GIBRALTAR REGULATORY AUTHORITY

Retail Fixed Access
Retail Local Calls
Retail International Calls

Public Consultation

C01/22

7th February 2022

FOREWORD

In 2014, the Authority carried out a review of the retail fixed access and retail fixed calls markets and issued public consultation 01/14 on the 22nd of January 2014, followed by Decision Notice 11/14 on 28th of July 2014.

The markets have evolved considerably in terms of competition over the last few years and consequently it is time for the Authority to revisit this market review.

When considering these markets, existing regulation must be withdrawn in instances where markets are deemed to be effectively competitive or will become effectively competitive within the lifetime of the review.

Where markets are deemed to be uncompetitive, the Authority must consider the imposition of appropriate regulatory obligations on any undertaking which has significant market power ("SMP").

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1. INTRODUCTION

The main purpose of a market review is to identify the competitive conditions prevailing in a market by assessing systematically the competitive constraints that are faced by undertakings in the market. A market review commences by defining a market, which is then analysed to assess the degree of effective competition.

The competition assessment determines whether any undertaking is found to have Significant Market Power (SMP), which is held to be equivalent to the concept of dominance under competition law, and is defined as the ability to behave independently of competitors, suppliers and ultimately businesses and consumers in that market.

If there is no SMP, the market is effectively competitive and does not require *ex-ante* regulation[1]. If there is SMP, then the market is not effectively competitive and *ex-ante* regulation should be imposed, at either the wholesale or the retail level to counteract the potential negative effects of the competition problems that can be caused by the SMP operator.

Each market review consists of three main components:

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

In order to identify markets that are susceptible to *ex-ante* regulation, the Gibraltar Regulatory Authority (the "Authority") will apply the three criteria test which considers three questions regarding barriers to entry, tendency towards competition and competition law.

This review considers an assessment of the following three retail markets in Gibraltar:

- **Retail access** provided at a fixed location.
- **Retail local calls** provided at a fixed location.
- **Retail international calls** provided at a fixed location.

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

Retail Fixed Access

The retail fixed access market is concerned with the provision of high-quality access and connectivity services provided at a fixed location in Gibraltar. This market essentially covers the physical connection, normally from a home or business directly to the operators own network. This physical access connection is subsequently needed, together with the addition of certain equipment that provides a functional line, and ultimately supports the provision of retail fixed-line services such a voice calls and broadband internet access. Despite this however, the retail fixed access market is solely concerned with the provision of, or availability of such access in its simplest form, despite the subsequent services that may be obtained via the same line.

Retail fixed local calls

The retail local calls market is concerned with all calls originating locally from a fixed network and terminating locally on a fixed network. This market also includes on-net and off-net calls i.e. calls made on the same network or calls made from one network to another. This market also includes all local calls originating on a fixed line and terminating on a local mobile network.

Retail fixed international calls

The retail international calls market is concerned with all calls originating locally from a fixed network and terminating internationally on either a fixed or mobile network.

There are currently three operators providing retail access, retail local and retail international calls. These are:

- Broadband (Gibraltar) Ltd trading as (Sapphire Networks and u-mee).
- GibFibre Ltd.
- Gibtelecom Ltd.

Conclusion

The Authority's preliminary view is that no operator has SMP in the retail markets listed above. The markets do not fulfil the three criteria test and are therefore not considered to be susceptible to *ex-ante* regulation. They are deemed to be effectively competitive especially when considering all issues on a forward-looking basis.

The Authority therefore proposes to withdraw all SMP obligations currently imposed on Gibtelecom in the three retail markets.

The Authority welcomes comments from all interested parties on the questions posed in this market review (full list of questions is set out in Annex A) and will accept written comments up until **3pm on 7th March 2022**. Any questions relating to the clarification of issues will need to be sent within two weeks of the date of publication of this document.

In order to promote further openness and transparency, the Authority will publish the consultation responses on its website. Please note that this is subject to confidentiality. Respondents are asked to clearly identify material which is to be treated as confidential.

1.1 LEGISLATION

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

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

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

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

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

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

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

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

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

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

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

"14.(1) Where the Authority–

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

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

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

….

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

(a) charge excessive prices;

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

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

(d) unreasonably bundle services.

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

(a) retail price cap measures;

(b) measures to control individual tariffs; or

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

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

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

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

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

1.2 OVERVIEW OF PREVIOUS CONSULTATION

The Authority previously carried out a review of the retail fixed access, retail local and retail international calls markets in 2014[2] which designated Gibtelecom as having SMP in all three markets. This conclusion was also supported by the fact that Gibtelecom was the sole operator at the time, providing fixed access and telephony services to residential and business customers in Gibraltar.

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

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

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

1.3 EXISTING SMP OBLIGATIONS

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

Gibtelecom's current SMP obligations are as follows:

Retail Fixed Access

Transparency

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

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

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

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

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

Non-discrimination

1. Gibtelecom should not unduly discriminate between customers.

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

Accounting separation and cost accounting

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

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

Furthermore, Gibtelecom shall ensure that:

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

b) it operates and maintains a cost accounting system suitable for ensuring compliance with Regulation 14 of the Universal Service and Users' Rights Regulations,

c) it operates and maintains a cost accounting system which is annually verified by a qualified independent person,

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

e) it maintains cost accounting systems which produce appropriate information to demonstrate compliance with cost-orientation.

Price control

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

2. Gibtelecom shall ensure that its prices are cost oriented.

Retail Fixed Local Calls

Transparency

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

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

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

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

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

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

3. Gibtelecom shall ensure that its prices are cost oriented.

Retail Fixed International Calls

Transparency

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

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

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

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

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

Non-discrimination

1. Gibtelecom should not unduly discriminate between customers.

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

Accounting separation and cost accounting

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

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

Furthermore, Gibtelecom shall ensure that:

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

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

e) it maintains cost accounting systems which produce appropriate information to demonstrate compliance with cost-orientation.

Price control

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

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

3. Gibtelecom shall ensure that its prices are cost oriented.

1.4 DESCRIPTION OF THE MARKETS IN GIBRALTAR

Fixed access services in Gibraltar have been provided by the incumbent operator, Gibtelecom, via traditional copper means. Gibtelecom's decision to later deploy both "Fibre to the Node" (FTTN) and "Fibre to the Home" (FTTH) technologies has now resulted in greatly improved end-to-end fibre performance for homes and businesses across Gibraltar.

In addition to the above, competition in this sector has developed gradually with two alternative operators, namely GibFibre and Broadband (Gibraltar) Ltd laying their own independent FTTH networks with an ever-increasing network reach now covering most of Gibraltar.

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

Sapphire Networks started offering fixed internet access services in July 2005 and in October 2014 started offering telephony services to the general public. Additionally, u-mee began offering internet access services in June 2015 and followed with telephony services shortly after in November 2015.

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

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

2. MARKET DEFINITIONS

2.1 METHODOLOGY

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

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

Hypothetical Monopolist Test

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

Demand-side and Supply-side substitution

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

Three Criteria Test

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

The three criteria are:

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

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

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

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

In innovation-driven markets characterised by ongoing technological progress, such as the electronic communications markets, barriers to entry may progressively become less relevant. In such markets, competitive constraints often come from threats exerted by potential innovative competitors that are not currently in the market. Therefore, the possibilities to overcome barriers to entry within the relevant time horizon should also be taken into consideration when identifying the relevant markets for possible *ex-ante* regulation.

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

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

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

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

2.2 DELINEATION OF MARKETS

In order to define the boundaries of product and service markets in retail fixed electronic communications, the Authority has considered the following:

- Are fixed access and fixed calls in the same market?
- Are retail fixed services in the same market as retail mobile services?
- Are all types of retail fixed calls in the same market?

Are fixed access and fixed calls in the same market?

One of the key considerations made by the Authority in its market definition process is to assess whether retail fixed access and retail fixed calls can be substitutable for each other.

Demand side substitution

At present customers commonly purchase fixed access and fixed calls as a combined package of services and so are perceived as being one product. However, in reality they are functionally different as access services are an input to the capability of making calls over the fixed network. Therefore, customers are only able to use their fixed line services once they have acquired or purchased retail access to the fixed public telephone network.

Notwithstanding the assessment above, it is important to note that recently, Gibtelecom have started to offer a number of fixed line calling plans that charge a monthly flat rate that covers both access and calls. These plans typically include a certain amount of free minutes or unlimited minutes in the monthly charge with tariffs for calls which go beyond the free prescribed minutes. Furthermore, the distinction between access and calls in the case of Sapphire Networks, u-mee and GibFibre is less distinguishable as access in the form of line rental charges are free.

In this sense, the Authority concludes that rather than being substitutable, retail fixed access and fixed line calls are complementary in nature. Therefore, in the event of a small but

significant non-transitory increase in the price of retail fixed access, customers cannot substitute fixed access for fixed calls since the latter are dependent on the former.

The Authority therefore proposes that fixed access and fixed calls are complements and therefore not part of the same market.

Supply side substitution

On the supply side, while an access provider may be able to enter the calls market, a calls provider would not easily be able to enter the access market speedily. This is due to the fact that significant economies of scale and sunk costs are involved in the construction of alternative access networks and the process to build a fixed network may take longer than the timeframe of this review.

Conversely, an operator providing retail access may be willing to enter the retail calls market in the event of a small but significant non-transitory increase in the price (SSNIP) of local and/or international calls. This is because the provision of retail fixed calls is much easier to offer the market once an operator has an established access network. Nevertheless, this one-way substitution is not considered enough to pose a realistic constraint on a hypothetical increase in the price of retail access.

The Authority therefore suggests that, from a supply-side perspective, the provision of fixed line access and the provision of fixed line calls belong to separate markets.

Proposal: Retail fixed access and retail fixed calls are in separate markets.

Are retail fixed services in the same market as retail mobile services?

With the considerable number of active mobile subscribers, it is the Authority's view that it should consider whether mobile access falls within the scope of the market definition. The Authority has considered whether a customer would switch between fixed line access and mobile access, and whether supply-side substitution between the two forms of access infrastructures is a possibility.

Demand side substitution

The most obvious difference between fixed and mobile access, from a functional point of view, is the dependency on location. For mobile users, location is not generally an issue (apart from signal coverage issues), whereas a fixed user is dependent upon where the line is connected. In this regard, substitutability would be uni-directional as customers would most likely consider replacing fixed access by a mobile access service, but not vice versa.

Reliability is also a factor to consider when comparing the two forms of access. In terms of the fixed line access, reliability is usually excellent, especially with modern fibre solutions, where a variety of factors have the potential to affect mobile access such as network operator, surrounding physical infrastructure in densely built-up areas, weather conditions and the number of subscribers using the same network at any given time.

The Authority also takes note of the fact that the number of fixed access subscribers has grown substantially since the last review and continues to do so, albeit at a slower rate. This growth is arguably as a direct result of enhanced competition within the sector with alternative

operators providing competitively priced packages coupled with the constant development of new housing estates throughout Gibraltar. With the above in mind, the number of mobile subscribers has also increased over recent years, however to date mobile numbers have remained reasonably constant, fluctuating between 40,000 to 41,500[3] subscribers at a given time. This suggests that the two forms of communication are complements rather than substitutes.

Therefore, in the event of a SSNIP test of fixed access, the Authority considers it unlikely that a sufficient number of customers would transfer to mobile access.

Supply side substitution

For supply side substitution to occur, a mobile operator would have to switch production and offer access that would match the quality and price of a fixed line in response to a price increase in fixed access. To achieve this, the undertaking would either have to roll out a fixed access network or develop a similar product, possibly via a wireless solution. This would require either the construction of a fixed access network or the development of a wireless product with functional attributes of a fixed access product. In each case, a mobile operator interested in providing fixed access is faced with significant sunk costs and long timeframes in implementing the project.

At the time of writing, the only operator who operates a fixed and mobile network in Gibraltar is Gibtelecom. The Authority must therefore consider whether both the existing 4G, and more recently introduced 5G mobile networks currently offered are a viable substitution that have the potential to compete with a fixed access service.

In Gibraltar, 5G mobile networks became publicly available in June 2021 and to date, one operator is providing mobile telephony and data services. Furthermore, the use of 5G is still not widespread, as only a selection of mobile handsets are fully compatible with this technology.

In terms of broadband speeds, local operators are now providing fixed access via fibre broadband with symmetric upload and download speeds of up to 1Gbps with one operator providing 2Gbps. It is the Authority's view that the maximum real-world download speeds offered by a 4G mobile network cannot compete or even serve as a realistic substitute for the extremely high speeds now available locally in respect of fixed access.

In relation to 5G, the explanatory note accompanying the Commission Recommendation on relevant markets[4] states that the average speed expected from a 5G mobile network is around 500Mbps in dense urban areas, however it is not expected that 5G in any of the coming specifications will outperform 1 Gbps FTTH Ethernet in a point-to-point topology. Mobile coverage and reliability are also important factors to consider as a mobile signal is dependent on location and this can affect the service considerably. Fixed access via fibre is therefore a more robust and efficient service when compared to 5G wireless solution.

[3] Statistics collected as part of the Authority's annual data gathering exercise.

[4] Explanatory note accompanying Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of December 2018 establishing the European Electronic Communications Code.

It is therefore very unlikely that a SSNIP would entice switching in these circumstances and would render supply-side substitution between mobile access and fixed line access unlikely.

Proposal: Retail fixed access and retail mobile access are in separate markets.

Are all types of retail fixed voice calls in the same market?

There are two main considerations to be examined here. Firstly, does the destination of the call indicate that it should be in a separate market – for example, should local calls be considered as part of the same market as international calls? Secondly, does the form of access matter, in other words does the type of technology used, have a significant impact or bearing on whether all types of retail fixed calls should be considered to be within the same market?

For the purposes of this review, the Authority has concluded that all types of equipment and technologies used for the delivery of fixed voice communications should be considered within the same market. This includes technologies such as Public Switched Telephone Networks (PSTN), Voice over Internet Protocol (VoIP), Voice over Broadband (VoB), FTTH and FTTN, as these are essentially substitutable in so far as the ultimate service provided is indistinguishable to the customer and all of these technologies provide services that are billed monthly.

Local and international calls

Demand-side substitution

For obvious reasons, there is clearly no demand side substitution between local and international calls. One involves a telephone call to a person or business based in Gibraltar and the other involves a call to a person or business in another country. Furthermore, international rates differ according to the destination and are in most cases more expensive than local calls. In addition to this, some local operators also provide free local calls.

Supply side substitution

On the supply side, could a supplier of local calls switch to supply international calls in response to a small but significant price increase? The supplier of local calls would have to obtain an international gateway and negotiate agreements with international operators. This would involve considerable costs and resources necessary to establish the necessary routing network. Additionally, a supplier of international calls responding to an increase in the price of local calls would possibly not have the local infrastructure (i.e. local access network) necessary to terminate local calls, so would have to rely on wholesale call termination services, which is unlikely to present an attractive business opportunity given the local market conditions.

However, with the above in mind, the Authority is also conscious of the fact that all local operators currently provide both local and international calls on the basis of their own infrastructure, and that this does not necessarily dictate that these should be characterised within the same market.

Proposal: Local and international calls are in separate markets.

2.4 GEOGRAPHICAL MARKET

The relevant geographic market comprises an area in which the conditions of competition are similar throughout, and which can be distinguished from neighbouring areas where the conditions of competition are different. The Authority believes that the geographic market for all retail fixed communications access and calls services is Gibraltar. There are no appreciable differences in the conditions of demand or supply within Gibraltar, and similar services are offered on the same terms and conditions throughout.

<u>Proposal:</u> The geographical boundary for all markets defined above is all of Gibraltar.

2.5 PRELIMINARY MARKETS TO BE DEFINED

The Authority's preliminary conclusions with regards to the markets being defined are as follows:

- Retail fixed access and retail fixed calls are in separate markets.
- Retail fixed access and retail mobile access are in separate markets.
- Local and international calls are in separate markets.

The Authority therefore proposes to define the relevant markets as follows:

- **Retail fixed access.**
- **Retail fixed local calls.**
- **Retail fixed international calls.**

Q1: Do you agree with the Authority's proposed market definitions?
Please give reasons for your answer.

3. APPLICATION OF THREE CRITERIA TEST

Having defined the markets, it is now necessary to ascertain whether these markets are susceptible to *ex-ante* regulation. As explained above, this is done using the three criteria test explained in Section 2.1 of this market review.

The three criteria are:

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

3.1 RETAIL FIXED ACCESS

Criterion 1 – High and non-transitory structural, legal or regulatory barriers to entry are present

Gibraltar is a very small and heavily populated jurisdiction with a high density of buildings within the majority of areas. Given its small geographical size, alternative operators have managed to roll out their networks on the basis of their own infrastructure throughout most of Gibraltar within a relatively short amount time. Since 2013, alternative operators u-mee and GibFibre have laid out their FTTH networks at a very rapid rate and have achieved a significant foothold on the market evidenced by the large number of customers switching from Gibtelecom (the present incumbent) to these competing operators.[5]

The market now boasts of three operators providing competitively priced access products. Given the extensive roll out carried out within approximately seven years and the availability of a wide range of competing products and services all fostering consumer choice, it is the Authority's view that no high and non-transitory structural, legal or regulatory barriers to entry are present in the retail access market. Furthermore, given the recent trend, the Authority does not foresee the market undergoing any changes which would indicate the contrary.

The Authority therefore considers that the first criteria has not been met as high and non-transitory structural, legal or regulatory barriers to entry are not present.

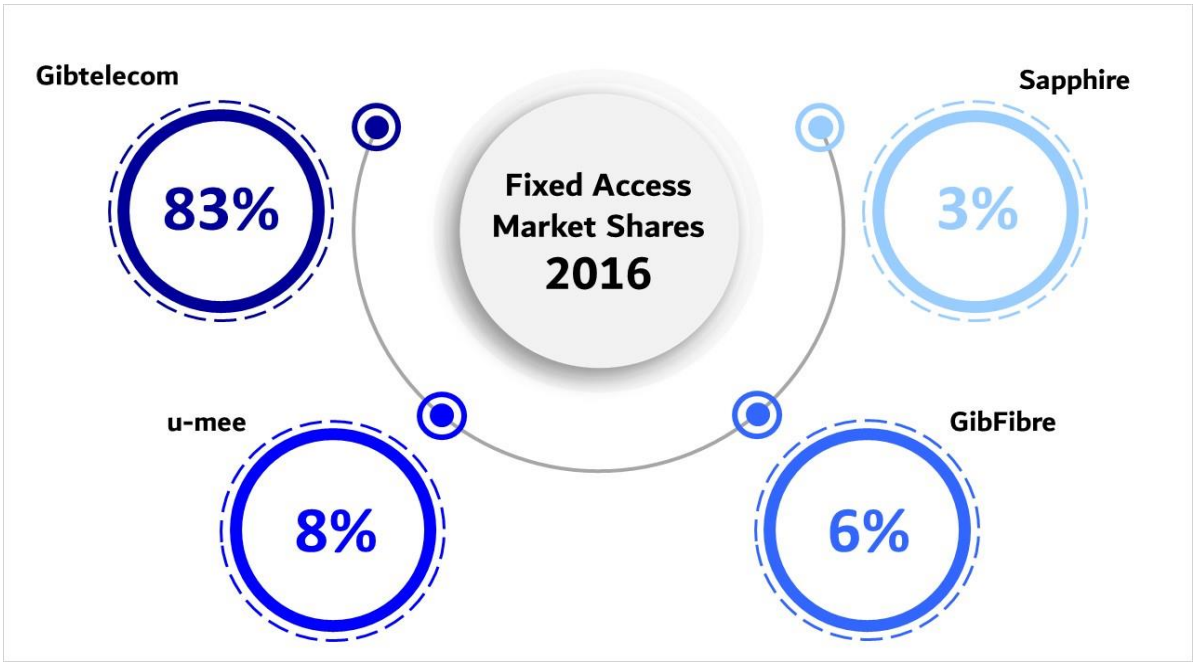
Criterion 2 - There is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry

[5] See statistics below.

Throughout the last decade, the retail fixed access market has experienced a considerable shift from a 100% monopoly acquired by Gibtelecom to currently having less than 40% market share in terms of subscriber numbers.

Throughout this time and as mentioned above, there are now multiple operators providing local retail fixed access and each of these competitors have experienced considerable growth in this market over the last few years. As of Q2 2016, Gibtelecom had 14,915 active subscriptions in respect of the retail fixed access market, whereas GibFibre had 1,017, u-mee 1456 and Sapphire Networks 614.

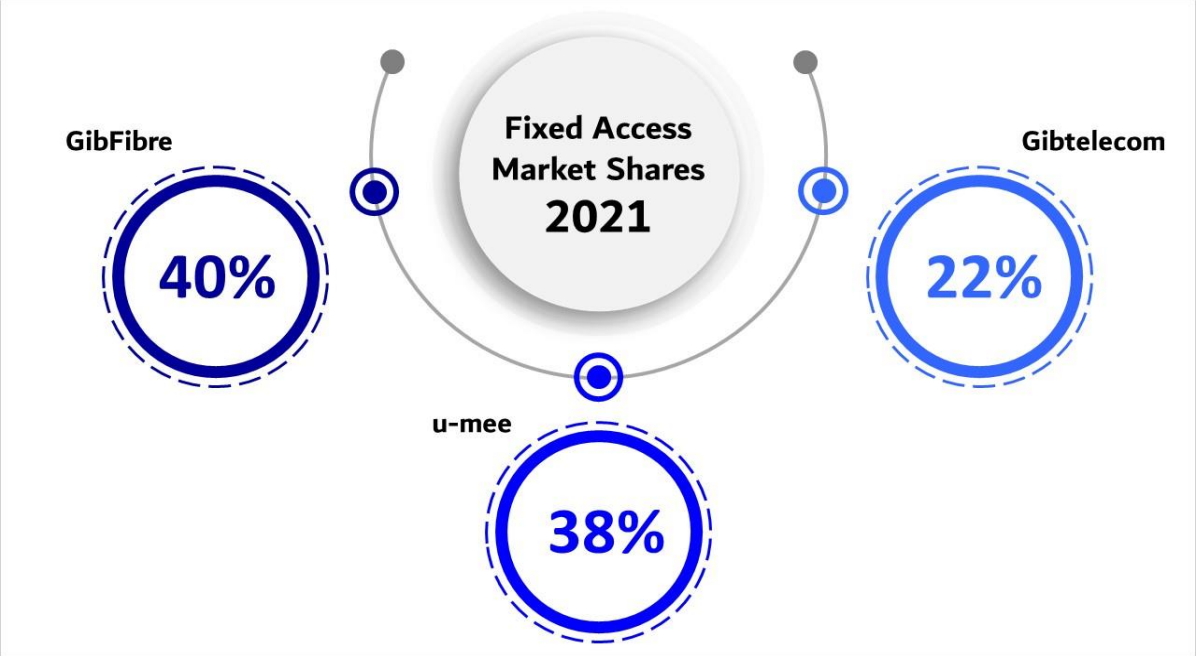
The diagram below illustrates the fact the Gibtelecom's retail fixed access market share which includes both residential and business access was 83% in 2016, whereas GibFibre and u-mee gained initial growth in the market having their market shares at 6% and 8% respectively.



This trend or shift in market share has continued as the alternative operators have successfully rolled out their own FTTH networks with progressive coverage around Gibraltar and offered increasingly competitive packages. Accordingly, as of Q2 2021 Gibtelecom had 8438 active subscriptions in respect of the retail fixed access market whereas GibFibre was calculated at 8634, u-mee at 4602 and Sapphire Networks at 88.

The diagram below illustrates the fact that Gibtelecom's retail fixed access market share, which includes both residential and business access has decreased to 38%, whereas GibFibre and u-mee have increased their market shares to 40% and 22% respectively. It is important to note however that a large percentage of Sapphire Network's residential customers were gradually migrated over to u-mee's home and business packages between 2018 and 2019, in line with u-mee's fibre roll out as these customers did not require the strict service level agreements, resilience and 24hr support offered by Sapphire Networks.

Therefore, Sapphire Network's decrease in market share from 3% in Q2 2016 to less than 1% in Q2 2021 is not reflected below, but is however representative of these customers being absorbed into u-mee's market share, rather than a loss of customer base.



Consequently, the market structure demonstrates that over the last five years, the alternative operators have managed to establish a sizeable foothold of the customer base and will continue to do so over the next coming years. The Authority therefore considers the market to be effectively competitive within the lifetime of this review, having regards to infrastructure-based competition and other sources of competition behind the barriers to entry.

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

Criterion 3 - applicable competition law alone is insufficient to adequately address the identified market failure(s)

According to the Commission Recommendation on Relevant Markets[6], "*The decision to define a market as susceptible to ex-ante regulation should also depend on an assessment of the sufficiency of competition law to adequately address the market failures identified. Competition law based interventions are likely to be insufficient where frequent and/or timely intervention is indispensable to redress persistent market failure(s)*".

Furthermore, the same recommendation states that, "*In general, the application of general competition rules in markets characterised by sustainable and effective infrastructure-based competition should be sufficient*".

Taking into account the Authority's assessment under the first two criteria, in which it has established that there are no high and non-transitory barriers to entry and that the market is tending towards competition, it is of the view that any significant market failures are unlikely

[6] Commission Recommendation (EU) 2020/2245 of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to *ex-ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code.

to occur. The probability of the Authority's intervention in this regard is very low and so it considers that the applicable competition law is sufficient to address any potential market failures.

It is also important to note that the market for retail fixed access is no longer considered as a "relevant market susceptible to *ex-ante* regulation[7]", as this market is deemed to be competitive or prospectively competitive at a European wide level and therefore does not fulfil the three criteria test.

Accordingly, the Authority is of the view that the third criteria has not been met owing to the likelihood that competition law alone is sufficient to adequately address any potential market failure(s) that may arise.

The Authority therefore concludes that the market for retail fixed access is not susceptible to *ex-ante* regulation and as such, the Authority will not be taking this analysis any further.

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

Please give reasons for your answer.

3.2 RETAIL LOCAL CALLS

Criterion 1 - High and non-transitory structural, legal or regulatory barriers to entry are present

Gibraltar is a small and heavily populated jurisdiction with a high density of buildings within the majority of areas. Given its small geographical size, alternative operators have managed to roll out their networks on the basis of their own infrastructure throughout most of Gibraltar within a relatively short amount time. Since 2013, alternative operators u-mee and GibFibre have laid out their FTTH networks at an unprecedented rate and have achieved a significant foothold on the market.

The market now boasts of three operators providing competitively priced local call products. Given the extensive roll out carried out within approximately seven years and the availability of a wide range of competing products and services all fostering consumer choice, it is the Authority's view that no high and non-transitory structural, legal or regulatory barriers to entry are present in the retail local calls market. Furthermore, given the recent trend, the Authority does not foresee the market undergoing any changes which would indicate the contrary.
The Authority therefore considers that the first criteria has not been met as high and non-transitory structural, legal or regulatory barriers to entry are not present.

Criterion 2 - There is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry

[7] *Ibid,* footnote 6 above.

The most notable shifts in terms of individual market shares for the total number of retail fixed local call minutes over the last four years, have been experienced by Gibtelecom and GibFibre. With respect to Gibtelecom, since Q2 2018, their market share has declined by 18% from 89% to 71% in Q2 2021. Conversely, GibFibre's share increased by 16% from 2% in Q2 2018 to 18% in Q2 2021. During this same period, u-mee's share increased by 2% and Sapphire Network's share remained static at 1%.

According to established case-law[8], a very large market share (in excess of 50%) held by an undertaking for some time is in itself, save in exceptional circumstances, evidence of the existence of a dominant position. The higher the market share and the longer the period of time over which it is held, the more likely that it constitutes an important preliminary indication of SMP.

However, even an undertaking with a high market share may not be able to act to an appreciable extent independently of customers with sufficient bargaining strength. In addition, the fact that an undertaking with a strong position in the market is gradually losing market share may well indicate that the market is becoming more competitive. A forward-looking assessment of the likely evolution of market shares and competition in general is therefore necessary to make an accurate analysis of the market.

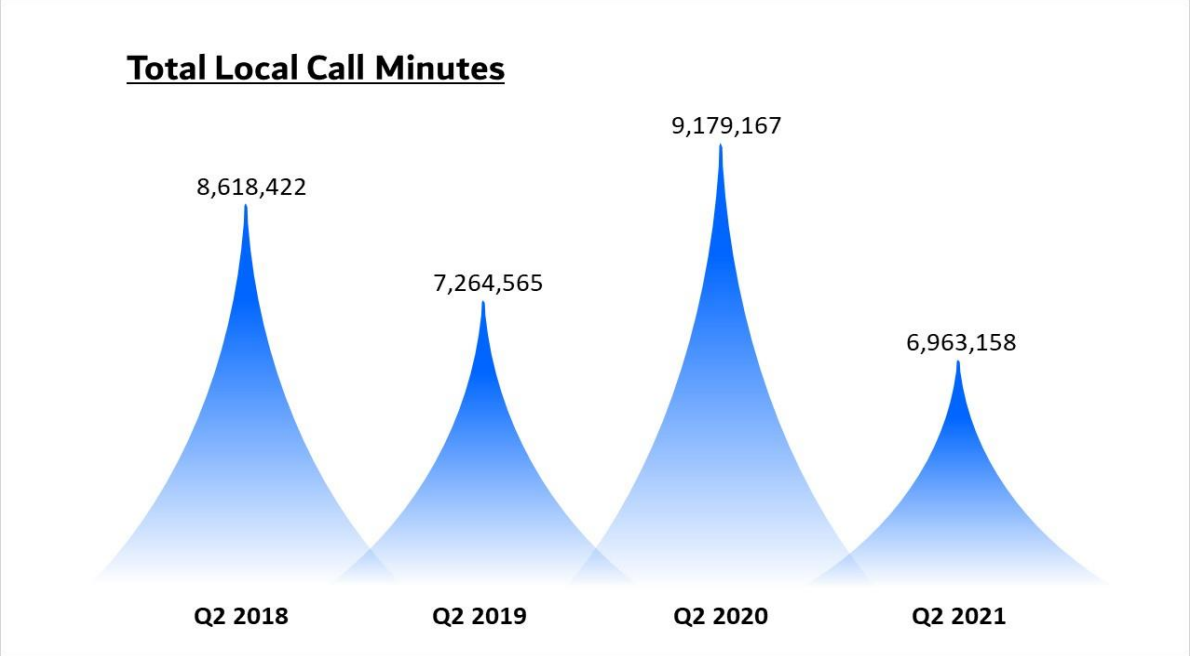
The Authority notes that Gibtelecom still retains a considerable share of the local calls market, however, a decline of 18% in the last four years is quite significant. Furthermore, given the ever-changing technologies used in the provision of call services, changes in usage trends and the increased availability of bundled packages, the Authority must consider multiple factors beyond market shares, such as pricing and pricing behaviour when assessing whether competition within this market is effective.

The chart below illustrates a steady decline in the total number of local call minutes generated by fixed telephony users in Gibraltar. Between Q2 2018 and Q2 2021, these decreased from 8,618,422 to 6,963,158 representing a decline of just over 1.6 million minutes. This equates to a substantial reduction of 19.2% within those four years.

All factors considered, this gradual yet steady decrease in minutes would have also been expected for Q2 2020, however the Authority must take note of the impact of the Covid-19 pandemic and subsequent lockdowns, which have undoubtedly caused a surge in local minutes generated for 2020.

The retail fixed calls market in general is arguably not as significant as it once was and the fact that local call minutes in Gibraltar are in decline is a clear indication that usage habits are changing. In many ways this follows global trends whereby subscribers are increasingly substituting "traditional fixed calls" in favour of free over-the-top (OTT) services such as WhatsApp, Skype and Facetime to make local calls.

[8] Case T-228/97 Irish Sugar v Commission, Case C-62/86 AKZO Chemie BV v Commission.



As highlighted in the paragraphs below, and in order to try and gain a competitive advantage, the alternative operators started offering cheaper and, in some instances, free local calls in comparison to Gibtelecom, as soon as they started providing these services. More recently, Gibtelecom have amended and consolidated their fixed line tariffs in an effort to regain those minutes of traffic.

In 2016 Gibtelecom's rates varied depending on the time of day in which a call was made. These were classified as "Peak" "Standard" and "Cheap" rates[9] of 0.025p, 0.0167p & 0.006p (in pence per second) respectively, for fixed-to-fixed local calls. In addition to this, an initial connection charge of 3p also applied. In so far as fixed to local mobile calls were concerned, a "standard" rate of 11p per minute (applicable Monday to Friday 0800Hrs to 2000Hrs) and a "cheap" rate of 6p per minute applied in addition to an initial connection charge of 2.5p.

During the same 2016 period, u-mee and Sapphire Networks were providing free local on-net calls and also charged a "peak" and an off-peak rate of 1p and 0.4p per minute for a local off-net call.[10] In respect of a fixed to local mobile call, u-mee also charged a "peak" and an off-peak rate of 6p and 4p per minute respectively, whereas Sapphire Networks simply charged 6p per minute.[11] GibFibre were also providing free local on-net calls and then charged their customers 2p per minute for local fixed to fixed calls terminating off-net. In respect of a fixed to local mobile call, GibFibre charged its customers 4p per minute.[12]

In contrast to the above, the current pricing structures and tariff rates adopted by local operators has changed. In 2021, Gibtelecom adopted a different pricing approach all together

[9] Gibtelecom's 2015/2016 Directory.

[10] Information obtained directly from u-mee and Sapphire Networks.

[11] *Ibid.*

[12] Information obtained directly from GibFibre.

by offering a range of fixed landline plans[13] with inclusive local minutes to suit various usage needs, including residential and business. Some of these plans include 250 local fixed and mobile minutes for £7 per month including line rental and another plan offers unlimited local fixed and mobile minutes for £9.50 per month including line rental.

Gibtelecom customers are then charged out-of-bundle tariffs once these inclusive minutes have been used, charged at 2p per minute when calling a landline (including off-net numbers) and 12p per minute when calling a mobile. All local calls are charged per second after an initial one minute minimum however, Gibtelecom are no longer charging call connection fees.

In contrast, u-mee and Sapphire Networks have been providing free calls to "all" local landlines (both on-net and off-net) since the 4th & 9th July 2020 respectively, and also now charge a single rate of 6p per minute for a fixed to local mobile call. In addition to GibFibre already offering free on-net local calls since the 1st July 2020, this was extended to include any number on GibFibre's "225" numbering range that may have been ported outside their network. For fixed-to-fixed local calls terminating off-net, GibFibre now charges a rate of 1p per minute[14]. A rate of 4p per minute still applies for all fixed to local mobile calls and this has remained unchanged since 2016.

Therefore, given the trends shown above, the Authority is of the view that the market structure is tending towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry.

Consequently, having considered a multitude of factors, the Authority is of the view that the second criteria has not been met in so far as the market structure is tending towards effective competitive within the relevant time horizon, having regard to the state of infrastructure-based competition.

Criterion 3 - applicable competition law alone is insufficient to adequately address the identified market failure(s)

According to the Commission Recommendation on Relevant Markets[15], "*The decision to define a market as susceptible to ex-ante regulation should also depend on an assessment of the sufficiency of competition law to adequately address the market failures identified. Competition law based interventions are likely to be insufficient where frequent and/or timely intervention is indispensable to redress persistent market failure(s)*".

Furthermore, the same recommendation states that, "*In general, the application of general competition rules in markets characterised by sustainable and effective infrastructure-based competition should be sufficient*".

Taking into account the Authority's assessment under the first two criteria, in which it has established that there are no high and non-transitory barriers to entry and that the market is tending towards competition, it is of the view that any significant market failures are unlikely

[13] Gibtelecom's website as of January 2022.

[14] GibFibre's website as of January 2022.

[15] *Ibid*, footnote 6 above.

to occur. The probability of the Authority's intervention in this regard is very low and so it considers that the applicable competition law is sufficient to address any potential market failures.

It is also important to note that the market for retail local calls is no longer considered as a "relevant market susceptible to *ex-ante* regulation[16]", as this market is deemed to be competitive or prospectively competitive at a European wide level and therefore does not fulfil the three criteria test.

Accordingly, the Authority is of the view that the third criteria has not been met owing to the likelihood that competition law alone is sufficient to adequately address any potential market failure(s) that may arise.

The Authority therefore concludes that the market for retail fixed local calls is not susceptible to *ex-ante* regulation and as such, the Authority will not be taking this analysis any further.

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

Please give reasons for your answer.

3.3 RETAIL INTERNATIONAL CALLS

Criterion 1 - High and non-transitory structural, legal or regulatory barriers to entry are present

Gibraltar is a small and heavily populated jurisdiction with a high density of buildings within the majority of areas. Given its small geographical size, alternative operators have managed to roll out their networks on the basis of their own infrastructure throughout most of Gibraltar within a relatively short amount time. Since 2013, alternative operators u-mee and GibFibre have laid out their FTTH networks at an unprecedented rate and have achieved a significant foothold on the market.

The market now boasts of three operators providing competitively priced international calls products. Given the extensive roll out carried out within approximately seven years and the availability of a wide range of competing products and services all fostering consumer choice, it is the Authority's view that no high and non-transitory structural, legal or regulatory barriers to entry are present in the retail international calls market. Furthermore, given the recent trend, the Authority does not foresee the market undergoing any changes which would indicate the contrary.

The Authority therefore considers that the first criteria has not been met as high and non-transitory structural, legal or regulatory barriers to entry are not present for any potential entrants wishing to provide retail fixed international calls.

[16] *Ibid,* footnote 6 above.

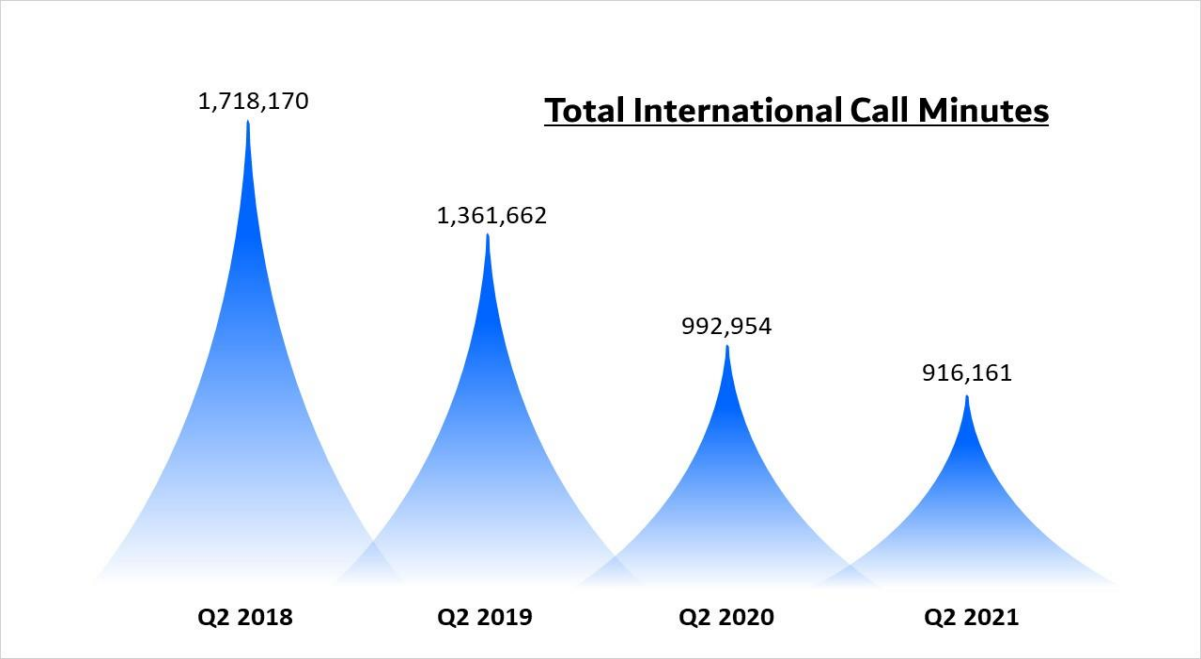
Criterion 2 - There is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry

In line with the retail local call analysis in section 3.2 above, Gibtelecom also holds the majority market share for international call minutes at 76% as of Q2 2021. However, it is important to note that this figure has declined by 14% since Q2 2018 when it stood at 90%. Conversely, over the same four-year period, GibFibre's share increased by 10% from 1% in Q2 2018 to 11% in Q2 2021. U-mee's share also increased by 3% to 8% in Q2 2021 and Sapphire Network's share remained static at 4% during this period.

Although Gibtelecom still retains a considerable share of the international calls market, the ever-changing technologies used in the provision of calls services, changes in usage trends and the increased availability of bundled packages, the Authority must again consider multiple factors beyond market shares alone when assessing whether or not competition within this market is effective.

Firstly, the Authority again takes note of the fact that the calls market in general is arguably not as significant as it once was and the fact that the number of international call minutes are in decline, is once again a clear indication that usage habits are changing, in line with global trends whereby subscribers are gradually substituting "traditional fixed calls" in favour of free OTT services such as WhatsApp, Skype, Facetime etc.

The chart below clearly shows a significant decline in the number of international call minutes with 802,009 fewer minutes generated in Q2 2021 when compared to Q2 2018, representing a decrease of approximately 47% within those four years.



Secondly, tariffs and pricing behaviour have to be taken into account in order to ascertain if any constraints have been exerted by the alternative operators on the current incumbent or whether it can still act independently of its competitors despite the market forces present.

In 2016, Gibtelecom offered its customers two separate methods for making international calls each with their own unique pricing structure, namely the traditional International Direct Dialling (IDD) service and the lower cost "884" service.

Gibtelecom

International Direct Dialling (IDD)

IDD is a service allowing customers to make international calls and this service offers resilience, high quality speech and data communication. In 2016, IDD call rates were divided into bands and expressed in minutes, although the actual charge was calculated to the nearest second. A "standard" and "cheap" rate also applied with the standard rate applicable Monday to Friday from 0800Hrs to 2000Hrs and the cheap rate applicable at other times and during weekends and public holidays. All calls were subject to an initial charge of 2.5p[17].

Band	Destination	Standard Tariff (per minute)	Cheap Tariff (per minute)
A	UK – Fixed	14p	10p
B	UK – Mobile	20p	15p
C	Europe/USA – Fixed	22p	17p
D	Europe/USA – Mobile	30p	25p
E	Rest of the world (Fixed/Mobile)	55p	50p

Gibtelecom

"884" Service

Gibtelecom's 884 service offered customers a low-cost[18] alternative for calling abroad with a simplified pricing structure which did not have peak or cheap rates. This service had no prepayment or contract and simply required the customer to dial 884 before dialling the required telephone number. All calls were also subject to an initial charge of 2.5p.

[17] Rates obtained from Gibtelecom 2015/2016 Directory.

[18] *Ibid.*

Destination	Tariff (per minute)
UK – Fixed	7p
UK – Mobile	20p
Europe – Fixed	7p
Europe[19] – Fixed	12p
Europe – Mobile	20p
Rest of the world (Fixed/Mobile)	15/20p

During the same 2016 period, u-mee applied the following international call rates[20] which included both "peak" and "off-peak" rates but did not carry any additional call connection charges.

u-mee

Destination	Peak Tariff (per minute)	Off-peak Tariff (per minute)
UK – Fixed	6p	5.4p
UK – Mobile	15p	13.5p
Europe – Fixed	8p	7.2p
Europe – Mobile	13p	11.7p
USA – Fixed	8p	7.2p
USA – Mobile	15p	13.5p
Rest of the world (Fixed/Mobile)	25p	22.5p

[19] Certain countries, although still within Europe incur a slightly higher rate, i.e. Albania, Bulgaria, Romania, Lithuania, Bosnia & Herzegovina.

[20] Information obtained from u-mee directly.

In contrast, Sapphire Networks did not have "peak" or "off-peak" rates and had a slightly different pricing structure to that of u-mee in 2016, which was marketed as "business telephony" and priced in a manner which reflected this. In respect to the rest of the world fixed and mobile rates, these varied considerably for each individual country and ranged from 4.5p to £1.91 per minute.

Sapphire Networks

Destination	Tariff (per minute)
UK – Fixed	1.9p
UK – Mobile	14p
Europe – Fixed	1.9p
Europe – Mobile	14p
USA – Fixed	1.9p
USA – Mobile	14p
Rest of the world (Fixed/Mobile)	4.5p - £1.91

In 2016, GibFibre was charging its customers the following international call rates with no additional call connection charges.

GibFibre

Destination	Tariff (per minute)
UK – Fixed	5p
UK – Mobile	10p
Europe – Fixed[21]	5p – 7p
Europe – Mobile	10p – 12p
USA – Fixed/Mobile	12p
Rest of the world (Fixed/Mobile)	8p - £1

[21] Rates may vary slightly depending on the exact destination called. This applies to the Europe – Mobile and Rest of the world (Fixed/Mobile) as well.

In contrast to the above, the current pricing structures and tariff rates adopted by local operators has now changed. In 2021, Gibtelecom implemented revised and simplified international call rates[22] by adopting a single rate of 20p per minute to the UK and EU, irrespective of whether a customer is calling from a Gibtelecom fixed landline or mobile. There are no "peak" or "off-peak" charges and Gibtelecom have gone a step further by abolishing all connection fees and all international calls are charged per second after an initial minimum one minute. Gibtelecom currently charges rates of 25p and 70p per minute for USA and rest of the world calls respectively. Gibtelecom still currently have the "884" service in operation, however all rates have been revised and are either 15p or 25p per minute depending on the international location being called.

Gibtelecom

Destination	Tariff (per minute)
UK / EU – Fixed/Mobile	20p
USA – Fixed/Mobile	25p
Rest of the world (Fixed/Mobile)	70p

U-mee currently charge their customers the following international call rates and do not charge any call connection charges and no longer have "peak" of "off-peak" rates. However, when compared to their 2016 pricing structure, the majority of u-mee's international tariffs have increased slightly. For example, a local fixed to UK fixed call has increased from 6p in 2016 to 9.5p in 2021 and a call to a fixed line in Europe has increased from 8p to 12.7p over the same period.

u-mee

Destination	Tariff (per minute)
UK - Fixed	9.5p
UK - Mobile	16.2p
Europe - Fixed	12.7p
Europe - Mobile	16.2p
USA - Fixed	10.6p
USA - Mobile	19.8p
Rest of the world - Fixed	33.1p
Rest of the world - Mobile	39.7p

[22] Gibtelecom's website as of January 2022.

Sapphire Networks currently continue to offer bespoke business telephony solutions with competitive calling rates (available on request). As was the case in 2016, in respect to rest of the world fixed and mobile rates, these continue to vary considerably for each individual country listed, however the tariffs themselves have not changed at all between 2016 and 2021.

GibFibre also revised their tariffs and currently charge their customers the following international call rates with no additional call connection charges.

GibFibre

Destination	Tariff (per minute)
UK - Fixed	6p
UK - Mobile	6p
Europe - Fixed[23]	4.5p - 6p
Europe - Mobile	4.5p – 5p
USA - Fixed	4.5p
USA - Mobile	6p
Rest of the world - Fixed	5p - 55p
Rest of the world - Mobile	20p - 70p

The majority of charges appear to have decreased slightly from 2016, especially calls to a UK mobile which have dropped from 10p to 6p per minute as well as calls to a USA fixed number which have dropped from 12p to 4.5p per minute.

Given the pricing behaviour explained above, it is apparent that most operators revised their tariffs from 2016 to 2021, each obtaining a unique competitive advantage. In relation to Gibtelecom's realignment of tariffs, the Authority believes that these have been implemented in response to the market conditions currently present.

Therefore, taking the above into account, the Authority is of the view that the second criteria has not been met given the fluctuations in market shares over time and the market conditions imposed by the OTT players, which has led to a significant decline of traditional international calls being made resulting in the pricing behaviours observed.

The Authority is of the view that the second criteria has not been met in so far as the market structure is tending towards competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry.

[23] Rates may vary slightly depending on the exact destination called. This also applies to Europe – Mobile, Rest of the world – Fixed and Rest of the world – Mobile.

Criterion 3 - applicable competition law alone is insufficient to adequately address the identified market failure(s)

According to the Commission Recommendation on Relevant Markets[24], "*The decision to define a market as susceptible to ex-ante regulation should also depend on an assessment of the sufficiency of competition law to address adequately the market failures identified.*

Competition law based interventions are likely to be insufficient where frequent and/or timely intervention is indispensable to redress persistent market failure(s)".

Furthermore, the same recommendation states that, "*In general, the application of general competition rules in markets characterised by sustainable and effective infrastructure-based competition should be sufficient*".

Considering the Authority's assessment under the first two criteria, in which it has established that there are no high and non-transitory barriers to entry and that the market is tending towards competition, it is of the view that any significant market failures are unlikely to occur. The probability of the Authority's intervention in this regard is very low and so it considers that the applicable competition law is sufficient to address any potential market failures.

It is also important to note that the market for retail international calls is no longer considered as a "relevant market susceptible to *ex-ante* regulation[25]" as this market is deemed to be competitive or prospectively competitive at a European wide level and therefore does not fulfil the three criteria test.

With the above in mind the Authority is of the view that the third criteria has not been met owing to the likelihood that competition law alone is sufficient to adequately address any potential market failure(s) that may arise.

The Authority therefore concludes that the market for retail fixed international calls is not susceptible to *ex-ante* regulation and as such, the Authority will not be taking this analysis any further.

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

Please give reasons for your answer.

[24] *Ibid*, footnote 6 above.

[25] *Ibid*, footnote 6 above.

4. REMOVAL OF SMP OBGLIGATIONS

Considering the evidence presented in the analyses above, the Authority concludes that each market is competitive or will be effectively competitive within the next five years and that no undertaking enjoys SMP in any of the identified retail markets.

Given these, the Authority does not deem it justifiable to mandate regulatory obligations on undertakings active in the retail fixed access markets, retail local calls market and the retail international calls market. Therefore, pursuant to the provisions of section 40(5)(b) of the Act, the Authority proposes to withdraw all SMP obligations on Gibtelecom in respect of these 3 markets.

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

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

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

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

Please give reasons for your answer.

ANNEX A: CONSULTATION QUESTIONS

Q1: Do you agree with the Authority's proposed market definitions?
Please give reasons for your answer.

Q2: Do you agree that the market for retail fixed access should no longer be subject to ex-ante regulation?
Please give reasons for your answer.

Q3: Do you agree that the market for retail fixed local calls should no longer be subject to ex-ante regulation?
Please give reasons for your answer.

Q4: Do you agree that the market for retail international calls should no longer be subject to ex-ante regulation?
Please give reasons for your answer.

Q5: Do you agree with the proposed notice period of 30 calendar days for the removal of all SMP obligations?
Please give reasons for your answer.

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