



Price cap control compliance Public Consultation 03/10

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1. Introduction

The following public consultation describes the compliance procedure proposed by the Gibraltar Regulatory Authority (GRA) with regard to SMP price control obligations applicable to those providers of electronic communications services designated with significant market power (SMP) and facing such obligations. The current document focuses on retail price control obligations applying to Gibtelecom. However, the GRA believes that the procedures suggested in this document can serve as a template for the enforcement of other similar SMP obligations, particularly SMP price control obligations.

By using the SMP retail price cap obligations imposed on Gibtelecom as an example, the GRA proposes a compliance procedure framework which will provide guidance to all operators who now or in the future will be subject to any form of similar price controls. The public consultation, although more specific to Gibtelecom's retail price caps, is non-confidential. However, the consultation includes an additional annex (Annex B) which contains relevant confidential data applicable to Gibtelecom's case. As a requirement to protect commercial sensitivities Annex B is only available to Gibtelecom for comment. The GRA will report on the responses on Annex B without compromising commercial sensitivities.

In Decision Notice 03/09, "SMP Obligations in relevant Retail Fixed Markets – Application of Rebalancing and a Price Cap control on Gibtelecom"¹, the GRA imposed three retail price caps on Gibtelecom which apply on an annual basis over the period from 1st May 2009 to 30th April 2012, a period of three years. This document builds upon what was established in the Decision Notice and explains any amendments and additions to the compliance process where necessary. All changes have taken into account operator resources and where possible have adhered to the principle of proportionality. Therefore every effort has been made to minimise the requirement of information provision.

In this public consultation the GRA proposes the form in which SMP operators must submit price cap compliance information. The purpose of this consultation is to enhance transparency and increase legal certainty for market players.

The GRA welcomes comments from all interested parties on the questions posed in this consultation (a full list of questions is set out in Annex A) and will accept written comments up until **3pm on Wednesday 26th May 2010**.

Under Regulation 15 of the Communications (Access) Regulations 2006, and in order to promote further openness and transparency, the GRA will make public the names of all respondents and make available for inspection responses to the consultation at its offices. This is subject to confidentiality. Respondents are asked to identify clearly material which is to be treated as confidential.

The GRA's Statement "Accounting separation, cost orientation, cost accounting methods and compliance under SMP obligations" Document No. 07/08 should also be read in conjunction with this consultation.

¹ www.gra.gi.

1.1 Procedure

On 11th August 2008, the GRA published public consultation 06/08, "Retail Price Controls – Application of Rebalancing and a Price Cap control on Gibtelecom". The consultation dealt with the application of a retail price control on Gibtelecom, forming part of the SMP obligations described in Decision Notice 05/08² issued 11th August 2008. The GRA proposed to apply a retail price control on the SMP operator Gibtelecom in the following markets:

1. Retail access to the public telephone network at a fixed location
2. Retail national publicly available telephony services from a fixed location
3. Retail international publicly available telephony services from a fixed location

The consultation described the form of the retail price cap preferred by the GRA. The main parameters of the retail price cap were set out as follows:

1. Services subject to the price cap will face a price cap such that each year the (weighted) average of price changes shall not exceed inflation less 3 percentage points.
2. The price cap shall start on 1 January 2009 or as soon as possible thereafter and will last for three years.
3. The starting prices in the price cap will enable Gibtelecom to rebalance its tariff structure.
4. Two sub caps will apply to monthly exchange line charges, one for residential and one for business. These sub caps will constrain price increases each year not to exceed inflation plus 2 percentage points for residential and inflation plus 5 percentage points for business.

Taking into account all the comments received during the retail price control consultation and in particular comments in letters sent to the GRA by Gibtelecom, the GRA imposed on Gibtelecom in accordance with the existing SMP obligations the following retail price control obligations. These were set out in Decision Notice 03/09³.

1. A requirement that retail price changes for telephony services in the relevant markets shall not exceed inflation less 3 in each applicable year for three years. The retail price control shall apply on 1st May 2009 and end 30th April 2012.
2. Gibtelecom shall be allowed to rebalance retail tariffs in accordance with SMP transparency obligations applicable in the relevant markets. The GRA therefore permitted Gibtelecom to increase monthly line rental charges as stipulated in Table 1 below.

² Decision Notice 05/08 – Decision and SMP Obligations, Retail Fixed Markets.

³ Decision Notice 03/09 - SMP Obligations in relevant Retail Fixed Markets – Application of Rebalancing and a Price Cap control on Gibtelecom

Table 1 Rebalanced monthly line rental charges

Line type	Rebalanced monthly line rental charges (£)	Current monthly line rental charges (£)
Residential	8.00	6.00
Business	12.00	10.00
Centrex	14.50	12.50

Gibtelecom was permitted to increase line rental charges, subject to the ceilings stipulated in Table 1 and the requirement that it shall publish changes to the terms and conditions at least 30 days in advance of implementation, and shall publish information on increases to tariffs at least 30 days in advance. **It was made clear that the above rebalancing was not to count as price changes (increases) for the purposes of compliance with the retail price cap starting 1st May 2009.**

3. Post any rebalancing (as described in 2 above) two sub-caps shall apply to the monthly line rental charges, one for residential and one for business. These sub-caps constrain price increases each applicable year not to exceed inflation plus 2 percentage points for residential line rental and inflation plus 5 percentage points for business line rental.

4. Gibtelecom was permitted to remove the free call allowance of £1.25 per month available to all residential customers subject to the requirement that it shall publish the changes to the terms and conditions at least 30 days in advance of implementation, and shall publish information on the implied increase in the line rental at least 30 days in advance.

Table 2 below summarises the services within the retail price cap, the associated starting prices and information about the application of sub-caps.

Table 2 Services in the retail price cap, starting prices and sub-caps

Specific Set of services	Starting Price	Included in sub-cap?
Connection Fee	£60	No
Residential monthly rental fee	£8.00	Yes, $x = \text{Inflation} + 2\%$
Business monthly rental fee	£12.00	Yes, $x = \text{Inflation} + 5\%$
Centrex Line	£14.50	No
Unit price national fixed to fixed calls	6p	No
Local DQ	25p per call	No
International DQ	50p per call	No
International Direct Dial charges	Tariff as at August 2008	No

5. There are three Price Control Years over the periods: 2009-10, 2010-11 and 2011-12.

6. In addition a price control on retail fixed to mobile services in the form of a cost orientation obligation applies. Gibtelecom shall demonstrate compliance by reference to the three main cost components of the services:

(i) Wholesale fixed call origination which is subject to a SMP price control obligation;

(ii) Wholesale mobile termination which is also subject to a SMP price control obligation; and

(iii) Other costs (such as a proportion of overheads).

The GRA was notified by Gibtelecom that the rebalancing allowed as part of the retail price control obligations was to be introduced contemporaneously with per second billing for local telephony calls. Per second billing for local calls is a requirement under the SMP obligations stipulated in Decision 05/08.

The GRA was provided with estimates by Gibtelecom that showed tariff rebalancing, the removal of free call allowance and the introduction of per second billing for local calls would provide a net benefit to almost all residential and business subscribers.

1.2 Structure of this document

The rest of the consultation is structured as follows:

Section 2 - Gibtelecom SMP Obligations

A list of the SMP Obligations which are relevant to the price cap controls will be included in this section.

Section 3 – Compliance with retail price controls

A breakdown of the retail price control compliance procedure will be included together with details of the compliance statement.

Section 4 –Retail price cap compliance forms

The compliance forms for the price cap are proposed and explained in this chapter.

Section 5 – Compliance with retail price control sub-caps

This section will outline the procedure for compliance with the retail price control sub-caps. The compliance forms for the sub-caps are also proposed and explained in this chapter.

Section 6 - Compliance test for retail fixed to mobile call cost orientation obligation

This section will concentrate on the price control in the form of a cost orientation obligation on retail fixed to mobile calls.

Annex A – Consultation Questions

A summary of all the consultation questions.

2. Gibtelecom SMP Obligations in relevant markets

In addition to the retail price control SMP obligations explained in section 1.1, the following SMP obligations imposed on Gibtelecom are relevant to this public consultation.

Retail fixed markets

Retail access to the public telephone network at a fixed location

Transparency

1. Gibtelecom shall notify the Authority at least 60 days in advance of changes to terms and conditions (excluding price decreases).
2. Gibtelecom shall notify the Authority at least 30 days in advance for price reductions.
3. Gibtelecom shall publish changes to terms and conditions at least 30 days in advance of implementation.
4. Gibtelecom shall publish information on increases to tariffs at least 30 days in advance.
5. Gibtelecom shall publish information on decreases to tariffs at least 14 days in advance.
6. Publication shall include a prominent notice on the company's website.

Non-Discrimination

1. Gibtelecom shall not unduly discriminate between customers.

Price control and cost accounting obligations

1. Gibtelecom shall account separately for its retail fixed access services provided at a fixed location in Gibraltar.
2. Gibtelecom's monthly charges for its line access products facilitating publicly available telephone services on the fixed network shall be included in a basket of services to be subject to a retail price control commencing on 1 January 2009 or later if the public consultation is not concluded by this date.

National publicly available telephony services at a fixed location

Transparency

1. Gibtelecom shall notify the Authority at least 60 days in advance of changes to terms and conditions (excluding price decreases).

2. Gibtelecom shall notify the Authority at least 30 days in advance for price reductions.
3. Gibtelecom shall publish changes to terms and conditions at least 30 days in advance of implementation.
4. Gibtelecom shall publish information on increases to tariffs at least 30 days in advance.
5. Gibtelecom shall publish information on decreases to tariffs at least 14 days in advance.
6. Publication shall include a prominent notice on the company's website.

Non-Discrimination

1. Gibtelecom shall not unduly discriminate between customers.

Price control and cost accounting obligations

1. Gibtelecom shall account separately for its national publicly available telephony services at a fixed location market.
2. Gibtelecom shall charge its retail customers using a per-second billing format from 1 January 2009. 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's retail charges for national publicly available telephone calling services on the fixed network may be included in a basket of services to be subject to a retail price control commencing on 1 January 2009 or later if the public consultation is not concluded by this date.

International publicly available telephony services at a fixed location

Transparency

1. Gibtelecom shall notify the Authority at least 60 days in advance of changes to terms and conditions (excluding price decreases).
2. Gibtelecom shall notify the Authority at least 30 days in advance for price reductions.
3. Gibtelecom shall publish changes to terms and conditions at least 30 days in advance of implementation.
4. Gibtelecom shall publish information on increases to tariffs at least 30 days in advance.

5. Gibtelecom shall publish information on decreases to tariffs at least 14 days in advance.
6. Publication shall include a prominent notice on the company's website.

Non-Discrimination

1. Gibtelecom shall not unduly discriminate between customers.

Price control and cost accounting obligations

1. Gibtelecom shall account separately for its international publicly available telephony services provided at a fixed location in Gibraltar.
2. Gibtelecom shall charge its retail customers using a per-second billing format from 1 January 2009. 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's charges for international publicly available telephone calling services on the fixed network may be included in a basket of services to be subject to a retail price control commencing on 1 January 2009 or later if the public consultation is not concluded by this date.

Wholesale fixed markets

Call origination on the public telephone network at a fixed location in Gibraltar

Transparency

1. Gibtelecom shall make available call origination services and make public the terms and conditions in a Reference Interconnection Offer (RIO).
2. The terms and conditions applicable to call origination services may be subject to amendment and/or direction by the Authority.
3. Gibtelecom shall notify the Authority at least 60 days in advance of changes to terms and conditions (excluding price decreases).
4. Gibtelecom shall notify the Authority at least 30 days in advance for price reductions.
5. Gibtelecom shall publish changes to terms and conditions (excluding prices decreases) at least 30 days in advance of implementation.
6. Gibtelecom shall provide at least 14 days notice to publish a decrease in prices.
7. Publication shall include a prominent notice on the company's website.

Non-Discrimination

1. Gibtelecom shall not unduly discriminate between customers.
2. Gibtelecom shall apply equivalent conditions in equivalent circumstances to other authorised operators providing equivalent services.
3. Gibtelecom shall provide services and information to other authorised operators under the same conditions and of the same quality as it provides for its own services.

Accounting separation

1. Gibtelecom shall account separately for its wholesale call origination services.

Price control and cost accounting obligations

1. Gibtelecom shall ensure that its prices are cost oriented.
2. Gibtelecom shall charge as a cost on its profit and loss accounts a fee not exceeding 1.8 pence per minute plus 10%, as a contribution to other costs incurred on the fixed network, on average for calls destined to terminate on an authorised national mobile network in Gibraltar. The average shall be calculated using weights based on revenues.
3. Gibtelecom shall maintain cost accounting systems which produce appropriate information to demonstrate compliance with cost-orientation.

Call termination on individual public telephone networks at a fixed location in Gibraltar

Transparency

1. Gibtelecom shall make available call termination services and make public the terms and conditions in a Reference Interconnection Offer (RIO).
2. The terms and conditions applicable to call termination services may be subject to amendment and/or direction by the Authority.
3. Gibtelecom shall notify the Authority at least 60 days in advance of changes to terms and conditions (excluding price decreases).
4. Gibtelecom shall notify the Authority at least 30 days in advance for price reductions.
5. Gibtelecom shall publish changes to terms and conditions (excluding prices decreases) at least 30 days in advance of implementation.
6. Gibtelecom shall provide at least 14 days notice to publish a decrease in prices.

7. Publication shall include a prominent notice on the company's website.

Non-Discrimination

1. Gibtelecom shall not unduly discriminate between customers.
2. Gibtelecom shall apply equivalent conditions in equivalent circumstances to other authorised operators providing equivalent services.
3. Gibtelecom shall provide services and information to other authorised operators under the same conditions and of the same quality as it provides for its own services.

Accounting separation

1. Gibtelecom shall account separately for its wholesale call termination services.

Price control and cost accounting obligations

1. Gibtelecom shall ensure that its prices are cost oriented.
2. Gibtelecom shall maintain cost accounting systems which produce appropriate information to demonstrate compliance with cost-orientation.

Wholesale mobile markets

Voice call termination market

Transparency

1. Gibtelecom shall publish information concerning:
 - a. The terms and conditions for mobile voice call termination services, including prices; and
 - b. The accounting system used in relation to voice call termination services.
2. Gibtelecom shall notify the Authority at least 45 days in advance of changes to terms and conditions (including price increases).
3. Gibtelecom shall notify the Authority at least 30 days in advance for price reductions.
4. Gibtelecom shall publish changes to terms and conditions at least 30 days in advance of implementation.
5. Gibtelecom shall provide at least 30 days notice to publish an increase in tariffs.

6. Gibtelecom shall provide at least 14 days notice to publish a decrease in tariffs.
7. Publication shall include a prominent notice on the company's website.
8. The above shall form part of the reference interconnection offer.

Non-Discrimination

1. Gibtelecom shall not unduly discriminate in matters related to mobile voice call termination services.
2. Gibtelecom shall apply equivalent conditions in equivalent circumstances to other persons providing equivalent services.
3. Gibtelecom shall provide services and information to others under the same conditions and of the same quality as provided to itself or subsidiaries and partners.
4. Gibtelecom shall not discriminate in tariffs between calls arriving from other national authorised fixed or mobile networks.

Access

1. Gibtelecom shall meet reasonable requests for access to, and use of, specific network elements and associated facilities in situations where the Authority considers that denial of such access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.
2. 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;
 - f. to interconnect networks or network facilities.
3. Gibtelecom may be required, if the Authority is of the view this will promote effective competition, to provide co-location or other forms of facility sharing, including duct, building or mast sharing.

4. 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 termination services, the Authority shall intervene if either party writes to the Authority seeking intervention. The Authority shall determine whether the request is reasonable within a period of 60 days following receipt of a written request for intervention. The Authority shall be guided by Regulation 13(1) "Obligations of access to and use of specific network facilities" of the Communications (Access) Regulations 2006 when assessing whether an access request is reasonable.

Price control and cost accounting obligations

1. Gibtelecom shall account separately for its voice call termination services business.
2. Gibtelecom shall set rates for mobile voice call termination as follows:
 - a. From January 1, 2009, the maximum price of the termination of a voice call on Gibtelecom shall not exceed 9.5 pence per minute.
 - b. from January 1, 2010, the maximum price of the termination of a voice call on Gibtelecom shall not exceed 8.5 pence per minute.
 - c. from January 1, 2011, the maximum price of the termination of a voice call on Gibtelecom shall not exceed 7.5 pence per minute.
3. Gibtelecom may vary the price of the termination of a voice call across discrete time periods.

3. Compliance with retail price controls

As stated in Decision Notice 03/09⁴ the GRA shall apply a retail price control in the form of Index of Retail Prices-x (IRP-x) to a specific set of services offered by Gibtelecom in the relevant retail markets. The retail price control constrains the weighted average change in prices for the services in the specific set, where the weight of a service in the specific set is its revenue share over a twelve month period preceding the price control year.

IRP will measure inflation according to data published by the Government of Gibraltar in compiling the Index of Retail Prices. The value of x is set at 3. The retail price control will apply for three years starting 1st May 2009 and ending 30th April 2012.

Decision Notice 03/09 provided guidelines for compliance with the retail price controls in the form of a hypothetical illustrative example. In the example the GRA demonstrated how the compliance procedure could be set out but emphasised that Gibtelecom was free to choose any method for verifying compliance. This consultation will expand upon the compliance procedure and where necessary will explain any amendments and additions to the entire process. As mentioned earlier, every effort has been made to minimise the strain on operator resources in providing the necessary data.

Compliance statement

With regard to the compliance statement, Gibtelecom shall submit to the GRA a written statement of compliance **no later than four months after each full year of the application of retail price controls**. The compliance statement shall make use of regulatory accounts data drawn from the financial year two calendar years prior to the end of the price control. For example, for the first price control year (1st May 2009 to 30th April 2010) a compliance statement must be submitted by 31st August 2010 and the statement must refer to accounts data over the period 1st January 2008 to 31st December 2008. This requirement will enable Gibtelecom to make use of the most recent set of audited figures.

In the Decision Notice, the GRA stated that the compliance statement should refer to data drawn from twelve months immediately prior to the price control year. The GRA is amending this requirement for the reasons stated above. Gibtelecom is expected to supply the GRA with at least three compliance statements over the duration of the SMP obligations in these markets.

Due to the fact that the GRA is publishing this consultation near the date of the end of the first price control year i.e. 30th April 2010, it is proposing to lower the amount of data required from Gibtelecom in order to verify compliance with price controls over the first year. This will reduce the burden on the incumbent and will also streamline the compliance process for the first year. Gibtelecom will therefore have to submit a complete compliance statement within four months of the end of the price control year but for the first year only it will not be required to produce the same level of detail as in the following two years.

⁴ See footnote 3 above.

Question 1: Do you agree that the deadline for the compliance statement should be four months after the end of each price control year? If not, please give reasons for your answer?

Question 2: Do you agree that the compliance statement should refer to the calendar year which corresponds to two years prior to the end of the price control year? If not, please give reasons for your answer?

Question 3: Do you also agree that for the first year a reduced amount of data should be required from Gibtelecom in order to confirm compliance with the price controls? If not, please give reasons for your answer?

4. Retail price cap compliance forms

The forms below, though specific to Gibtelecom, illustrate in general the form and type of data which will be required from any SMP operator subject to a price control obligation. The forms are relevant to all price control years, although the examples provided below apply only for the first year.

The GRA has inserted values in some of the forms below (see also Annex B – which is redacted) but it is important to note that these values may change once they have been checked by all relevant parties.

Annex B, containing confidential information available to Gibtelecom only, will provide all the forms required for the compliance procedure, and where applicable, the GRA has inserted values in some tables which provide guidance to Gibtelecom. In price control years 2 and 3 these values will not be provided.

Form PCY1: Price Control Year 1 – 1 May 2009 to 30 April 2010

STEPS			VALUE	GRA CHECK	Gibtelecom CHECK
A	'IRP' (INFLATION): AVERAGE ANNUAL % INCREASE IN IRP THROUGH JULY 2007 – JULY 2008		3.30%		
B	OFFSET PRODUCTIVITY FACTOR 'X'		3.00%		
C	IRP – X	A – B	0.30%		
D	CARRYOVER FROM 2008 ('ROW L' VALUE PREVIOUS YEAR'S FORM)		0.00%		
E	CONTROLLING PERCENTAGE	C + D	0.30%		
F	TOTAL 2008 REGULATED REVENUE (SEE TABLE 1A)	TOTAL (i) FROM FORM 1A	£		
G	MAXIMUM ALLOWABLE REVENUE CHANGE ON 2008 VALUES	E x F	£		
H	REVENUE CHANGE ON REGULATED SERVICES BASED ON 2008 VALUES	TOTAL (ii) FROM FORM 1A	£		
I	COMPLIANCE TEST	IS H < G?	Y/N		
J	REGULATED REVENUE IN PCY1	F + H	£		
K	PERCENTAGE CHANGE IN REGULATED REVENUE	$[(J - F)/F] \times 100$	%		
L	CARRYOVER TO NEXT YEAR	E – K	%		

Form PCY1 will be produced by the GRA and submitted to Gibtelecom for completion. The GRA has inserted figures for rows A to E which must be checked by Gibtelecom.

All the other values in steps F to L are inserted by Gibtelecom and verified by the GRA. This form covers the period of the first price control year. For years 2 and 3, the GRA will be providing Gibtelecom with forms PCY2 and PCY3 when it checks compliance with the retail price caps in the preceding year. For example, when Gibtelecom submits the compliance statement for year 1, the GRA will assess compliance and subsequently provide Gibtelecom with form PCY2 including the figures for rows A to E. The explanatory notes below will apply to each PCY form 1, 2 and 3. However, the presentation in the explanatory notes is based on PCY1.

The final two columns of the form are verification checks. If a party (the GRA or Gibtelecom as appropriate) agrees to the value in the relevant row a tick shall be inserted. If a party (the GRA or Gibtelecom as appropriate) disagrees with the value in the relevant row a cross shall be inserted. Where the one party disagrees about the value inserted by another party this shall be made known in writing to the other party within ten business days following receipt of the form. The disagreeing party should provide a full written explanation justifying its position.

Question 4: Do you agree with the GRA inserting values in steps A-E and for Gibtelecom to make clear its position on these values? Do you agree that one party should notify the other party of any disagreement with the inserted values within ten business days? If not, please give reasons for your answer?

Explanatory notes for Form PCY1

Step A: Information about the inflation rate to apply in the price control year is required. The value will be calculated using the published Index of Retail Prices issued by the Statistics Office of the Government of Gibraltar.⁵ The GRA shall make use of the *General Index of Retail Prices* produced on a quarterly basis. The GRA shall insert the value of inflation applicable in the price control year. In the form shown above the value is 3.30%.

The GRA explains the methodology it used to compute the average inflation of 3.30% used in the above form. The GRA stated in Decision Notice 03/09 that:

"Gibtelecom shall use a measure of inflation over a twelve month period starting three months prior to the start of the price control year".⁶

This document sets out precisely the measure of inflation to be used and makes an adjustment to the starting period. The change to the proposed starting period is undertaken to enable greater regulatory certainty. As regulation should provide as much certainty as possible and not unduly constrain Gibtelecom's discretion over the time at which it plans tariff changes, the GRA is proposing to amend the time period over which inflation is measured for the purpose of retail price control compliance.

For example, suppose Gibtelecom sought to apply a price increase for the monthly residential line rental service at the beginning of a price control year (that is in the

⁵ See <http://www.gibraltar.gov.gi/statistics> and the Abstract of Statistics Table 55 Index of Retail Prices: All Items, 1998-2009, Government of Gibraltar Abstract of Statistics 2008, Statistics Office 2009, at http://www.gibraltar.gov.gi/images/stories/PDF/statistics/Abstract_of_Statistics_2008.pdf.

⁶ See Section A.5, page 28 of Decision Notice 03/09.

month of May). In accordance with SMP transparency obligations Gibtelecom would need to notify the GRA about the price increase by the end of February at the latest. Because the monthly residential line rental service is subject to a sub-cap of Inflation plus 2, Gibtelecom would benefit from knowing the appropriate value of inflation at the time of the proposed change so that it could manage its compliance more effectively.

For a price increase notified by the end of February it is likely that Gibtelecom would undertake internal discussions preparing for the change in January and February (even possibly earlier). If internal discussions commence in January and Gibtelecom needed to know what rate of inflation would apply in the sub-cap, then it follows that the company would need to make use of publicly available price data in January. The GRA believes that the most recent Index of Retail Prices data that would be available in the public domain for certain in January is the index value for July of the previous year. This is some nine months before the start of the price control year. The GRA is therefore changing the inflation reference point to provide greater regulatory certainty. The GRA shall make use of a measure of inflation over a twelve month period ending July 2008.

The inflation rate shown above is calculated by taking an arithmetic average of the annual change in the general index of retail prices over the period October 2007 through to July 2008. The data used by the GRA are shown below:

Data used to compute inflation in Form PCY1

Quarter (month/year)	General Index of Retail Prices	Percentage change over last 12 months % (Inflation)
October 2006	117.41	2.30
January 2007	117.77	2.60
April 2007	119.18	2.70
July 2007	120.17	2.70
October 2007	120.68	2.80
January 2008	120.78	2.60
April 2008	122.87	3.10
July 2008	125.83	4.70
October 2008	120.68	4.50
January 2009	120.78	2.80
April 2009	122.87	2.80
July 2009	125.83	2.60
October 2009	120.68	2.80
January 2010	120.78	3.40

Source: Table 55 Index of Retail Prices: All Items, 1998 – 2009, Government of Gibraltar Abstract of Statistics 2008, Statistics Office 2009, at http://www.gibraltar.gov.gi/images/stories/PDF/statistics/Abstract_of_Statistics_2008.pdf and at <http://www.gibraltar.gov.gi/statistics>

The Inflation rate in PCY1 is calculated as 3.30%, which is an average over the four twelve month measures of inflation between October 2007 and July 2008:

$$[(2.8+2.6+3.1+4.7)/4] = 13.2/4 = 3.30\%.$$

The GRA uses an average of the inflation rate over a twelve month period preceding PCY1 to reflect that revenues accrued and costs incurred by Gibtelecom throughout the twelve month period. Over the period October 2007 through July 2008 annual inflation varied from 2.8% to 4.7%.⁷

The GRA notes that Form PCY2 will feature an inflation rate of 3.16% as shown in the calculation below:

$$[(4.5+2.8+2.8+2.6)/4] = 12.7/4 = 3.16\%.$$

Question 5: Do you agree with the proposed way of measuring inflation in the retail price control compliance statement? If not, please give reasons for your answer.

Step B shows the value of the productivity offset factor. This was set at 3.00% in Decision Notice 03/09.

Step C is a straightforward calculation showing the difference between the rate of inflation in **Step A** and the productivity offset factor in **Step B**. Form PCY1 shows the value is 0.30%. This means that the retail prices of the services in the basket of regulated services could, on a weighted average basis and before any other adjustments in the process, increase in nominal terms on an annualised basis by up to 0.30%. The value of **Step C** in Form PCY2 is 0.16%.

Step D is 'Carryover' which was defined in Decision Notice 03/09. There are two types of carryover. The first form of carryover occurs when the regulated firm complies with the price control and does not increase prices by as much as is permitted under the price controls, in which case carryover appears as a positive term in Form PCY1. This eventuality was highlighted in section 4A of Decision Notice 03/09 as an "unused part of the allowed tariff increase". For this form of carryover, the GRA will allow Gibtelecom to count excess price reductions towards its price control obligations in the following year.

For example, if in a price control year Gibtelecom lowered nominal prices and did not make any price increases. If inflation exceeds 3.00% then carryover will be positive. For example, suppose that carryover were 1.5% in PCY2. In this event the controlling percentage would be calculated as follows:

$$\text{Controlling percentage} = 3.16\% - 3.00\% + 1.50\% = 1.66\%.$$

The second form of carryover occurs when the regulated firm fails to comply with the price controls (in other words it increases prices on average by more than permitted under the price control constraint), in which case carryover appears as a negative term in Form PCY1.

⁷ The process of averaging inflation this way is commonly adopted in price control compliance arrangements, for example see the compliance statement produced by Cable & Wireless in Jamaica for the Office of Utilities Regulation. See <http://www.our.org.jm/> for details.

The GRA is proposing to mandate carryover if in a price control year Gibtelecom fails to reduce its prices by an amount sufficient to comply with the overall retail price control where it demonstrates it reasonably anticipated to meet the price controls. In this event Gibtelecom would be required to make additional equivalent reductions in the price control year immediately following the one in which compliance fails.

For example, in Form PCY1 the controlling percentage is shown as 0.30%. If compliance were to fail in the year⁸, then carryover into the subsequent year would be a 'negative' percentage (as given by the calculation in **Step L** described below). Suppose that carryover into price control year 2 were [0.10%]. In this case the controlling percentage in **Step E** would be calculated in Form PCY2 as follows:
Controlling percentage = 3.16% - 3.00% + (-0.10%) = 0.06%.

In the event that Gibtelecom were to fail the compliance test and is not able to demonstrate to the GRA that it reasonably anticipated to achieve compliance, the GRA would require Gibtelecom to reimburse customers an amount equivalent to the revenue associated with failing to meet compliance. In addition, the GRA would mandate that the negative carryover is included in the year immediately following that in which non-compliance occurs.

For example, if Gibtelecom were to fail compliance then the value shown in **Step H** would exceed that shown in **Step G**. The difference in values between these steps would form the basis of the reimbursement to customers.⁹ In addition, the GRA would mandate that the negative carryover is included in the year immediately following that in which non-compliance occurs.

In the event that Gibtelecom fails the compliance test in two consecutive years and is not able to demonstrate to the GRA that it reasonably anticipated to meet compliance, the GRA will require Gibtelecom to compensate customers **three times** the amount that is equivalent to the revenue associated with failing to meet compliance in the second subsequent year. In addition, the GRA would mandate that the negative carryover is included in the year immediately following that in which non-compliance occurs.

The GRA is of the view that the penalties for non-compliance are fair and reasonable and provide for appropriate incentives.

Question 6: Do you agree with the proposed penalties for dealing with non-compliance? If not, please give reasons for your answer.

In Form PCY1 Carryover is zero because of the absence of the retail price control SMP obligation prior to May 2009. This was made clear in Decision Notice 03/09.

Step E is a calculation that leads to 'the controlling percentage'. The value of the controlling percentage is critically important as it is used to calculate the cap that shall apply to the revenues associated with regulated services.

⁸ The example serves to illustrate the position with regard to the event of non-compliance and is purely hypothetical in this instance.

⁹ The precise form of reimbursement would likely be on a *pro rata* basis.

Step F should ideally reflect the revenue earned from sales of services in the specific set (the regulated retail basket) over the period 1 May 2007 through to 30 April 2008, as set out in Decision Notice 03/09. However, Gibtelecom has recently implemented regulatory accounting reporting procedures in which it submits to the GRA audited SMP Regulated Accounts dated on a calendar year basis.

The GRA does not wish to impose a further regulatory burden on Gibtelecom by requiring it to submit additional accounting regulatory accounting data covering a different twelve month period 1 May through to end April of the following year. Therefore in accordance with the principle of proportionality the GRA is prepared to accept a value for revenue earned from sales of services in the specific set for the most recent calendar year available.

Step F in Form PCY1 shall comprise the revenue obtained from the regulated services in the specific set for the calendar year 2008. The GRA understands that this information is available and was subject to an independent audit. The revenue figure shall be reported to the GRA in 'Form 1A' as set in the penultimate column of an illustrative Form 1A (Price Control Year – Prices, Quantities and Revenues) below.¹⁰

Gibtelecom will insert revenue values for each main service category shown in Form 1A within the specific set. The sum of the revenue figures (Total (i) in Form 1A) will form the basis of the figure inserted in **Step F**. To safeguard commercial sensitivities the GRA does not intend to make public the values in the final two columns of Form 1A, except for the total figures at the bottom of the final two columns.

Question 7: Do you agree with the GRA's proposal to make use of calendar year regulated accounting data for revenue? Do you also agree with the non-disclosure of the data supplied in the final two columns of Form 1A? If not, please give reasons for your answers.

¹⁰ Explanatory notes for Form 1A are presented below Form 1A.

Form 1A: Price Control Year 1– Prices, Quantities and Revenues

SERVICE	I = 09/10 STARTING PRICE (£)	II = 09/10 AVERAGE PRICE (£)	III = % CHANGE I & II	IV = 2008 REVENUE (£ 000)	V = III x IV (£ 000)
CONNECTION FEE					
RESIDENTIAL LINE RENTAL					
BUSINESS LINE RENTAL					
CENTREX					
FIXED TO FIXED LOCAL CALLS	<i>See Form 1B</i>	<i>See Form 1B</i>	<i>VALUE (b) Form 1B</i>		
LOCAL DIRECTORY ENQUIRIES					
INTERNATIONAL DIRECTORY ENQUIRIES					
*INTERNATIONAL DIRECT DIALING (WEIGHTED AVERAGE OF CALLS FOR STANDARD PERIOD)			<i>VALUE (b) Form 1C</i>		
*INTERNATIONAL DIRECT DIALING (WEIGHTED AVERAGE OF CALLS FOR CHEAP PERIOD)			<i>VALUE (b) Form 1C</i>		
TOTAL				(i)	(ii)

Form 1A explanatory notes: Gibtelecom will be required to fill in all the values in Form 1A. For the first price control year the GRA has inserted some confidential figures in Form 1A which will only be made available to Gibtelecom. The values are based on the GRA's understanding of market data for the relevant years. For years 2 and 3, Gibtelecom will be required to fill in all the values in table.

Column I are the retail prices as shown on Table 2 in section 1.2.

Column II are the average retail prices over the twelve month period 2009/10 based on the published tariffs of Gibtelecom applicable between 1 May 2009 and 30 April 2010. See also the accompanying notes to Form 1B.

Column III is a calculation showing an illustrative percentage change in price between I and II. See Form 1B for an explanation of the proposed methodology used to compute the average price change of fixed to fixed local calls.

Column IV shows the 2008 annual revenue for each service in the specific set, i.e. between 1 January 2008 and 31 December 2008. The total of column IV is referred to as (i) in Form PCY1.

Column V is a calculation showing the change in regulated revenue over the calendar year. The total of column IV is referred to as (ii) in Form PCY1.

The grey shaded cells will not be made public by the GRA.

Step G is a calculation that shows the maximum allowable change in revenue for the specific set of services, as described in Decision Notice 03/09. This value makes use of the reported audited revenue associated with the regulated services and the controlling percentage.

Step H is the total revenue change associated with the regulated services based on quantity data for the calendar year 2008 and price data over the year 1 May 2009 through 30 April 2010, as calculated in Form 1A total (ii).

Step I is the 'Compliance Test' which requires the value in **Step H** to be no greater than the value in **Step G**. The value in this step is Y (Y=Yes) if **Step H** is no greater than **Step G**. Otherwise the value is N (N=No). Where the value in **Step I** is Y then Gibtelecom complies with the retail price controls and the test is positive.

The remaining steps in the process are undertaken to calculate carryover, as described in **Step D** above.

Step J is a calculation that measures the revenue associated with regulated services in the specific set, based on quantities for the calendar year 2008.

Step K is a calculation showing the percentage change in the revenue associated with the services in the specific set between the current price control year and the previous year.

Step L is a calculation showing 'carryover' into the next price control year and will be the value inserted into **Step D** of Forms PCY2 and PCY3.

Question 8: Do you agree with the GRA's methodology in calculating the figures in Form 1A? If not, please give reasons for your answers.

Form 1B: Price Control Year 1– Fixed to Fixed local call retail prices

FIXED TO FIXED LOCAL CALLS	I STARTING PRICE 08/09 PRICE (PENNY PER UNIT)	II 2009/10 PRICE (PENNY PER SECOND)	III % CHANGE (OF I & II)	IV TOTAL MINUTES (2008)	V = WEIGHT = IV/VALUE (a) (%)	VI = III x V = WEIGHTED CHANGE (%)
PEAK (MON-FRI 09:00-13:00)	6P FOR 2 MINUTES	*3P INITIAL CHARGE AND 0.025	-25%			
STANDARD (MON-FRI 08:00-09:00 & 13:00-18:00)	6P FOR 3 MINUTES	*3P INITIAL CHARGE AND 0.0167	-25%			
CHEAP (MON-FRI & WEEKENDS/PUBLIC HOLIDAYS 18:00-08:00)	6P FOR 9 MINUTES	*3P INITIAL CHARGE AND 0.006	-39%			
TOTAL			-----	VALUE (a)	100%	VALUE (b)

The values in column I refer to the starting prices which are based on the old tariff (pre-rebalancing) of 6p per unit, where the unit is measured in terms of minutes and varies according to the period in which a call is made.

The values in column II refer to the average price for fixed to fixed calls applicable over the period 1 May 2009 through 30 April 2010. As Gibtelecom made no changes to its fixed to fixed retail domestic calling tariffs over this period, the average value is simply that as published by the company in the year.

Column III measures the percentage change in price. To perform this calculation the GRA has applied a method to deal with the change in tariff structure. This method is described with reference to the Peak charge, but the same approach is adopted in the case of the standard and cheap calling periods.

A peak call under the old tariff was measured in units of two minutes. The GRA shall assume that a call made in the Peak period has an equal probability of lasting anywhere between 1 and 120 seconds.¹¹ The GRA calculates the price change for every call between 1 and 120 seconds, that is a call of 1 second, 2 seconds, 3 seconds, etc. By doing this a call of 1 second duration is seen to have a 50% price reduction: under the old tariff the cost of the call was 6p whereas under the tariff applicable in 2009/10 it was 3p plus 0.025p. A call of 120 seconds duration has a 0% price reduction: under the old tariff it costs 6p and under the new tariff it also costs 6p i.e. 3p plus (120 times 0.025p which equals 3p). Therefore the average reduction in price for calls in the Peak period is estimated at 25%.

¹¹ The probability call duration is assumed to be uniform between 1 and 120 seconds.

Performing the same calculus for the other two periods and assuming call distributions between 1 and 180 seconds for the standard period and 1 and 540 seconds for the cheap period yields price reductions of 25% and 39% respectively. The values for the percentage changes in prices for the calls are inserted into column III. In column IV the total number of minutes of each call type is presented (the total number of minutes for all call types is VALUE (a)) and in column V this value is divided by the total number of minutes to arrive at a weight, in percentage terms, of the call type. Column VI is then the weighted value of the price change and the total represents the weighted average price change, VALUE (b).

An illustrative figure that could have been inserted into Column III by the GRA in Form 1A is based on an arithmetic average of $25+25+39=29.7\%$. This figure would be appropriate if the proportion of minutes of calls in all periods were 33%. This figure of 29.7% would now be equal to value (b) yet the precise value of this figure requires information about traffic volumes across the three calling periods.

If Gibtelecom does not have readily available data on minutes across the calling periods for the calendar year 2008, the GRA proposes to apply a simple arithmetic average to reflect the price change for fixed to fixed domestic calls. In Form 1A this would result in the insertion of a value $29.7\% = \text{VALUE (b)}$.

The grey shaded cells in the form will not be made public by the GRA.

Question 9: Do you agree with the GRA's methodology for computing the change in price of fixed to fixed domestic calls? Do you agree with the GRA's proposal to make use of a simple arithmetic average in the absence of readily available data about minutes of traffic across the three calling periods for fixed to fixed domestic calls? If not, please give reasons for your answers.

Form 1C: Price Control Year 1– International Direct Dial (IDD) charges

FIXED TO FIXED IDD CALLS	I = STARTING PRICE (PENCE PER MINUTE)	II = 20009/10 AVERAGE PRICE (PENCE PER MINUTE)	III = % CHANGE	IV = TOTAL MINUTES (2008)	V = WEIGHT = IV/VALUE (a) (%)	VI = III x V = WEIGHTED CHANGE (%)
SPAIN - STANDARD						
SPAIN - CHEAP						
UK - STANDARD						
UK - CHEAP						
PORTUGAL - STANDARD						
PORTUGAL - CHEAP						
EUROPE/USA/CANADA/NE W ZEALAND/ISRAEL/ AUSTRALIA - STANDARD						
EUROPE/USA/CANADA/NE W ZEALAND/ISRAEL/ AUSTRALIA - CHEAP						
MOROCCO - STANDARD						
MOROCCO - CHEAP						
REST OF WORLD - STANDARD						
REST OF WORLD - CHEAP						
INMARSAT MINI-M - STANDARD						
INMARSAT MINI-M - CHEAP						
ISDN (WESTERN EUROPE) - STANDARD						
ISDN (WESTERN EUROPE) - CHEAP						
ISDN (EASTERN EUROPE) - STANDARD						
ISDN (EASTERN EUROPE) - CHEAP						
INMARSAT A - STANDARD						
INMARSAT A - CHEAP						
INMARSAT M - STANDARD						
INMARSAT M - CHEAP						
TOTAL			-----	VALUE (a)		VALUE (b)

* IDD countries have been listed in this manner as a result of IDD bands being different between 08/09 and 09/10 and therefore a like-for-like comparison could not be made.

Form 1C requires Gibtelecom to provide the GRA with information about international direct dial (IDD) charges and volumes. This is needed to calculate the weighted average price change for IDD calling services. For the first price control year the GRA has inserted confidential figures in Form 1C. The values are based on the GRA's understanding of market data for the relevant years. For each subsequent price control year, Gibtelecom will be required to provide all call data to populate form 1C.

The methodology employed in Form 1C is identical to that in Form 1B. In this form, the GRA requires total minutes for each destination to be split between the standard and cheap periods. In previous information requests, Gibtelecom have only been able to submit total minutes for its five most popular destinations. Taking this into account, the GRA proposes the following options to apply to the **first** price control compliance statement.

Option 1: Gibtelecom shall submit total minutes for as many individual destinations as possible including all Inmarsat and ISDN call data. In the absence of an accurate split between standard and cheap data, Gibtelecom shall provide an estimate of minutes for each call period. (Provision of this data will enable a more accurate figure to be calculated for value (b)).

Option 2: In the absence of total minute data for all individual destinations including Inmarsat and ISDN an arithmetic average of column III would be calculated using only the major IDD destinations i.e. Spain, UK, Portugal, Europe/USA/Canada/New Zealand/Israel/Australia and Morocco. All other call services would not be included in calculating the average percentage change. The average percentage change would in this case be value (b).

The grey shaded cells in the form will not be made public by the GRA.

Question 10: Do you agree with the GRA's methodology for computing the change in price of IDD calls? Do you agree with the GRA's proposal to make use of a simple arithmetic average based on 'major' IDD calling services in the absence of readily available data about minutes of traffic for IDD calls? If not, please give reasons for your answers.

5. Compliance with retail price control sub-caps

There are two sub-caps applicable in the price controls. The first applies a sub-cap on monthly residential rental charges not to exceed inflation plus 2. The second applies a sub-cap on monthly business rental charges not to exceed inflation plus 5.

The price cap compliance forms are shown below. They consist of 2 Forms, one for residential line rental RSCY1 and SCRA and the same for business line rental BSCY1 and SCBA. The GRA has inserted all values for the first sub-cap price control year in all tables which demonstrate compliance. These tables can be found in Annex B.

This serves as an example of how the figures have to be submitted in the following years and also reduces the burden on Gibtelecom to provide additional data. Gibtelecom will only need to check and verify the data and send a copy of the tables to the GRA. Gibtelecom will need to fill in the tables for the following two years except steps A to E on both the RSCY and BSCY tables. This data will be filled in by the GRA every year.

**Form Residential RSCY1: Price Control Year 1
1 May 2009 to 30 April 2010**

STEPS			VALUE	GRA CHECK	Gibtelecom CHECK
A	'IRP' (INFLATION): AVERAGE ANNUAL % INCREASE IN IRP THROUGH JULY 2007 – JULY 2008		3.30%		
B	SUBCAP CEILING 'X'		2.00%		
C	IRP + X	A + B	5.30%		
D	CARRYOVER FROM 2008 ('ROW L' VALUE PREVIOUS YEAR'S FORM)		£0.00		
E	STARTING PRICE (TARIFF AT 30 APRIL 2009 PLUS D)		£8.00		
F	AVERAGE MONTHLY RESIDENTIAL RENTAL CHARGE 2009/10 (SEE TABLE SCRA)	TOTAL (a) FROM FORM SCRA			
G	MAXIMUM ALLOWABLE AVERAGE RENTAL CHARGE 2009/10	[C x E] + E			
H	COMPLIANCE TEST:	IS F < G?			
I	CARRYOVER TO NEXT YEAR	G - F			
J	STARTING PRICE NEXT YEAR	F + I			

Explanatory notes of Form RSCY1

Step A: This is calculated as in Form PCY1.

Step B shows the value of the sub-cap ceiling as set in Decision Notice 03/09.

Step C is a straightforward calculation showing the sum of the rate of inflation in **Step A** and the sub-cap ceiling in **Step B**.

Step D is 'Carryover' which was defined in Decision Notice 03/09. There are two types of carryover. The first form of carryover occurs when the regulated firm complies with the sub-cap and does not increase the monthly line rental by as much as is permitted under the sub-cap, in which case carryover appears as a positive term in Form RSCY1.

The second form of carryover occurs when the regulated firm fails to comply with the sub-cap control (in other words it increases the monthly line rental on average by more than that permitted under the sub-cap), in which case carryover appears as a negative term in Form RSCY1.

The GRA sets out its position in relation to the case where the regulated firm fails to comply with the sub-cap.

The GRA is proposing to mandate carryover if in a price control year Gibtelecom fails to meet compliance by adjusting the starting price in the following year to that consistent with compliance.

In the event that Gibtelecom were to fail the compliance test and is not able to demonstrate to the GRA that it reasonably anticipated this, the GRA would require Gibtelecom to reimburse customers an amount equivalent to the revenue associated with failing to meet compliance.

In the event where Gibtelecom fails the compliance test in two consecutive years and is not able to demonstrate to the GRA that it reasonably anticipated this, the GRA will require Gibtelecom to compensate customers **three times** the amount that is equivalent to the revenue associated with failing to meet compliance in the second subsequent year.

The GRA is of the view that the penalties for non-compliance are fair and reasonable and provide for appropriate incentives.

In Form RSCY1 Carryover is zero because of the absence of a residential line rental sub-cap prior to May 2009. This was made clear in Decision Notice 03/09.

Step E is the starting price, which is simply the residential monthly line rental charge applicable at 30 April 2009.

Step F is the weighted average monthly residential line rental charge as calculated and shown below in Form SCRA:

Form Residential SCRA: Price Control Year 1

MONTH	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	TOTAL
WEIGHT	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1
PRICE (£)													
WEIGHT x PRICE													TOTAL (a)

Form SCRA explanatory notes:

Row 1: Month

Row 2: The weight is simply 1/12.

Row 3: The monthly line rental charge applicable in the month (if variation occurs within the month this should be adjusted to reflect a weighted average)

Row 4: Is the weight multiplied by the monthly line rental charge.

The final column provides the weighted average: TOTAL (a), which is inserted into RSCY1.

Step G is a calculation that shows the maximum allowable residential monthly line rental charge.

Step H is the 'Compliance Test' which requires the value in **Step F** to be no greater than the value in **Step G**. The value in this step is Y (Y=Yes) if **Step F** is no greater than **Step G**. Otherwise the value is N (N=No). Where the value in **Step H** is Y then Gibtelecom complies with sub-cap control.

The remaining two steps in the process are undertaken to calculate carryover and the starting price for the following year.

Step I is a calculation that measures the value of the carryover.

Step J is a calculation that shows the starting price for the following year.

The second sub-cap applies on monthly business rental charges not to exceed inflation plus 5.

The business price cap compliance form is shown below for BSCY1. The GRA has inserted values for the first sub-cap price control year in steps A to E. Steps F to J are confidential and are therefore provided for the first year only in Annex B. Gibtelecom will be required to fill in steps F to J for all other price control years.

**Form Business BSCY1: Price Control Year 1
1 May 2009 to 30 April 2010**

STEPS			VALUE	GRA CHECK	Gibtelecom CHECK
A	'IRP' (INFLATION): AVERAGE ANNUAL % INCREASE IN IRP THROUGH JULY 2007 – JULY 2008		3.30%		
B	SUBCAP CEILING 'X'		5.00%		
C	IRP + X	A + B	8.30%		
D	CARRYOVER FROM 2008 ('ROW L' VALUE PREVIOUS YEAR'S FORM)		£0.00		
E	STARTING PRICE (TARIFF AT 30 APRIL 2009 PLUS D)		£12.00		
F	AVERAGE MONTHLY BUSINESS RENTAL CHARGE 2009/10 (SEE TABLE SCBA)	TOTAL (a) FROM FORM SCBA			
G	MAXIMUM ALLOWABLE AVERAGE RENTAL CHARGE 2009/10 (ROUNDED UP TO NEAREST 10P)	[C x E] + E			
H	COMPLIANCE TEST:	IS F < G?			
I	CARRYOVER TO NEXT YEAR	G - F			
J	STARTING PRICE NEXT YEAR	F + I			

Explanatory notes of Form BSCY1

Step A: This is calculated as in Form PCY1.

Step B shows the value of the sub-cap ceiling as set in Decision Notice 03/09.

Step C is a straightforward calculation showing the sum of the rate of inflation in **Step A** and the sub-cap ceiling in **Step B**.

Step D is 'Carryover' which was defined in Decision Notice 03/09. There are two types of carryover. The first form of carryover occurs when the regulated firm complies with the sub-cap and does not increase the monthly line rental by as much as is permitted under the sub-cap, in which case carryover appears as a positive term in Form BSCY1.

The second form of carryover occurs when the regulated firm fails to comply with the sub-cap control (in other words it increases the monthly line rental on average by more than that permitted under the sub-cap), in which case carryover appears as a negative term in Form BSCY1.

The GRA sets out its position in relation to the case where the regulated firm fails to comply with the sub-cap.

The GRA is proposing to mandate carryover if in a price control year Gibtelecom fails to meet compliance by adjusting the starting price in the following year to that consistent with compliance.

In the event were Gibtelecom to fail the compliance test and is not able to demonstrate to the GRA that it reasonably anticipated this, the GRA would require Gibtelecom to reimburse customers an amount equivalent to the revenue associated with failing to meet compliance.

In the event where Gibtelecom fails the compliance test in two consecutive years and is not able to demonstrate to the GRA that it reasonably anticipated this, the GRA will require Gibtelecom to compensate customers **three times** the amount that is equivalent to the revenue associated with failing to meet compliance in the second subsequent year.

The GRA is of the view that the penalties for non-compliance are fair and reasonable and provide for appropriate incentives.

In Form BSCY1 Carryover is zero because of the absence of a residential line rental sub-cap prior to May 2009. This was made clear in Decision Notice 03/09.

Step E is the starting price, which is simply the residential monthly line rental charge applicable at 30 April 2009.

Step F is the weighted average monthly residential line rental charge as calculated and shown below in Form SCBA:

Form Business SCBA: Price Control Year 1

MONTH	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	TOTAL
WEIGHT	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1/12	1
PRICE (£)													
WEIGHT x PRICE													TOTAL (a)

Form SCBA explanatory notes:

Row 1: Month

Row 2: The weight is simply 1/12.

Row 3: The monthly line rental charge applicable in the month (if variation occurs within the month this should be adjusted to reflect a weighted average)

Row 4: Is the weight multiplied by the monthly line rental charge.

The final column provides the weighted average: TOTAL (a), which is inserted into BSCY1.

Step G is a calculation that shows the maximum allowable residential monthly line rental charge.

Step H is the 'Compliance Test' which requires the value in **Step F** to be no greater than the value in **Step G**. The value in this step is Y (Y=Yes) if **Step F** is no greater than **Step G**. Otherwise the value is N (N=No). Where the value in **Step H** is Y then Gibtelecom complies with sub-cap control.

The remaining two steps in the process are undertaken to calculate carryover and the starting price for the following year.

Step I is a calculation that measures the value of the carryover.

Step J is a calculation that shows the starting price for the following year.

Question 11: Do you agree with the GRA's proposal with regard to Gibtelecom only needing to check the figures in all tables for the price control year 2009/10? If not, please give reasons for your position.

Question 12: Do you agree with the proposed penalties for dealing with non-compliance? If not, please give reasons for your answer.

6. Compliance test for the fixed to mobile cost orientation obligation

In Decision Notice 03/09 the following obligation was imposed on Gibtelecom.

A price control on retail fixed to mobile services in the form of a cost orientation obligation shall apply. Gibtelecom shall demonstrate compliance by reference to the three main cost components of the services:

- (i) Wholesale fixed call origination which is subject to a SMP price control obligation;
- (ii) Wholesale mobile termination which is also subject to a SMP price control obligation; and
- (iii) Other costs (such as a proportion of overheads).

In order to check compliance with the fixed to mobile price control, the GRA must add Gibtelecom's wholesale call origination charge to its wholesale mobile termination rate in relation to Gibtelecom's fixed to mobile calls. In addition, by allowing for a reasonable mark up, the total figure must not exceed the fixed to mobile retail charge. The compliance test is demonstrated using the forms below.

The current wholesale fixed call origination charges as stated in Gibtelecom's RIO¹² are:

Charging Period	Call origination interconnection rate (ppm)
Cheap	0.6
Standard	1.7

**Form 2: Price Control Year 1 – 1 May 2009 to 30 April 2010
Weighted average fixed to mobile calling charges¹³**

Call Type	Weighted Average Price (ppm)		Gibtelecom Check
	Standard	Cheap	
Fixed to mobile retail charge¹⁴			

In Form 2, Gibtelecom will be required to fill in the weighted average price for its fixed to mobile calls during the price control years. In the first year, the GRA will insert the values and these will be checked by Gibtelecom. For subsequent years, Gibtelecom will be required to fill in the table and the figures will be checked by the GRA. Therefore in years 2 and 3, the "Gibtelecom check" column will be substituted by a "GRA check" column. The figures in the table are considered confidential and will only be shown to Gibtelecom in Annex B.

In Form 3 below Gibtelecom will be required to fill in the necessary data for the following call type:

1. Local Fixed Gibwireline to Prepaid/Postpaid Gibtel - on net

Gibtelecom will also need to fill in Form 4 with regards to its fixed to mobile cost orientation obligation.

¹² www.gibtele.com

¹³ The weighted average prices are calculated by multiplying the monthly price by 1/12.

¹⁴ The weighted average prices in this category do not include the initial charge of 2.5p.

**Form 3 - wholesale mobile termination compliance test
Local Fixed Gibwireline to Prepaid/Postpaid Gibtel - on net**

	Standard	Cheap
Median call duration	2 minutes 30 seconds	2 minutes 30 seconds
Rounded call duration	3 minutes	3 minutes
Initial charge	ap	bp
Total retail call charge for rounded call duration	$3 \times Xp + ap = Sp$	$3 \times Yp + bp = Cp$
RIO call origination cost plus 10% other fixed costs	$(3 \times RIOp) \times 1.1 = x.xxp$	$(3 \times RIOp) \times 1.1 = y.yyp$
Net RIO call origination cost	$Sp - x.xxp$	$Cp - y.yyp$
10% contribution to other mobile costs	$A = 0.1 \times [Sp - x.xxp]$	$B = 0.1 \times [Cp - y.yyp]$
Net of 10% contribution to other mobile costs	$AA = Sp - x.xxp - A$	$BB = Cp - y.yyp - B$
Implied mobile per minute call termination cost	$AA/3$	$BB/3$
% weight of minutes terminated	CC	DD
Weighted Average	$WAF2M = (AA/3 \times CC) + (BB/3 \times DD)$	
Compliance Test¹⁵	If $WAF2M \leq 9.12p$ Compliant If $WAF2M > 9.12p$ Non-compliant	

¹⁵ As the price control year is 1 May 2009 to 30 April 2010 a weighted average mobile termination rate is used i.e. $(9.5/12 \times 8) + (8.5/12 \times 4)$.

Question 13: Do you agree with compliance test for the wholesale mobile termination charge in terms of Gibtelecom’s fixed to mobile calls? If not, please give reasons for your answer.

Form 4 – Fixed to mobile cost orientation compliance test

In order to assess compliance with the fixed to mobile cost orientation obligation, the wholesale cost of a fixed to mobile call must be compared to the fixed to mobile retail rate. It is the GRA’s view that the cost orientation obligation requires the retail fixed to mobile rate to be no higher than the wholesale cost of the call, where wholesale costs include a mark-up covering common costs (e.g. overheads). The GRA is proposing to use a figure of 15.3%¹⁶ to represent the extent of common costs. However, the GRA realises that using this figure based on a measure of Gibtelecom’s cost of capital, may not accurately represent the correct contribution to common costs.

Wholesale	Standard	Cheap
Fixed Origination¹⁷ (ppm)	a	A
Mobile Termination¹⁸ (ppm)	b	B
Wholesale cost (ppm)	a + b	A + B
15.3% Mark up	$(a + b) \times 1.153 = c$	$(A + B) \times 1.153 = C$

¹⁶ 15.3% is the WACC as per Gibtelecom’s ASR 2008.

¹⁷ Please insert Gibtelecom’s current fixed origination interconnection rates here.

¹⁸ Please insert Gibtelecom’s implied mobile per minute call termination cost as per Form 3 (AA/3 and BB/3).

Retail	Standard	Cheap
Initial charge (p)	d	D
Weighted average fixed to mobile retail charge (ppm)	e	E
Rounded call duration	3 mins	3 mins
Total fixed to mobile call charge (p)	$(3 \times e) + d$	$(3 \times E) + D$
Total fixed to mobile call charge (ppm)	$((3 \times e) + d)/3 = f$	$((3 \times E) + D)/3 = F$
Compliance test (wholesale cost vs. total fixed to mobile call charge)	$f \leq c$	$F \leq C$

Question 14: Do you agree with using the value of 15.3% as a proxy for the mark-up to cover common costs? If not, please give reasons for your answer.

Question 15: Do you agree with compliance test for the fixed to mobile cost orientation obligation? If not, please give reasons for your answer.

Non-Compliance

If in its statement on compliance Gibtelecom discloses it has failed to comply with the fixed to mobile retail price cost orientation SMP obligation, Gibtelecom shall be required to make appropriate reductions in retail fixed to mobile tariffs in the price control year immediately following the one in which compliance fails.

In the event that Gibtelecom fails to comply with the cost orientation obligation and is not able to demonstrate to the GRA that it reasonably anticipated to achieve compliance, the GRA shall require Gibtelecom to reimburse customers an amount equivalent to the revenue associated with failing to meet compliance.

In the event that Gibtelecom fails to comply with the cost orientation obligation in two consecutive years and is not able to demonstrate to the GRA that it reasonably anticipated to meet compliance, the GRA will require Gibtelecom to compensate customers **three times** the amount that is equivalent to the revenue associated with failing to meet compliance in the second subsequent year.

The GRA is of the view that the penalties for non-compliance are fair and reasonable and provide for appropriate incentives.

Question 16: Do you agree with the proposed penalties for dealing with non-compliance? If not, please give reasons for your answer.

Annex A Consultation Questions

Question 1: *Do you agree that the deadline for the compliance statement should be four months after the end of each price control year? If not, please give reasons for your answer?*

Question 2: *Do you agree that the compliance statement should refer to the calendar year which corresponds to two years prior to the end of the price control year? If not, please give reasons for your answer?*

Question 3: *Do you also agree that for the first year a reduced amount of data should be required from Gibtelecom in order to confirm compliance with the price controls? If not, please give reasons for your answer?*

Question 4: *Do you agree with the GRA inserting values in steps A-E and for Gibtelecom to make clear its position on these values? Do you agree that one party should notify the other party of any disagreement with the inserted values within ten business days? If not, please give reasons for your answer?*

Question 5: *Do you agree with the proposed way of measuring inflation in the retail price control compliance statement? If not, please give reasons for your answer.*

Question 6: *Do you agree with the proposed penalties for dealing with non-compliance? If not, please give reasons for your answer.*

Question 7: *Do you agree with the GRA's proposal to make use of calendar year regulated accounting data for revenue? Do you also agree with the non-disclosure of the data supplied in the final two columns of Form 1A? If not, please give reasons for your answers.*

Question 8: *Do you agree with the GRA's methodology in calculating the figures in Form 1A? If not, please give reasons for your answers.*

Question 9: *Do you agree with the GRA's methodology for computing the change in price of fixed to fixed domestic calls? Do you agree with the GRA's proposal to make use of a simple arithmetic average in the absence of readily available data about minutes of traffic across the three calling periods for fixed to fixed domestic calls? If not, please give reasons for your answers.*

Question 10: *Do you agree with the GRA's methodology for computing the change in price of IDD calls? Do you agree with the GRA's proposal to make use of a simple arithmetic average based on 'major' IDD calling services in the absence of readily available data about minutes of traffic for IDD calls? If not, please give reasons for your answers.*

Question 11: *Do you agree with the GRA's proposal with regard to Gibtelecom only needing to check the figures in all tables for the price control year 2009/10? If not, please give reasons for your position.*

Question 12: *Do you agree with the proposed penalties for dealing with non-compliance? If not, please give reasons for your answer.*

Question 13: *Do you agree with compliance test for the wholesale mobile termination charge in terms of Gibtelecom's fixed to mobile calls? If not, please give reasons for your answer.*

Question 14: *Do you agree with using the value of 15.3% as a proxy for the mark-up to cover common costs? If not, please give reasons for your answer.*

Question 15: *Do you agree with compliance test for the fixed to mobile cost orientation obligation? If not, please give reasons for your answer.*

Question 16: *Do you agree with the proposed penalties for dealing with non-compliance? If not, please give reasons for your answer.*