelecom shall prepare and submit to the GRA 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 GRA 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 GRA 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 GRA 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 GRA shall intervene if either party writes to the GRA seeking intervention. The GRA 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 Controls 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 his compliance with the cost accounting system he 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 rates for wholesale fixed call termination:

Date	Wholesale fixed call termination rate (€cents/min)	Wholesale fixed call termination rate (p/min)
1 st December ¹⁹ 2015 onwards ²⁰	0.0983 ²¹	0.0718

¹⁹ Please note this date has been amended from the original date (1st September 2015) as contained in Response to Consultation C04/15 due to this Decision Notice being published in October 2015.

²⁰ The fixed call termination rate will be in force until further reviewed by the Authority. This period will probably be three years depending on local market conditions.

²¹ This figure has been calculated as the average termination rate between Member States which have implemented a BU-LRIC model. The Member States are Bulgaria, Czech Republic, Spain, France, Hungary, Ireland, Italy, Luxembourg, Malta, Romania, Slovenia, Slovakia and UK as stipulated by the BEREC FTR Benchmark Report (as of January 2015).