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AUTHORITY

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COMMUNICATIONS ACT 2006

DIRECTION ISSUED TO GIBTELECOM REGARDING ITS ACCOUNTING SEPARATION AND COST ACCOUNTING SIGNIFICANT MARKET POWER OBLIGATIONS

DIRECTION C06/2015

To: Mr Tim Bristow, Chief Executive Officer

Of: Gibtelecom Limited
PO Box 929
15/21 John Mackintosh Square
Gibraltar

DIRECTION

In exercise of the powers conferred on it by Section 10 of the Communications Act 2006 (hereon, "the Act"), the Gibraltar Regulatory Authority, (hereon "the Authority"), hereby issues this Direction to Gibtelecom Limited (hereon "Gibtelecom").

BACKGROUND

Accounting Separation and Cost Accounting obligations

Gibtelecom is subject to accounting separation and cost accounting obligations in both retail and wholesale markets and therefore shall comply with the accounting policies as set by the Authority.

The Authority has consulted industry on these policies and published Decision Notice C01/15 on Accounting Separation, Cost Accounting Systems, Cost Orientation and Retail Price Notification.

The Authority has imposed the following SMP obligations on Gibtelecom:

1. Prepare and submit to the Authority an audited Accounting Separation Report (ASR) every year on 30th September.

2. Ensure that:

a) it operates and maintains a cost accounting system that complies with the specific requirements and guidelines issued by the Authority;

b) it operates and maintains a cost accounting system suitable for ensuring compliance with Regulation 14 of the Access Regulations (wholesale markets) and Regulation 14 of the Universal Service and Users' Rights Regulations (retail markets);

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.

Issues arising with regards to the submission of the 2013 and 2014 ASRs and steps taken by the Authority

Gibtelecom's deadline for submitting a fully compliant ASR for the year 2013 was 30th September 2014. This report shall constitute data collated for the period 1st January 2013 to 31st December 2013. Following various extensions to the deadline granted by the Authority and exchanges of correspondence on the numerous issues affecting the 2013 ASR, the Authority contacted Gibtelecom eleven months after the deadline had expired, and suggested it prioritise work on producing a fully compliant 2014 ASR instead of continuing with the 2013 document.

RELEVANT LEGISLATION CONSIDERED BY THE AUTHORITY

Under the provisions of Sections 38 to 41 of the Communications Act 2006, Gibtelecom has been designated as having Significant Market Power (SMP) in various electronic communications markets.

Where there is a finding of SMP in retail markets, the Authority is obliged to impose obligations to remedy competition. SMP obligations are outlined in regulation 14 of the Communication (Universal Service and Users' Rights) Regulations 2006.

Under the provisions of Regulation 14, the Authority "*...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*".

Where there is a finding of SMP in wholesale markets, the Authority is also obliged to impose obligations to remedy competition problems. SMP obligations are outlined in regulation 10 to 14 of the Communications (Access) Regulations 2006.

THE AUTHORITY'S RIGHT TO SERVE A DIRECTION

This Direction is served in accordance with the Authority's powers under the Act to issue directions as follows:

10.(1) The Minister and the Authority may each, without prejudice to section 4, issue directions to persons who are subject to the provisions of this Act, whether individually or generally, requiring them to do or refrain from doing anything which the Minister or the Authority, as the case may be, may consider necessary for such person to comply with any provision of, or any condition, obligation or other requirement applicable to such person pursuant to, this Act and such person shall give effect to any such direction.

It is established that in accordance with the above provision, the Authority is entitled to serve this Direction.

THE AUTHORITY'S DETERMINATION

Having considered the matter in depth, including all communications with Gibtelecom, and correspondence submitted by Gibtelecom with regards to this matter, and in consideration of the relevant legislation, the Authority has determined that:

- i. In view of the fact that the Authority has provided a final clarification document¹ in order that Gibtelecom is able to effect the necessary changes, the Authority is extending the deadline for the ASR containing 2014 data to 15th December 2015.
- ii. Given that the 2013 ASR has not yet been completed by Gibtelecom, and in light of the above, the Authority is extending the deadline for the 2013 ASR to 15th February 2016.
- iii. In view of the above:

Gibtelecom is hereby directed to:

- a) submit an audited ASR containing 2014 figures by 15th December 2015 which is fully compliant with Decision Notice C01/15.**
- b) submit an audited ASR containing 2013 figures by 15th February 2016 which is fully compliant with Decision Notice C01/15.**

¹ "Response to Gibtelecom comments on ASR" prepared by GOS Consulting Ltd. for the Authority, dated 18/08/15.

RIGHT OF APPEAL

There is a right of appeal against this direction. This right exists under section 91 of the Act and must be brought no later than three weeks from the date of this notice.

Dated 1st September 2015

Signed _____

Paul J Canessa
Chief Executive