

## **Market Analysis – Retail Fixed Markets**

**Public Consultation 01/07**

**10<sup>th</sup> April 2007**

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## Executive Summary

The communications regulatory framework requires the Gibraltar Regulatory Authority (GRA or the Authority) to define relevant markets appropriate to national circumstances in accordance with the market definition procedure outlined in the Framework Directive<sup>1</sup>. In addition, the GRA is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive and, having identified competition problems, propose appropriate regulatory measures.

In carrying out market definition and market analysis, the GRA must take the utmost account of the Relevant Markets Recommendation<sup>2</sup> (the Recommendation) and the Commission's Guidelines<sup>3</sup> (the Guidelines) on Market Analysis and Significant Market Power.

According to the Guidelines, the purpose of imposing ex ante obligations on undertakings designated as having significant market power (SMP) is to ensure that undertakings cannot use their market power to restrict or distort competition in the relevant market, or to lever market power into an adjacent market.

The Guidelines make it clear that the designation of SMP, without imposing any regulatory obligations, is inconsistent with the provisions of the new regulatory framework, notably Article 16(4) of the Framework Directive<sup>4</sup>.

The Communications (Access) Regulations 2006<sup>5</sup> (the Access Regulations) provide the GRA with a number of SMP obligations it can apply given its preliminary finding of Gibtelecom's SMP in the retail fixed markets.

The GRA proposes a range of obligations to be placed on the SMP operator.

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 4pm on Monday 11<sup>th</sup> June 2007. Under Regulation 15 of the Access Regulations and in order to promote further openness and transparency, the GRA will publish the names of all respondents and will make available for inspection responses to the consultation at its offices. Please note that this is subject to confidentiality. Respondents are asked to clearly identify material which is to be treated as confidential.

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

2 Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services OJ [2003] L 114/45.

3 Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03) OJ [2002] C 165/6.

4 See footnote 1 above.

5 Communications (Access) Regulations 2006, Communications Act 2006.

# 1. Introduction

## 1.1 Background

A new European regulatory framework for electronic communications networks and services entered into force on the 25th July 2003. The framework is designed to create harmonised regulation across Europe and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. The basis for the new regulatory framework is a set of five Directives:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the Framework Directive)<sup>6</sup>
- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (the Access Directive)<sup>7</sup>
- Directive 2002/20/EC on the authorisation of electronic communications networks and services (the Authorisation Directive)<sup>8</sup>
- Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (the Universal Service Directive)<sup>9</sup>
- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (the Privacy Directive)<sup>10</sup>.

These five Directives were implemented as part of the Communications Act 2006<sup>11</sup>, Gibraltar, June 2006 (the Act). The legislation enables the Authority to carry out reviews of competition in relevant electronic communications markets to ensure that regulation remains appropriate in the light of changing market conditions, otherwise known as market reviews.

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<sup>6</sup> See footnote 1 above.

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

<sup>8</sup> DIRECTIVE 2002/20/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) OJ [2002] L 108/21.

<sup>9</sup> DIRECTIVE 2002/22/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) OJ [2002] L 108/51.

<sup>10</sup> DIRECTIVE 2002/58/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) OJ [2002] L 201/37.

<sup>11</sup> Communications Act 2006, Act No. 15, 2006.

### *Market Review methodology*

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

Section 39 of the Act requires the Authority to take due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of the provisions of a European Community instrument. Therefore the Authority should take due account of the Recommendation.

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

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

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

A market review has three main components:

- Definition of the relevant market or markets
- Assessment of competition in each market, in order to identify competitive constraints and assess whether any undertaking has SMP
- Where market power is identified, consideration of the appropriate SMP obligations in relation to that market.

The European Commission identified a set of product and service markets which may be susceptible to ex ante regulation<sup>12</sup>. The EC is currently consulting on a revised set of markets. Both the initial recommendation and the principles outlined in the current consultation have been taken into account in this review. It should be noted that Gibraltar does not have competition legislation. This is important because any SMP obligations proposed within the communications sector will be regulated only within that sector, there will be no recourse to competition law as there is in other jurisdictions.

It is important to recognise that the markets in this review are already subject to regulation. In order to take this into account, the EC recommends the use of a

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<sup>12</sup> See footnote 2 above.

“modified greenfield” approach, where markets are analysed absent regulation, except when that regulation is not to do with an SMP obligation, or is related to another market. In the retail fixed markets, for example, the obligation to negotiate interconnection is given in accordance with section 34 of the Act, hence the reviews will assume interconnection can be negotiated.

### **The market for retail fixed communications services in Gibraltar**

This market review is concerned with connection to the public telephone network for the purpose of making and receiving telephone calls and related services at fixed locations. In the Recommendation the EC identified six retail markets as susceptible to ex ante regulation. These are:

- Two markets for access to the public network at a fixed location, with separate markets for residential and non-residential customers
- Two markets for local and/or national calls at a fixed location, with separate markets for residential and non-residential customers
- Two markets for international calls at a fixed location, with separate markets for residential and non-residential customers.

The Recommendation is the starting point for the Authority’s consideration of the particular circumstances of the retail fixed communications services market in Gibraltar.

#### **1.2 Scope of the review**

In order to define the boundaries of product and service markets in retail fixed 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 forms of access in the same market?
- Are all types of voice call in the same market?
- Are residential and non-residential customers in the same market?

#### *Structure of this document*

Chapter 2 explains the way in which markets are defined, and delineates the retail fixed communications markets in Gibraltar. Chapter 3 analyses the markets. Chapter 4 describes competition problems and proposes SMP obligations. An assessment of regulatory measures is presented in Chapter 5 and Annex A summarises the consultation questions.

## **2. Market Definition**

### **2.1 Methodology**

The market definition procedures are designed to identify in a systematic way the competitive constraints encountered by providers of electronic communications networks and services. They do so in a way which also facilitates subsequent market analysis procedures. According to the European Court of Justice<sup>13</sup>, a relevant product market comprises all products or services that are sufficiently interchangeable or substitutable with its products, not only in terms of the objective characteristic of those products, their prices or their intended use, but also in terms of the conditions of competition and/or the structure of supply and demand for the product in question. In essence, this leads to a definition of the market's boundaries.

Market definition is about identifying the boundaries of a market for the purpose of correctly applying ex ante regulation. The process involves considering constraints arising on both the demand and supply sides of a market (and their interaction). The constraints are those which would apply to a so-called hypothetical monopolist, such that the hypothetical monopolist would be constrained in price setting behaviour. Hence, critical to the market definition process is the degree of substitution identified on the demand and supply-sides of the market.

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<sup>14</sup>. The competitive status of each relevant market can then be considered.

European guidelines also require the geographic coverage of markets to be considered. A relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products and/or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.

### **2.2 Background to the sector**

In Gibraltar, access to the public switched telephone network at a fixed location is currently provided by:

- Analogue exchange lines offering low capacity connection, where up to 2 calls can be made at the same time (PSTN analogue or ISDN basic rate access)

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13 See, for example, Case 322/81, Michelin v. Commission [1983] ECR 3461, as well as the Commission Notice on the definition of relevant markets for the purposes of Community competition law ("the Commission Notice on Market Definition") OJ 1997 C 372/3, and the SMP Guidelines.

14 A method for identifying market boundaries is known as the hypothetical monopolist test (also known as the SSNIP test, small but significant non-transitory increase in price test). This test assesses whether a hypothetical monopolist is able to increase price profitably for a product or service.

- High capacity connections where 3 or more calls can be made simultaneously (Digital ISDN exchange lines such as ISDN 30).

However, in determining the relevant market it is necessary to take account of all possible means of access to the end user – this could include copper, fibre, cable, powerline or wireless.

At the end of 2005, there were a total of 24,094 exchange lines<sup>15</sup>.

A fixed connection provides access to:

- Outgoing calls to other end-users. These calls may be to fixed or mobile customers, domestic or international locations, or to geographic or non-geographic numbers (for example an ISP, telephone banking and so on)
- Incoming calls from end-users.

### **2.3 Description of the market**

Fixed telephony services in Gibraltar have largely been provided by the incumbent, Gibtelecom, which offers a range of retail access and calls products to residential and business customers. A second operator, Sapphire Networks, was licensed in late 2004. Its service offering to date is principally resale of Gibtelecom ADSL services, or direct ethernet connection to Sapphire's own network, where the customers are within physical reach.

In the market for retail calls, the Authority has carried out a consultation on Carrier Pre-Selection (CPS) and has agreed and determined how it should be implemented in Gibraltar. The timing for the implementation has been delayed pending the outcome of this current consultation, and pending the implementation of the recent commitments expressed in the Trilateral Agreement<sup>16</sup> (the Agreement). Four operators (Gibtelecom, EasyCall, CTS (Gibraltar) Ltd and Transworld Systems Ltd) offer Voice over Internet Protocol (VoIP) calls.

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<sup>15</sup> GRA annual report 2005 – 2006 page 21.

<sup>16</sup> Electronic communications features significantly in the Tripartite Agreement concluded in Cordoba in September 2006. In the official communiqué the following were stated: "8. In the field of electronic communications, and in order to both address the current limitation on the quantity of telephone numbers in Gibraltar accessible from and through the Spanish network, and also enable roaming agreements between networks in Spain and Gibraltar for mobile telephones, telephone calls from Spain to Gibraltar will be channelled using the technical procedures for international direct dialling recommended by the International Telecommunications Union for all States and territories, including the territory of Gibraltar. In addition, the Spanish network operators will be able to accept the codes assigned to Gibraltar by the aforementioned organization, in order to identify the operators in that territory. These arrangements will become operational within four months of to-day's date, and the 30,000 telephone numbers reserved by Spain in its national numbering plan for access to the Gibraltar network will then be available for reassignment in Spain. Since the introduction of mobile roaming is a matter for the Network operators, the participants shall request from their respective telephone Network operators that, as soon as possible, they enter into appropriate commercial agreements, in accordance with the rules of the free market and in compliance with the EC Electronic Communications Directives (Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services) and other legal community provisions on electronic communications, all of which have been brought into effect." See [http://www.gibraltar.gov.gi/latest\\_news/press\\_releases/2006/Official\\_Documents\\_Released\\_After\\_the\\_meeting\\_Cordoba.pdf](http://www.gibraltar.gov.gi/latest_news/press_releases/2006/Official_Documents_Released_After_the_meeting_Cordoba.pdf)

Until the recent Agreement, a major constraint in the development of competition in electronic communications markets in Gibraltar has been the restriction on the quantity of numbers. As Spain did not recognise Gibraltar's International area code (+350), this created a bottleneck, as in order to have direct dialling to Gibraltar, Gibraltar's telephone numbers were treated by Spain as being allocated from the Spanish local exchange in Cadiz. This means that a call to an end user in Gibraltar could be delivered either by calling the Spanish number associated with the Cadiz exchange (from anywhere in the world) or by dialling the Gibraltar IDD international code (from anywhere in the world except Spain).

For example, a Gibraltar telephone number has five digits. The Gibraltar civil exchange uses numbers in the format 4xxxx, 5xxxx, and 7xxxx. The Forces exchange uses sub-levels from 5xxxx and has numbers in the format 53xxx and 55xxx. These numbers are treated by Spain as being allocated through the Cadiz exchange which has the prefix 956 in Spain. Hence, the numbers could be called by dialling +350 xxxxx or by dialling +34 956(7) xxxxx. Mobile telephone numbers are in the format 54xxxxxx, 56xxxxxx, 57xxxxxx and 58xxxxxx. Prior to the commitments of the Agreement, there was a limitation of 30,000 numbers in Gibraltar which could be dialled from Spain. The 30,000 numbers were effectively exhausted.

The lack of available numbers has caused problems both for the incumbent and for any potential market entrants. For the incumbent, for example, there is a restriction on opening up further number blocks for IDD, a service for which it notes demand. For potential entrants, there are simply no numbers available.

To some extent, the growth of VoIP can be seen as a response to the lack of available geographic numbers.

It is expected that numbering constraints will not be an issue from early 2007 onwards.

## **2.4 Delineation of the market**

*Are fixed access and fixed calls in the same market?*

The Authority proposes that retail fixed access and retail fixed calls are not in the same relevant market. This is because:

- On the demand side, there is no functional substitutability between access and calls. The relationship between the two is complementary and they perform different functions in the eyes of consumers
- 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. Where an operator is designated as having SMP in the provision of connection to and use of the public telephone network at a fixed location it is required under the Universal Service Directive to offer Carrier Selection and Pre-Selection (CS and CPS). This could allow entry to the calls market by a service provider using the incumbent's access network infrastructure. This

indicates the potential availability of alternative calls products, but not the availability of alternative access products.

### **Proposal: fixed access and fixed calls are in separate markets**

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

As the Authority proposes to consider access and calls as separate markets, we need to consider firstly whether fixed access is in the same market as mobile access, and secondly whether calls from a fixed line should be in the same market as calls from a mobile.

#### *Access*

The Authority proposes that fixed access and mobile access are not in the same market because:

- Fixed access is used for services in addition to voice calls, notably internet access (both dial-up and DSL). At this time, fixed internet access is not substitutable by mobile internet access, and in the near future it is unlikely that mobile internet products will offer the functional equivalence to the fixed products<sup>17</sup>
- For both residential and non-residential users, fixed and mobile access are seen as complements rather than substitutes. There are very few mobile-only households – that is, households which have given up a fixed line completely in favour of mobile
- It is difficult to compare fixed and mobile pricing because of tariff structures, but generally mobile access is cheaper than fixed access, but mobile calls are more expensive than fixed calls
- Considering supply side substitutability, it is not likely that a supplier of fixed access would switch to supply mobile access, or vice versa, in response to a small but significant price increase because of the cost of providing an access network.

#### *Calls*

The Authority proposes that fixed calls and mobile calls are not in the same market. It is suggested that calls from a fixed line and calls from a mobile should be characterised as complementary products rather than substitutes because a user will choose to make a type of call based largely on location. In the Authority's view, there are several reasons why calls from a fixed line and calls from a mobile are in separate markets:

- On the demand side, calls from mobile are generally (but not always) more expensive than calls from a fixed line

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<sup>17</sup> Poor in building penetration for mobile internet is particularly relevant in the densely populated area of Gibraltar.

- A defining feature of a mobile call is that it is location-independent, and this cannot be substituted by a fixed call
- In building penetration of the mobile service is variable
- Supply side substitution in response to a small but permanent increase is unlikely. This is because an operator of one type of call would have to provide access for the other type of call, either by building infrastructure or by buying the wholesale inputs necessary to offer the other type of call. In Gibraltar, the wholesale inputs are not available and are not likely to be made available within the lifetime of this review, and the sunk costs involved in building an alternative access network makes this option very unlikely.

**Proposal: retail fixed services are not in the same market as mobile services**

*Are all forms of access in the same market?*

The Authority has considered the extent to which different forms of access may be substitutable.

*Narrowband vs broadband*

While broadband connections are capable of delivering narrowband services, consumers generally switch from narrowband to broadband in order to access higher speed internet services. In Gibraltar, all broadband customers have retained their narrowband connection as well<sup>18</sup>. On the supply side, substitution between fixed narrowband access and fixed broadband access is limited, as a supplier of fixed broadband is not likely to be able to switch readily to supply fixed narrowband services.

*High capacity vs low capacity*

In its latest consultation<sup>19</sup> the EC recognises that NRAs may on the basis of national circumstances segment the market further, and suggests that there may be separate markets for low capacity access and high capacity access. Low capacity access is characterised as access which permits up to 2 simultaneous calls, and high capacity access permits more than 3 simultaneous calls. This would mean that PSTN access and low capacity ISDN, for example, would be substitutes, while high capacity ISDN would be in a separate product market.

The Authority has considered whether there is a single market for low capacity access lines in Gibraltar. On the demand side, low capacity ISDN is functionally substitutable for PSTN access, as ISDN 2 provides similar functionality to two PSTN lines.

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<sup>18</sup> Response to data request, Gibtelecom.

<sup>19</sup> Commission Staff Working Document Public Consultation On Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (second edition). Brussels, 28 June 2006 SEC(2006) 837.

If we consider pricing, an ISDN connection, which would provide 2 channels, currently costs £110<sup>20</sup>, while a single line connection costs £50. Line rental is currently £6 per month for a single PSTN line, and £24 per month for the ISDN channels (i.e. the equivalent of £12 per channel). This means that while the initial connection fee is in line, the monthly rental is significantly higher – double the PSTN price - for ISDN. This difference in price suggests that low capacity ISDN and PSTN access are not demand-side substitutes at the prevailing prices, because a price increase of 5-10% would not be enough to induce sufficient numbers of customers to switch.

However, a supplier of PSTN access would be able to switch to supply low capacity ISDN access, and vice versa, in response to a small price increase.

In considering whether low capacity ISDN and high capacity ISDN are in the same product market, it is not likely that a customer would consider multiple PSTN lines to be a functional substitute for high capacity ISDN. Generally, high capacity ISDN is used to connect to a PBX, and this could not be achieved by multiples of low capacity connections. Further, the pricing differential between low capacity and high capacity access is significant. This would suggest that low capacity and high capacity access are not demand substitutes.

The EU view of supply issues is that there is generally little supply side substitution between low and high capacity ISDN, because low capacity ISDN supply is linked with the narrowband access network, whereas high capacity ISDN may be supplied directly to a large customer. However, the geographical concentration of Gibraltar means that the spread of the access network is less of an issue, and it is likely that an entity which supplied low capacity ISDN would be able to switch to supply high capacity ISDN and vice versa.

The Authority notes also that the market for high capacity ISDN access in Gibraltar is extremely small, and, in common with ISDN markets throughout Europe, is declining.

The conclusion is therefore that there is a single narrowband retail access market in Gibraltar.

**Proposal: broadband access is not in the same market as narrowband access, but all forms of narrowband access are in the same product market.**

*Are all types of voice call in the same market?*

There are two main considerations to be examined here. First of all, does the destination of the call indicate that it should be in a separate market – for example, should domestic calls be considered as part of the same market as international calls? Secondly, does the form of access matter - are calls made over broadband lines substitutes for calls made over narrowband access?

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20 There is an additional one-off line conversion fee. [source : Gibtelecom website]

### *Domestic/international*

There is clearly no demand side substitution between domestic and international calls.

On the supply side, could a supplier of domestic calls switch to supply international calls in response to a small but significant price increase? The supplier of domestic calls would need to obtain an international gateway and agreements with international operators, but is likely to be able to do this. However, a supplier of international calls responding to an increase in the price of domestic calls would not have the domestic infrastructure (i.e. local access network) necessary to offer domestic calls, and is not likely to be able to enter the domestic market. This analysis is absent regulation – it could be argued that if CPS were a mandated obligation, then a supplier could enter the market by purchasing wholesale inputs. This is not currently an option in Gibraltar.

A supplier of international VoIP calls could in theory switch to supply domestic VoIP calls. However, the pricing structure is such that the margin is likely to be too small.

This would suggest that domestic and international calls are not in the same market.

### *Calls over broadband*

The Authority proposes that Voice over Broadband (VoB) calls are part of the retail fixed calls market.

The EC recommends that NRAs consider the extent to which VoB calls are substitutes for narrowband calls by considering a range of factors such as broadband penetration, price elasticity of calls, and the quality of service. The Authority proposes that a VoIP call is a functional substitute for a narrowband call because, to the user, it looks and feels like a retail fixed narrowband call. While there may be a lower call quality for VoIP calls, the Authority does not believe that this would be sufficient to deter switching.

Gibraltar's broadband penetration is currently just under 15% of population. This is above average compared with the EU-15<sup>21</sup>. This means that the infrastructural requirement for VoB (to have broadband access in order to make a VoB call) is sufficiently established.

In terms of pricing, a customer wishing to make a VoIP call needs to have appropriate access – usually a broadband connection and an adaptor. However, the cost of a call is then significantly lower on VoIP<sup>22</sup>. The Authority does not believe that pricing differences would stop customers switching from fixed narrowband to VoIP, and that taking functional characteristics and pricing into account, fixed calls and VoB calls are demand substitutes.

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21 At the end of 2005, the average broadband penetration for the EU15 was 13% of population, or 25% of households. Five member states had penetration rates on or above 15%. Source : Europa website

22 For example, a Gibtelecom cheap rate fixed call from Gibraltar to the UK costs 15p/min, while a Gibtelecom VoIP call costs 9p.

On the supply side, a supplier of fixed retail calls could switch to supply calls over VoB in response to a price increase, relatively quickly and at low cost.

**Proposal: domestic and international calls are in separate markets, but VoB calls are part of the fixed calls market.**

*Are residential and non-residential customers in the same market?*

*Access*

The Authority proposes that residential and non-residential customers are in the same market for retail access because:

- The contractual terms of access do not differ significantly between residential and non-residential users, and the pricing structure is the same for residential and non-residential users
- Operators do not classify different demand categories differently (for example, ISDN access data is collected on a global basis)
- Considering supply side substitution, because the products are the same, a supplier to residential customers could easily divert to the supply of non-residential customers and vice versa.

*Calls*

The Authority proposes that residential calls are in the same market as non-residential calls because:

- The contractual terms of access do not differ significantly between residential and non-residential users, and the pricing structure is the same for residential and non-residential users
- Operators generally do not classify different demand categories differently, and do not discriminate between residential and non-residential customers
- A supplier of calls to residential customers could readily switch to supply non-residential customers in response to a small but significant price increase, and vice versa.

**Proposal: there are no separate markets based on a distinction between residential and non-residential customers.**

## **2.5 Geographical market**

According to established case law, the relevant geographic market comprises an area in which the conditions of competition are similar across the area, 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.

**Proposal: the geographical market is Gibraltar**

**2.6 Preliminary markets to be defined**

*Summary of preliminary conclusions*

The Authority's preliminary conclusions are as follows:

- fixed access and fixed calls are in separate markets
- retail fixed services are not in the same market as mobile services
- all forms of narrowband access are in the same market
- domestic and international calls are in separate markets
- VoB calls are part of the fixed calls market
- residential and non-residential calls fall within the same relevant product market
- the geographical scope of the market is Gibraltar.

**The Authority therefore proposes to define the following markets:**

- **Retail access to the public telephone network at a fixed location**
- **Retail domestic calls from a fixed location**
- **Retail international calls from a fixed location.**

***Q1: Do you agree with the proposed market definitions?***

***Please give reasons for your answer***

### **3. Market Analysis**

#### **3.1 Methodology**

Having defined the scope of the relevant product and geographic markets, the Authority must assess the level of competition within each market. An undertaking will be deemed to have SMP if it is in a position of economic strength affording it the power to behave independently to an appreciable extent of competitors, customers and ultimately consumers.

The Authority must now assess the current and prospective level of competition within each of these markets:

- Retail fixed access
- Retail fixed domestic calls
- Retail fixed international calls.

The market analysis begins by considering market share. In the SMP Guidelines, it is clear that although a high market share alone is not sufficient to establish the possession of significant market power; it is unlikely that a firm will be dominant without a large market share. The SMP Guidelines note that:

“...very large market shares – in excess of 50% - are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position”<sup>23</sup>.

It is important to consider the changes to market shares over time, as this will indicate trends in the market and will contribute to an assessment of whether or not the market may tend towards effective competition over the period of this review.

As large market shares are not in themselves sufficient to find SMP, the market analysis must also consider whether there are other factors which may contribute to, or offset, SMP.

#### **3.2 Market analysis: retail fixed access**

##### *Current situation*

The number of narrowband access lines has declined slightly to just over 24,000 over the last two years. ISDN access accounts for a very small proportion of access lines – around 0.5% of overall access and around 2% of business access lines<sup>24</sup>. The number of ISDN access lines has remained fairly stable since the beginning of 2004. Gibtelecom is the only provider of retail fixed access, and currently has 100% share of the retail fixed access market.

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<sup>23</sup> At paragraph 75.

<sup>24</sup> Note this assumes that all ISDN lines are for business use – data does not differentiate between residential and business use of ISDN.

### *Barriers to entry*

According to the Explanatory Memorandum accompanying the Relevant Markets Recommendation,

"...high structural barriers may be found to exist when the market is characterised by substantial economies of scale, scope and density and high sunk costs. To date, such barriers can still be identified with respect to the widespread deployment and/or provision of local access networks to fixed locations"<sup>25</sup>.

Economies of scale generally refer to the cost advantage which a large-scale operator may have over a smaller operator in the situation where the marginal cost of production decreases as output quantity increases. Economies of scope refer to the potential efficiencies which may be gained through supplying a range of goods and services, while economies of density refer to potential efficiencies associated with supplying customers who are geographically concentrated.

Should an operator decide to enter the market via direct access, it would require significant investment in an electronic communications network. Most of this will be sunk costs, as such costs will not be recoverable if the entrant decides to, or is forced to, exit the market. Significant sunk costs create an asymmetry in the market. A potential entrant has to consider whether prices would be high enough to recover sunk costs.

### *Vertical integration*

An undertaking which is dominant at the wholesale level of a market may have the opportunity to leverage market power into downstream markets. In the case of the retail fixed access market, the relevant upstream markets would be those associated with obtaining wholesale inputs, that is, wholesale unbundled access and interconnection.

A vertically integrated operator may enjoy efficiencies arising from its presence in the upstream and downstream markets. Further, a new entrant to the downstream retail market may be dependent on a wholesale input supplied by a vertically-integrated operator which is its competitor in the retail market.

### *Potential competition*

A second operator, Sapphire Networks, provides public electronic communications networks and services in Gibraltar. To date, its service offering has been restricted to resale of ADSL and related services. Sapphire has some customers directly connected by ethernet, primarily for the supply of internet services.

Given the size of the market in Gibraltar, it is unlikely that it would be an economic option to replicate access infrastructure. However, it is possible that a radio network

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<sup>25</sup> Section 2.2(i) of the Commission's Recommendation Explanatory Memorandum of the Commission Staff Working Document Public Consultation On Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (second edition). Brussels, 28 June 2006 SEC(2006) 837.

based on WiMax could be established relatively quickly. However, WiMax is used principally for internet access, and so would not necessarily offer the voice and data services offered by a fixed narrowband access line. Nevertheless, WiMax indicates that a radio based network may offer potential competition to the fixed access network.

The other potential means of introducing competition is through the unbundling of the local loop. Local Loop Unbundling (LLU) allows alternative operators to take over the incumbent's local loop, and to assume ownership of the customer relationship and the customer's line.

A Reference Unbundling Offer which would provide for local loop unbundling has been agreed between the incumbent and the regulator. Although the data input to this consultation indicated interest in providing a service based on LLU, the consideration is at such an early stage that the Authority does not consider it will appreciably impact on the level of competition in the market within the timeframe of this review.

The Authority has yet to witness any substantial investment in alternative infrastructure and this leads it to the view that effective competition in the access market is unlikely to emerge over the next two years.

The numbering issue has acted as a major constraint to competition in Gibraltar, and its resolution should offer an opportunity to move forwards. However, the Authority believes that the retail fixed access market is very unlikely to become competitive within the lifetime of this review.

#### *Countervailing Buyer Power*

The Authority has considered whether countervailing buyer power (CBP) is an issue in this market. A potential constraint on a supplier's market power is the strength of buyers, if for example a purchaser was sufficiently important to its supplier to influence the price it was charged. In Gibraltar, a purchaser is not able to switch to other suppliers of retail access services, so the potential exercise of CBP is not relevant.

### **3.3 Preliminary conclusions and SMP designation if appropriate**

Gibtelecom has 100% of the market for retail fixed access. The Authority has assessed prospective competition and has assessed factors which may qualify Gibtelecom's ability to price independently of any competitors. The conclusion is that Gibtelecom will remain dominant in this market for the lifetime of this review.

**The Authority proposes that Gibtelecom should be designated with SMP in the market for retail fixed narrowband access.**

***Q2: Do you agree with the market analysis and proposed SMP designation of the retail fixed access market?***

***Please give reasons for your answer***

### 3.4 Market analysis: retail fixed domestic calls

#### *Current situation*

Analysis of the data suggests a decrease of around 33% in overall call volume over the last two years. When we look specifically at retail domestic calls, the share of the total calls market accounted for by domestic calls has fallen from 84% to 77% over the same period<sup>26</sup>. This suggests that the fall in the volume of domestic calls accounts for a substantial proportion of the overall decline.

It may be that customers are making fewer or shorter calls, or it may be that customers are making different types of call. During the same period, fixed to mobile calls have increased in volume by just over 40%, but in terms of call minutes, this is not enough to off-set the fall in fixed domestic calls, as fixed to mobile calls account for only 8% of all calls.

However, the data indicates a shift from dial-up internet access to broadband. The number of dial-up internet access subscribers fell by 36% from 2004 to 2005, while the number of ADSL subscribers increased by 61%<sup>27</sup>. As dial-up calls to the internet are counted as fixed domestic calls, and ADSL access is not seen as a fixed call, this reduction in the number of dial-up subscribers would bring about a reduction in associated calls, and this is the most likely explanation for the fall in domestic calls.

In calculating the market shares in the domestic calls market, it can be noted that, following the market definition discussed earlier, domestic GSM calls (i.e. calls from a mobile) are not considered to be part of the same market as fixed calls, and so are not included in the market share analysis. Because VoIP calls are considered to be substitutes for fixed calls, they should be included in the market share calculation. However, at present VoIP is used only for international calls from Gibraltar<sup>28</sup>, and so there is no domestic VoIP included.

Gibtelecom is the only operator offering domestic calls in Gibraltar, and has 100% market share.

#### *Barriers to entry*

Barriers to entry in the fixed domestic calls market are largely associated with the high and non-transitory barriers discussed above in relation to the fixed access network.

An operator could decide to enter the retail domestic calls market either directly, via direct access to customers, or indirectly, by purchasing wholesale inputs. Should an operator decide to enter the market via direct access, it would require significant investment in an electronic communications network. Most of this will be sunk costs,

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26 GRA Annual Reports 2005 and 2006 and response to data request.

27 GRA Annual Report 2006.

28 Because of Gibraltar's circumstances re IDD, some calls which look like international VoIP calls may be to domestic numbers.

as such costs will not be recoverable if the entrant decides to, or is forced to, exit the market. Significant sunk costs create an asymmetry in the market. A potential entrant would need to consider whether prices would be high enough to recover sunk costs.

Indirect entry would involve an alternative operator being able to offer a voice calls service over the incumbent's access network. The Communications (Universal Service and Users' Rights) Regulations 2006<sup>29</sup> (the Universal Service Regulations) mandate this principle where an operator is found to have SMP in the retail fixed access market. It could be achieved by offering a variant of carrier selection (Carrier Access, Carrier Select, Carrier Pre-Select), or by offering VoIP calls. None of these options is likely to exist absent regulation.

### *Vertical integration*

An organisation which is dominant at the wholesale level of a market has the opportunity to leverage market power into downstream markets. In the case of the retail fixed domestic calls market, the relevant upstream market would be that associated with obtaining wholesale inputs, that is, the interconnection markets of origination, transit and termination.

A vertically integrated operator may enjoy efficiencies arising from its presence in the upstream and downstream markets. Further, a new entrant to the downstream retail market may be dependent on a wholesale input supplied by a vertically-integrated operator which is its competitor in the retail market.

### *Potential competition*

As discussed above, it is unlikely that a new entrant would enter the domestic fixed calls market via direct access.

In the Authority's view, there are two possible indirect routes to offering domestic calls. Firstly, a service provider currently offering VoIP international calls could offer domestic VoIP calls. Secondly, a new entrant could develop a CPS offering. The main barrier to a supplier of international VoIP calls offering domestic VoIP calls is the current tariff structure, where the relatively low cost of domestic fixed calls makes it a less attractive market for a supplier than that for international calls. In the Authority's view, the main reason for a current provider of international VoIP calls not entering the domestic VoIP market is to do with the business case, rather than with any technical or regulatory barriers.

The second means of market entry may be via CPS. This has not been an option in Gibraltar up till now, as the wholesale elements needed to offer a retail CPS service were not available.

### *Countervailing Buyer Power*

The Authority has considered whether CBP is an issue in this market. A potential constraint on a supplier's market power is the strength of buyers, if for example a

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<sup>29</sup> Communications (Universal Service and Users' Rights) Regulations 2006, Communications Act 2006.

purchaser was sufficiently important to its supplier to influence the price it was charged. In Gibraltar, a purchaser is not able to switch to other suppliers of retail calls services, so the potential exercise of CBP is not relevant.

### **3.5 Preliminary conclusions and SMP designation if appropriate**

Gibtelecom has 100% of the market for retail fixed domestic calls. The Authority has assessed prospective competition and has assessed factors which may qualify Gibtelecom's ability to price independently of any competitors. The conclusion is that Gibtelecom will remain dominant in this market for the lifetime of this review.

**The Authority proposes that Gibtelecom should be designated with SMP in the market for retail fixed domestic calls.**

***Q3: Do you agree with the market analysis and proposed SMP designation of the fixed domestic calls market?***

***Please give reasons for your answer***

### **3.6 Market analysis: retail fixed international calls**

#### *Current situation*

In the period 2005-2006, the overall international call traffic volume increased from 11.8m minutes to 17.8m minutes. Just over 30% of call volume was international VoIP<sup>30</sup>, and this proportion has remained fairly stable over the last few years.

Gibtelecom's share of the VoIP market has decreased over the last year, and Gibtelecom now accounts for around 35% of all VoIP minutes. Gibtelecom has 100% of non-VoIP fixed international calls, so its overall share of the international calls market was 78% at the end of Q2 2006. This represents a decrease from an 82% market share at the same time in 2005.

There are currently four entities offering VoIP calls, namely CTS (Gibraltar) Ltd, Transworld Systems Ltd, EasyCall and Gibtelecom but only CTS (Gibraltar) Ltd, EasyCall and Gibtelecom's<sup>31</sup> services are accessed by dialling a prefix.

Analysis of market share suggests that the alternative VoIP operators are well-established, as following initial rapid growth after service launch, their share of the market has remained fairly constant over the last eighteen months.

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<sup>30</sup> Response to data request, as at end Q2 2006, Gibtelecom.

<sup>31</sup> It should be noted that existing customers of Gibtelecom can use the VoIP service simply by dialling the prefix - there is no requirement to register. Prospective customers of the other VoIP services must register with the service provider.

### *Barriers to entry*

Barriers to entry in the fixed international calls market are largely associated with the high and non-transitory barriers discussed above in relation to the fixed access network.

An operator could decide to enter the retail international calls market either directly, via direct access to customers, or indirectly, by purchasing wholesale inputs. Should an operator decide to enter the market via direct access, it would require significant investment in an electronic communications network. Most of this will be sunk costs, as such costs will not be recoverable if the entrant decides to, or is forced to, exit the market. Significant sunk costs create an asymmetry in the market. A potential entrant has to consider whether prices would be high enough to recover sunk costs.

Indirect entry would involve an alternative operator being able to offer a voice calls service over the incumbent's access network. The Universal Service Regulations mandate this principle where an operator is found to have SMP in the retail fixed access market. It could be achieved by offering a variant of carrier selection (Carrier Access, Carrier Select, Carrier Pre-Select), or by offering VoIP calls. International VoIP calls are already well-established in the market in Gibraltar. None of these options is likely to exist absent regulation.

### *Vertical integration*

An organisation which is dominant at the wholesale level of a market has the opportunity to leverage market power into downstream markets. In the case of the retail fixed international calls market, the relevant upstream market would be that associated with obtaining wholesale inputs, that is, the interconnection markets of origination, transit and termination.

A vertically integrated operator may enjoy efficiencies arising from its presence in the upstream and downstream markets. Further, a new entrant to the downstream retail market may be dependent on a wholesale input supplied by a vertically-integrated operator which is its competitor in the retail market.

### *Potential competition*

As discussed above, it is unlikely that a new entrant would enter the international fixed calls market via direct access.

In the Authority's view, there are two possible indirect routes to offering international calls. Two service providers (in addition to Gibtelecom) currently offer international VoIP calls. Other entrants could enter the market in this way. Secondly, a new entrant could develop a CPS offering. This has not been an option in Gibraltar up till now, as the wholesale elements needed to offer a retail CPS service were not available.

The Authority has considered whether the presence of alternative VoIP service providers is likely to constrain Gibtelecom's behaviour over the next two to three years. It is noted that the VoIP providers' market share has not increased in the last eighteen months, and there is no reason to indicate that it is likely to increase now.

Further, Gibtelecom already has around a 30% share of this segment of the international calls market. While the provision of VoIP calls may be competitive in itself, the market which has been defined is the market for fixed international calls. The provision of fixed international calls is not competitive, and although Gibtelecom's market share has declined slightly over the last year, it remains very high. The Authority does not believe that the market is tending towards competition.

#### *Countervailing Buyer Power*

The Authority has considered whether CBP is an issue in this market. A potential constraint on a supplier's market power is the strength of buyers, if for example a purchaser was sufficiently important to its supplier to influence the price it was charged. In Gibraltar, it is not likely that a purchaser of international calls services could exercise CBP.

### **3.7 Preliminary conclusions and SMP designation if appropriate**

Gibtelecom has around 78% of the market for retail fixed international calls at the end of Q2, 2006<sup>32</sup>. This represents a decrease from the preceding year, but it is the Authority's view that the market share remains very high. The Authority has assessed prospective competition and has assessed factors which may qualify Gibtelecom's ability to price independently of any competitors. The conclusion is that Gibtelecom will remain dominant in this market for the lifetime of this review.

**The Authority proposes that Gibtelecom should be designated with SMP in the market for retail fixed international calls.**

***Q4: Do you agree with the market analysis and proposed SMP designation of the fixed international calls market?***

***Please give reasons for your answer***

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<sup>32</sup> Response to data request, Gibtelecom.

## **4. Proposed SMP Obligations**

### **4.1 Competition problems in the retail markets**

In considering the implications of an undertaking's dominance in a market, the EC Commission notes that:

"dominance is a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of the consumers"<sup>33</sup>.

It should be noted that the market review process is not concerned with whether or not there has been a demonstrable abuse of a dominant position. The forward-looking approach recommended by the EC examines the dynamic characteristics of a market, and considers remedying problems that could give rise to or worsen ineffective competition. The concern is therefore with the dynamics of the structure of markets, and not with the behaviour of any particular undertaking.

In a market which is not effectively competitive, an undertaking which is dominant has the potential ability to influence a range of competition parameters, such as prices, innovation, output and the variety or quality of goods and services. Absent regulation, a dominant firm would rationally have an incentive to raise prices above costs, as there would be insufficient competitive pressure to prevent this.

In addition, a firm which was dominant in an upstream market could leverage this market power in the closely related downstream markets. In the retail markets, potential vertical leverage could involve an undertaking which was dominant in the wholesale market – that is, which controlled the wholesale inputs required to offer a retail service – using its dominance to affect competitive conditions in the related retail market.

As well as being able to leverage power vertically from a wholesale market into a downstream retail market, a firm which was dominant in one market could attempt to leverage power horizontally into a related market. In the fixed retail markets, horizontal leverage could include, for example, leverage from the fixed narrowband markets into the fixed broadband markets.

The market analysis which has been carried out in Gibraltar concludes that Gibtelecom should be designated with SMP in the retail markets for fixed access, fixed domestic calls and fixed international calls. The Authority is therefore obliged to consider how best to remedy the lack of effective competition in these markets.

### **4.2 Principles in determining SMP obligations**

Where a National Regulatory Authority (NRA) has made an SMP designation, it is obliged to impose an SMP obligation on the undertaking which has been found dominant. All National Regulatory Authorities (NRAs) have a suite of regulatory tools

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<sup>33</sup> DG Competition Discussion paper on the application of Article 82 of the Treaty to exclusionary abuses, Brussels, Dec 2005.

at their disposal. These are set out in the Access and Universal Service Directive which have been implemented in Gibraltar by the Act, the Access Regulations and the Universal Service Regulations.

Article 8 of the Framework Directive sets out the NRA's basic objectives, such that the NRA is required to:

- Promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services
- Contribute to the development of the internal market
- Promote the interests of the citizens of the European Union.

The NRA must ensure that the proposed obligation best addresses the problem it has identified, and must ensure that any SMP obligation is proportionate to the competition problem it intends to resolve. It is important that any proposed obligation constitutes the least possible burden on the undertaking to which it applies.

It should be noted that there is no recourse to competition law in Gibraltar. This means that the SMP obligations proposed must be sufficient in themselves to address competition problems.

### **4.3 SMP obligations proposed**

The Act sets out the potential SMP obligations which can be imposed where the Authority finds that any undertaking has SMP. Regulations 10 to 14 of the Access Regulations implement Articles 9 to 13 of the Access Directive, and Regulations 14 to 16 of the Universal Service Regulations implement Articles 17 to 19 of the Universal Service Directive. The regulatory options which are relevant for this review of the retail fixed markets are:

- Price controls
- No undue discrimination
- Price publication and notification
- Cost accounting and accounting separation.

The Authority has considered regulatory options in light of its overall regulatory objectives, and in the context of the problems identified in the retail fixed markets. An assessment of regulatory measures is presented in Chapter 5.

Under Regulation 16 of the Universal Service Regulations an undertaking which has SMP for the provision of connection to, and use of, the public telephone network at a fixed location is required to enable its subscribers to access the services of any interconnected provider of publicly available telephone services. This may be done:

- On a call-by-call basis by dialling a carrier selection code and
- By means of pre-selection, with a facility to override any pre-selected choice on a call-by-call basis by dialling a carrier selection code.

This is a mandated obligation, and is addressed in the Market Review of the Wholesale Fixed Markets<sup>34</sup>.

In considering each of the regulatory options, the Authority's proposals are as follows:

### *Price controls*

The Authority has considered whether it is appropriate to introduce price controls in some or all of the retail fixed markets. The Authority is mindful that there is currently no wholesale or retail competition in the fixed access and domestic calls markets, and no wholesale but some retail competition in the market for international calls. Regulation which is restricted to the wholesale level may be ineffective without supporting regulation at a retail level. It is noted also that there is no competition law in Gibraltar, and so a consideration of the adequacy of this form of regulation is not relevant.

The Authority has been working with Gibtelecom to rebalance tariffs. In practice, this would mean an increase in the price for line rental, to orient retail access prices towards costs, and a decrease in wholesale interconnection rates. The Authority believes that this rebalancing is objectively justified, and notes that Gibraltar's current line rental prices are amongst the lowest in Europe<sup>35</sup>. However, the costs of domestic and international fixed calls remain relatively high. This is exacerbated by the current billing regime – a move to billing on an actual use basis would be fairer to consumers, and would likely result in lower call charges to consumers.

The Authority accepts that there may be a need to increase retail access prices, but does not consider that this should result in an overall increase in the average consumer's telephone bill equivalent to the level of increase in line rental. This means that the impact of the rebalancing on the average subscriber's bill should be minimal.

As a first step, the Authority proposes to address the issue of the cost of domestic and international calls by requiring Gibtelecom to move to a per second billing regime. The Authority notes that in most European jurisdictions, billing for calls is based on actual use as this is fairer to consumers.

The Authority therefore proposes that an appropriate retail price control to be introduced in the market at this time is a requirement for per second billing.

The Authority has considered whether a retail price cap is required on some or all of Gibtelecom's fixed services. Given the absence of wholesale and retail competition in the markets for fixed access and fixed domestic calls, and the limited competition in

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<sup>34</sup> Public Consultation 02/07 – Wholesale Fixed Markets.

<sup>35</sup> Line rental for business and residential subscribers is currently £6 per month.

the market for fixed international calls, a retail price cap may be necessary to ensure that Gibtelecom cannot use its dominance to charge unreasonably high prices. Should the Authority decide to impose a price cap, it would seek to use a method which would be simple to apply and would constitute the minimum burden on the industry and the regulator. It is likely that the preferred option would be a cap based on the formula RPI-x. The Authority would consult further on any price cap mechanism prior to its implementation.

Proposal: Gibtelecom should be obliged to charge for fixed domestic and international calls on a per second basis.

The Authority welcomes comment on a potential retail price cap and will consider this further.

#### *No undue discrimination*

A provider can be said to be discriminating when it applies dissimilar conditions to equivalent transactions. Examples of discrimination may include price offers, information or terms and conditions. For instance, a situation where the SMP operator treats the customers of its own retail service differently from the customers of another provider's retail service by imposing more onerous contractual obligations could be construed as discrimination. An obligation not to unduly discriminate does not mean that there can be no differences in treatment between customers. Rather, it means that any differences must be objectively justifiable, and must not adversely affect competition.

Proposal: Gibtelecom should be obliged not to unduly discriminate between customers.

This obligation should be applied to the following markets:

- Market for retail fixed access
- Market for retail fixed domestic calls
- Market for retail fixed international calls.

#### *Price publication and notification*

The Authority proposes that Gibtelecom should be obliged to notify the Authority 60 days in advance of changes to terms and conditions, including prices.

The Authority proposes that Gibtelecom should be obliged to publish changes to terms and conditions 30 days in advance of implementation. As regards tariffs, Gibtelecom will require 30 days notice to publish an increase in tariffs and 14 days for a reduction. Publication should be by prominent notice in the local press and on the company website.

This obligation should be applied to the following markets:

- Market for retail fixed access

- Market for retail fixed domestic calls
- Market for retail fixed international calls.

*Cost accounting and accounting separation*

The Authority proposes that Gibtelecom should be obliged to maintain updated cost accounting systems which produce appropriate information to demonstrate compliance with cost-orientation.

The Authority also considers that Gibtelecom should be required to make transparent its wholesale prices and terms and conditions. The Authority believes that an obligation of accounting separation is a necessary support for the obligations of transparency and non-discrimination, and helps ensure that there is no unfair cross-subsidy.

In accordance with Regulation 12 of the Access Regulations, the Authority proposes to oblige Gibtelecom to maintain separated accounts.

This obligation should be applied to the following markets:

- Market for retail fixed access
- Market for retail fixed domestic calls
- Market for retail fixed international calls.

***Q5: Do you agree with the proposed SMP obligations?***

***Please give reasons for your answer***

## 5. Assessment of Regulatory Measures

The following table summaries the assessment of proportionality of the proposed measures.

Proposal	Gibtelecom	Market Entrants	Consumers	Overall
Option 1 – No regulation	<b>Positive impact on Gibtelecom:</b> Gibtelecom would benefit from removal of all regulatory obligations and may use its market power to influence market to its advantage	<b>Negative impact on competition:</b> High barriers to entry reducing the possibility of potential competition	<b>Negative impact on consumers:</b> No constraint on Gibtelecom's pricing and quality of service	Positive impact for Gibtelecom; Highly negative impact for the development of competition and consumers
Option 2 – Wholesale regulation	<b>Positive impact on Gibtelecom:</b> Removal of retail obligations	<b>Negative impact on competition:</b> Difficult entry into retail market	<b>Negative impact on consumers:</b> Gibtelecom will have no constraint on pricing and service delivery	Positive impact on Gibtelecom; Negative impact on competition and consumers
Option 3 – Wholesale and retail regulation	<b>Negative impact on Gibtelecom:</b> Increased regulatory burden	<b>Positive impact on competition:</b> Low barriers to entry and possibility of increased competition	<b>Positive impact on consumers:</b> Potential gains in quality and price by the introduction of competition	Negative impact on Gibtelecom but SMP obligations designed to minimise burden; Positive for market overall

## **Annex A: Consultation Questions**

*Q1: Do you agree with the proposed market definitions?*

*Please give reasons for your answer*

*Q2: Do you agree with the market analysis and proposed SMP designation of the retail fixed access market?*

*Please give reasons for your answer*

*Q3: Do you agree with the market analysis and proposed SMP designation of the fixed domestic calls market?*

*Please give reasons for your answer*

*Q4: Do you agree with the market analysis and proposed SMP designation of the fixed international calls market?*

*Please give reasons for your answer*

*Q5: Do you agree with the proposed SMP obligations?*

*Please give reasons for your answer*