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1. Introduction

In accordance with the terms set out in our letter of engagement, this document is prepared for MagtiCom LLC (“the Client” or “Magticom”) setting out our independent reactions to the Georgian National Communications Commission’s (“GNCC” or “the Commission”) *“Response to the Policy Report and Expert Opinion Prepared by Consulting Companies for Magticom Ltd”* (“the Response”). This document comprises the counter-views to some elements in the Response appertaining to Magticom’s disagreement to the Commission’s views expressed in the Response and to Resolution N O-20-9/156 of 31st December 2019 on the imposition of ex-ante regulation in the wholesale market for mobile network services to grant Mobile Virtual Network Operators (“MVNOs”) access to the network.

2. Executive Summary

Having assessed in detail the Response of the GNCC, this document sets out a number of matters upon which we have differing views or arrived at different conclusions from those derived by the Commission. This detailed document groups the assertions made the Commission by subject matter and sets out the basis for arriving at a different position from that taken by GNCC.

In total, there are 13 items upon which, we have formulated a different opinion from those established by GNCC. Out of the 13 items to the questions prepared by the Commission where according to the GNCC, the advisory documents allege that:

- 6 relate to Response Question number 1: in terms of price, the Georgian mobile communications market is quite affordable.
- 4 to Question number 2 one of which is combined with Q3: assert that the regulatory framework was defined “incorrectly”,
- 1 to Question number 3 one of which is combined with Q2: The Commission mishandled the so-called Three Criteria Test.
- 1 to Question number 5: The Commission resolution fails to consider financial and market risks, operating and service quality risks as well as macro-economic factors, and
- 1 to Question number 7: technological risks and likely “dangers” associated to data protection.

The differing opinions are summarised in the Tables overleaf.

The market data and research of the current situation form the basis of our conclusion that the presence of MVNOs does not seem to be a requirement for competitive outcomes since the market is already competitive, and any benefits of MVNO regulation are likely to be minimal.



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Item no	Response Question	Point number	Paragraph reference	GNCC Assertion/ <i>Opinion/Conclusion</i>	Our opinion/conclusions
1	1	Introduction	2 nd	<i>The use of Beeline Georgia in the analysis of tariffs when the operator was not known to enjoy significant market power</i>	The significance of Veon cannot be ignored when analysing competition and its effect on the market since it has effectively captured 25.3% share of the total subscribers and 18% of the revenues of the mobile market, which are substantial especially when considering that the rest of the market is shared with two other operators. This is even more so within the market for mobile data subscribers, where by Aug 2020 VEON had captured 30.5% of this market.
2	1	1	2 nd	<i>Retail tariffs in Georgia are higher than average amongst 37 OECD countries and that Georgia is offering higher rates than those offered by operators in leading European countries</i>	<p>> Since Georgia is harmonising electronic communications legislation with European legislation and GNCC has been sharing best practice with EU member states, comparisons with EU counterparts are more relevant.</p> <p>> An analysis of retail voice and internet plans for mobile services demonstrates that there has been an evolution in pricing structures producing positive outcomes in terms of value for money to client and affordability.</p>
3	1	3	3 rd	<i>Out of 155 countries, Georgia ranks 31st and is more expensive for a direct unit (rated) price than such leading countries as Denmark, France and Poland</i>	The ranking in the 31st position amongst 228 countries in 2020 for the average price of 1GB of mobile data; places Georgia in the upper quartile of the countries having the cheapest prices with Denmark and France in the 27th and 28th place respectively and Georgia being only three and four places away from them.
	1		4 th	<i>Neither prices are low (even compared to the international benchmark), nor competition is properly ensured.</i>	It is clearly evident that Georgia's mobile retail prices are highly competitive when compared to operators in leading European countries and this is in total contradiction to the GNCC's conclusions that prices are much higher than those offered by leading European countries. Our conclusion therefore is that the prices in Georgia stand at the lowest of the price range in Europe and therefore are extremely competitive. In view of the differing conclusions reached with regard to competition and quality of services, the Commission's decision to take certain actions upon the basis of its conclusions to enforce the introduction of the MVNO regulation will not reach the intended scope to improve competition and quality of service. As set out in Item 9, the opposite of the GNCC's intentions may actually happen.
4	1	2	1 st and last	<i>The tariff offers between the two key market players (Magticom and Silknet/Geocell) and the third operator (Veon Georgia) are radically different. However, despite that, there is no customer outflow between the operators, namely, no customer flow into the network of the low-price operator as there is almost no competition for affordable tariffs.</i>	<p>Whilst MagtiCom holds the strongest market position in terms of mobile revenue for mobile services at c. 45%, which primarily results from holding the largest share of mobile subscribers of c. 40% until Aug 2020 (Figure 1), it is key to note that MagtiCom does not control the market since it holds less than 50% of the market share.</p> <p>VEON's focus on mobile data and the launching of relatively cheaper mobile data offers, has significantly contributed to the increase in the number of mobile internet subscribers. The market leader in the mobile internet sector is Silknet, holding a market share of 36% as at Aug 2020.</p> <p>From a revenue point of view for mobile internet, MagtiCom accounts for the largest share followed by Silknet.</p> <p>The issue of customer outflow is dealt with in Item number 4.</p>

Item no	Response Question	Point number	Paragraph reference	GNCC Assertion/ <i>Opinion/Conclusion</i>	Our opinion/conclusions
5	1	2	2 nd	<i>the third operator (Veon Georgia) has failed to increase the market share of the total revenues from mobile services and continues to remain in a low-price niche where competition is low</i>	<p>Silknet offers the largest selection of plans with seven bundles starting from 750MB at Eur 1.27 to 20000MB at Eur 9.51. MagtiCom was identified as the only service provider to offer unlimited mobile internet at a price of Eur 47.54 for 30-days. Therefore, this implies that there does not seem to be a basis for tacit collusion when it comes to pricing. VEON distinguishes itself from its competitors by offering more data for the same monthly tariff.</p> <p>The various Hybrid bundles offered by each service provider highlights how, collectively, the current operators offer consumers in Georgia a large variety of options that are packaged and priced differently. The movements shown in Figure 4 and Figure 5 provide robust evidence of customer flow into the network of Veon and demonstrates how the outflow in the subscribers of MagtiCom and Silknet resulted in the inflow to the third operator. Accordingly, the Commission's conclusion that there is "no customer flow into the network of the low-price operator (Veon)" is incorrect.</p>
6	1	2	4 th (last)	<i>The technical process of porting is relatively difficult and the Commission is working hard to streamline the process.</i>	<p>Mobile number portings are effected within 24 hours. The movements observed over the period 2013 to 2019, imply enhanced competition (Refer to Figure 12) among network operators. Moreover, the high degree of changes in the market shares of the subscriber base, is a clear indication that mobile customers have been responding to the various tariff plans which have been launched, and number portability has facilitated the process of switching from one operator to the other. This evidence nullifies the GNCC argument that the technical process of porting is relatively difficult.</p>
7	2	2	1 st	<i>These points looked into various structural and market entry barriers such as the availability of frequency resource, high profit margin, investment in infrastructure.</i>	<p>Spectrum is not a constraint for allowing a new MNO wanting to invest in its own mobile network infrastructure in the foreseeable future, since a number of spectrum bands remain unassigned.</p>
		3	2 nd		<p>The capital expenditure to invest in a new infrastructure is not deemed as a barrier to entry, as indeed a third operator, VEON has successfully entered the market in 2007. In that respect, VEON did not find the duplication of an infrastructure so hard to the extent that it was precluded from entering the market and also managed to acquire 25.5% of the market share of mobile subscribers.</p>
	3	3	5 th		
8	2	1	2 nd & 3 rd	<i>The Georgian telecommunications market had failed for years to negotiate on commercial terms with the operators with significant market power to introduce MVNOs. The Commission does not intervene into the tariff regulation, leaving the pricing aspect on commercial terms between the operators.</i>	<p>Magticom has never refused to follow-up on serious enquiries to negotiate commercial terms for MVNO.</p> <p>if there is competition between the MNOs and they are able to serve the various niches an MVNO proposes to target, the business case may not exist for an MVNO.</p> <p>the GNCC can intervene and the methodology which must be applied is the "Retail Minus" method. Therefore, this indirectly implies that the pricing aspect between the operators is regulated by the GNCC and is not intended to be "freely" achieved on a commercial base.</p>

Item no	Response Question	Point number	Paragraph reference	GNCC Assertion/ <i>Opinion/Conclusion</i>	Our opinion/conclusions
9	2	2	1 st	<i>The ITU recommendations also deal with the fact that the Access Directive (2002/19/EC) does not make the existence of the MVNO access regulation on the mobile network for EU countries a mandatory requirement, leaving the matter within the margin of appreciation of national regulators.</i>	The source used by GNCC is in no way a recommendation or a guideline issued by the ITU. This article does not hold any legal standing by way of regulation, guideline or recommendation. References made to an article based on events which occurred 20 years ago in justifying a current market regulation of this significance, are baseless. Furthermore, the GNCC quoted only parts of the article that were relevant to its intentions and refrained from citing other sections in the article. For instance, in this article a word of caution was provided as it is specifically mentioned that, MVNOs could damage incentives for MNOs to invest in infrastructure, particularly in the early stages of investment. This is more so in today's current environment where technology has continued to evolve and advance and an investment in 5G is becoming a reality.
		3	2 nd	<i>Give regard to the ITU recommendation stating that if the EBITDA of a mobile network operator on the telecommunications market exceeds 25%, European regulators may introduce the MVNO access regulation.</i>	
10	2	5	3 rd	<i>By using the <u>Three Criteria Test</u>, the GNCC had assessed all the necessary preconditions.</i>	On the basis of the three-criteria test and the framework directive and guidelines issued by the Commission with regard to determination of joint dominance or whether there exists SMP identified in the relevant market on the basis of meeting the three criteria cumulatively , the resolution of the GNCC remains doubtful that the three MNOs in Georgia are found to have SMP and therefore the introduction of MVNO is the favourable next step in regulation.
11	3	1	2 nd	<i>According to the international standard, any index higher than 2500 is indicative of high concentration, and it is 3900 for Georgia</i>	GNCC made reference to the market environment of more than 18 years ago when MVNO first entered countries when mentioning the Netherlands, Denmark and Great Britain. This comparative basis is not adequate since the market conditions pre-existing at the time of introduction was very different from today's market. Furthermore, Georgia's placing on the world map in this context cannot be disregarded. As set out in Figure 14, Georgian HHI index in 2018 is lower than the rest of the world which is in the region of 4,000 points.
12	5	1	5 th	<i>MVNOs will effectively promote competition and eventually have a positive impact on ARPU and reflect on the revenues of operators too.</i>	The introduction of MVNOs will not necessarily reflect in higher ARPUs for the operators. It is noteworthy mentioning that since prices for mobile services in Georgia are already significantly lower when compared to the European markets (refer to Item 3 of this document), the resulting average ARPU earned by Georgian mobile operators is also low. In fact, ARPU is estimated to be 4.5 times lower (in 2018) than the average ARPUs earned in Europe (see Figure 16)
13	7	2	1 st	<i>GNCC will establish necessary security preconditions similar to those set for the authorized undertaking currently operating on the market. The resolution poses no additional risks to national security.</i>	MVNOs face serious security threats due to inadequate security practices, requirements and capabilities, which are generally weaker than those of a traditional MNO. Signalling systems are prone to intruders who exploit their flaws and vulnerabilities to intercept calls and SMSs, bypass billing, steal money from mobile accounts, or affect mobile network operability.

Question 1 of the Response - The advisory documents allege that “in terms of price, the Georgian mobile communications market is quite affordable.”

1. Introduction, 2nd paragraph

“...some of the consulting companies used an analysis of the tariffs of the smallest operator (Beeline Georgia) on the Georgian telecommunications market that by that time (2019) had not even been known as an operator with significant market power”.

A market analysis, particularly one which is to form the basis of an important market decision, **should consider all factors and all the market players operating within the relevant segment of the market.** In accordance with the European Commission’s Guidelines on significant market power (“SMP Guidelines”), “*Market definition is not a mechanical or abstract process but requires the analysis of all available evidence of past market behaviour and an overall understanding of the mechanics of a given sector*”. Furthermore, on the basis of finding single or collective significant market power requires National Regulatory Authorities (NRAs) to determine whether the underlying retail market(s) is/(are) prospectively competitive in the absence of wholesale regulation and whether any lack of effective competition is durable¹.

The third operator, VEON, operating under the brand “Beeline” was registered in Georgia in 2003 and launched its first mobile services in 2007. Since then Veon has invested in its own infrastructure and has been playing a significant role in bringing in effective competition in the retail market.

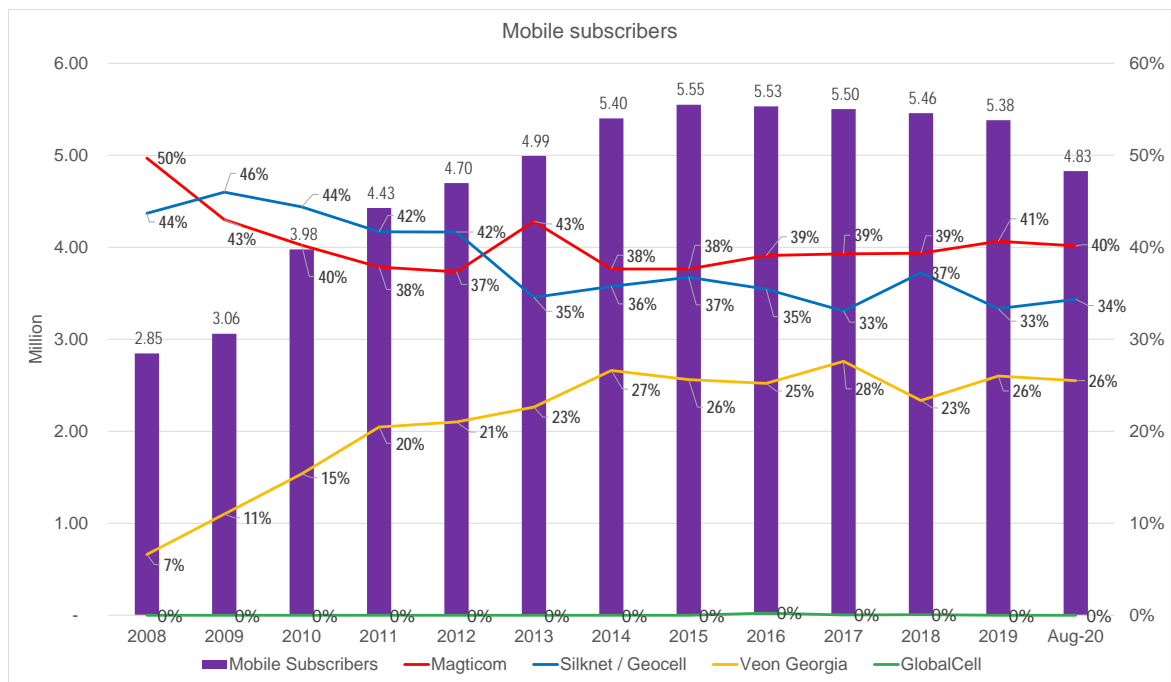


Figure 1: Market shares of mobile subscribers [Source: GNCC]

Shortly after entering the mobile market, by 2008, VEON managed to acquire 6.6% share of the subscribers and for the first time MagtiCom’s market share of subscribers decreased. Over the period 2008 to August (“Aug”) 2020, VEON experienced the greatest increase in the number of subscribers – an increase of 5.6 times, from 0.19mn in 2008 to 1.23mn in Aug 2020, effectively capturing 25.5% share of the total subscribers and 18% of revenues of the mobile market. Therefore, despite being the smallest MNO, VEON stimulated

¹ European Commission: “Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services”

competition within the mobile market, which competition cannot be ignored primarily for the following two reasons:

1. Veon invested in its own infrastructure and consequently any competition that was brought about by Veon is considered durable since it has to recover the investment over time; and
2. Upon consideration of the retail market, the SMP guidelines refer to prospective competition. To date, Veon secured one-fourth of the subscribers and almost one-fifth of the revenues of the mobile market.

In view of the above, the significance of Veon cannot be ignored when analysing competition and its effect on the market. Moreover, in June 2020², the Commission conducted a retail mobile voice service market study where tariff offers were compared amongst the three key market players (Magticom, Silknet/Geocell and Veon Georgia) [Vide Point 2, 1st Paragraph]. Therefore, the Commission’s basis for its assertions are not consistent.

2. Point 1, 2nd paragraph

“At the order of the Communications Commission, such well-known analytical companies as Strategy Analytics and Teligen Pricing prepared a study of retail tariffs on the fixed and mobile telecommunications market for the 2nd quarter of 2020. The study used the globally accepted benchmarking method across the OECD countries. The study clearly demonstrated that the retail tariffs mobile services in Georgia are higher than average (among 37 OECD countries) for the most used services, and as the volume of consumption is increasing, Georgia’s position is downgrading in terms of the rate of tariffs offered by mobile operators. The figures below (N1 and N2) show that the prices of Magticom and Geocell (Silknet) for mobile and voice services in Georgia are much higher than those for the services offered by the operators in leading European countries”.

Whilst in its response GNCC compares retail tariffs in Georgia to studies prepared by renowned companies, in its commentary it benchmarks Georgia to OECD countries. However, it is imperative to note that such an analysis is restrictive due to the fact that Georgia does not form part of the OECD. In view that Georgia is harmonising its current legislation in the field of electronic communications with the European legislation and regulations and the GNCC has been sharing the practice of EU Member states³, it is much more relevant to carry out price comparisons with other European countries.

However, prior to delving into any international benchmarking exercise and also because the key underlying assertion made by GNCC to Question 1 counter argues affordability, it is first important to understand the retail pricing structures and their evolution over time to provide the consumer with value for money.

The retail voice market experienced a capping of the basic standard (pay as you go) tariff at 24 Tetri. In 2019, the GNCC conducted a market research on the fixed and mobile communications market to determine the extent to which the price increase by the one of the largest market players was justified. As a result of the fixed and mobile services market research, the 24 Tetri tariff cap for voice retail services was also cancelled and the increase in price was deemed to be unnecessary⁴.

Mobile Voice Plans	Prior 2020 GEL	Aug 2020 onwards GEL	Validity
30 min, no Data, no SMS	5.00		30 Days
60 min, no Data, no SMS		5.00	30 Days
80 min, no Data, no SMS	10.00		30 Days
180 min, no Data, no SMS		10.00	30 Days
400 min, no Data, no SMS	30.00		30 Days
1000 min, no Data, no SMS	60.00		30 Days
UNLIMITED On-net min, no Data, no SMS		10.00	30 Days
UNLIMITED any network min, no Data, no SMS		14.00	30 Days

Table 1: MagtiCom Mobile Voice Plans [Source: MagtiCom]

Whilst MagtiCom offers a 'Pay As You Go' tariff of 24 tetri, it offers a variety of tariff plans (as shown in Table 1), which are priced much lower than 24 Tetri.

Revised tariff plans provide for 60 minutes at the same price at which 30 minutes were offered prior Aug 2020. Apart from the Standard Tariff Plans customers are offered low, behaviour-based options such as “Zero” / “Zero+”,

² GNCC Response document

³ GNCC 2018 annual report page 61. <https://www.comcom.ge/uploads/other/4/4120.pdf>

⁴ GNCC 2019 annual report page 30. <https://comcom.ge/uploads/other/5/5875.pdf>

that has “GEL0” minute price on on-net calls, the latter option dominating the market. **The average Voice Tariff actually works out at c. 4 Tetri (that is 83% lower than the 24 Tetri, price capping.** This proves that MagtiCom offers diversified Voice Oriented Tariff Plans tailored to High / Middle / Low Segment customer to meet the priorities of needs and wants of different customer groups.

With respect to data, instead of setting Standard Prices or Nominal changes to the tariff plans, MagtiCom offers the market different promotions at periodic marketing campaigns; such as the most recent “Wonder Days” which offers special price Internet / Voice Bundles every Sunday (6 GB for 6 GEL / 10 GB for 10 GEL / 150 MIN for 5 GEL, etc). This therefore explains the infrequent price movement, which however does not exclude that positive consumer outcomes are still being achieved. Moreover, as set out in Table 2 on Mobile Data pricing, price reductions still occurred:

- 70% reduction in 2015 in the plan of ‘0 min, 0.5 GB, no SMS’,
- 67% reduction in 2015 in the plan of ‘0 min, 1 GB, no SMS’; and
- 50% reduction in 2015 in the plan of ‘0 min, 15 GB, no SMS’.

Mobile Data Plans	2012 GEL	2013 GEL	2015 GEL	2019 GEL	Validity
0 min, 0.03 GB, no SMS	3				30 Days
0 min, 0.5 GB, no SMS	10		3		30 Days
0 min, 1 GB, no SMS	15		5	5	30 Days
0 min, 5 GB, no SMS	30			12*	30 Days
0 min, 15 GB, no SMS	60		30		30 Days
0 min, Unlimited GB, no SMS		150	150	150	30 Days
0 min, 2 GB, no SMS			7		30 Days
0 min, 4 GB, no SMS			10		30 Days
0 min, 6 GB, no SMS			15		30 Days
0 min, 3 GB, no SMS				9*	30 Days
0 min, 20 GB, no SMS				30*	30 Days
0 min, Unlimited GB, no SMS				1**	1 Day
0 min, Unlimited GB, no SMS				5**	7 Day
0 min, Unlimited Night GB, no SMS				5**	30 Days
*Applicable from Feb 2019					
**Applicable from Dec 2019					

Table 2: MagtiCom Mobile Data Plans [Source: MagtiCom]

In relation to hybrid bundles, offers are usually launched as a promotion for a limited time period, for example the three summer offers entitled “everything unlimited” that included:

1. Unlimited Calls, Unlimited SMS, Unlimited Internet for 1 day at 3 GEL
2. Unlimited Calls, Unlimited SMS, Unlimited Internet for 7 day at 10 GEL
3. Unlimited Calls, Unlimited SMS, Unlimited Internet for 30 day at 45 GEL

However, there are plans as shown in Table 3 that commenced either in the year 2014, in 2019 or in 2020 and are still valid and have been retained till to date.

Hybrid Plans	2014 GEL	2019 GEL	2020 GEL	Validity
Unlimited min, Unlimited GB, Unlimited SMS (from Apr 2014)	60.00			30 Days
Unlimited min, 0.1 GB, 100 SMS (from Sep 2019)		2.00		1 Day
500 min, 0.5 GB, Unlimited SMS (from Oct 2014)	25.00			30 Days
Unlimited on-net min, 0.5 GB, Unlimited SMS (from June 2019)		10.00		30 Days
Unlimited on-net min, 1 GB, Unlimited SMS (from May 2019)		5.00		7 Day
Unlimited min, 1 GB, Unlimited SMS (from Nov 2014)	25.00			30 Days
Unlimited min, 3 GB, Unlimited SMS (from Feb 2020)			30.00	30 Days

Table 3: MagtiCom Mobile Hybrid Plans [Source: MagtiCom]

When compared to the voice only or data only plans, the hybrid plans also produce positive outcomes in terms of value for money to the client. For instance, the plan established in 2014 of ‘Unlimited min, unlimited GB, unlimited SMS’ priced at GEL 60 shown in Table 3 is much more competitive when compared to the plan in place in 2012 in Table 2 of ‘0 min, Unlimited GB, no SMS’ which was priced at GEL 150. Another example is the ‘Unlimited on-net min, 0.5 GB, Unlimited SMS’ at GEL10 as compared to ‘UNLIMITED On-net min, no Data, no SMS’ priced at GEL 10.

Having established that the Magticom plans are producing positive outcomes in terms of value for money to the client and affordability, we can now move on to international benchmarking.

3. In Point 3, 3rd and 4th paragraphs, the GNCC states that:

“As for the mobile Internet prices in Georgia, according to the data published by Visual capitalist, the worldwide rating of countries for the cost of 1 gigabyte mobile data shows that out of 155 countries, Georgia ranks 31st and is more expensive for a direct unit (rated) price than such leading countries as Denmark, France and Poland <https://www.visualcapitalist.com/cost-of-mobile-data-worldwide/> (Table N3).”

AND

“The studies mentioned above show that neither the prices are low (even compared to the international benchmark) nor competition is properly ensured. Therefore, to ensure competition on the telecommunications market and offer better services at affordable prices to customers, certain actions need to be implemented and that is what the introduction of the MVNO regulation is intended for.”

The ranking in the 31st position amongst 155 countries in 2020, places Georgia in the upper quartile of the countries having the cheapest prices with Denmark and France in the 27th and 28th place respectively and Georgia being only three and four places away from them.

We traced the originating source⁵ of this data⁶ for the purpose of carrying further analysis on how Georgia compares on the average price of 1GB of mobile data at US\$ 0.93 against countries which have MVNOs.

We compared the rankings to the countries mentioned in the GNCC response, specifically Point 3, in reply to Question 4, wherein the Commission stated that:

“the introduction of MVNOs to the telecommunications markets of Austria, Germany and Ireland has had a positive effect in terms of price liberalization as well as improved competitive environment”.

⁵ cable.co.uk: "Worldwide mobile data pricing: The cost of 1GB of mobile data in 228 countries". <https://www.cable.co.uk/mobiles/worldwide-data-pricing/>.

⁶ Data from 5,554 mobile data plans in 228 countries were gathered and analysed by Cable.co.uk between 3 February & 25 February 2020. The average cost of one gigabyte (1GB) was then calculated and compared to form a worldwide mobile data pricing league table

It results that all three countries are ranked behind Georgia in the ranking, positioned at 43rd (Austria), 140th (Germany) and 55th (Ireland) place.

The GNCC further states in Point 5 of Question 5 “that Germany boasts of having 135 MVNOs” and yet Germany ranked amongst the most expensive countries at 140th place. This is ample evidence that there is no clear and simple correlation that MVNOs bring about effective competition and benefit to consumer outcomes.

The case of the mobile market in Ireland⁷ is very particular and relevant to Georgia. Ireland’s market comprises three MNOs and a small number of MVNOs where MVNOs are considered to be of the most successful in Europe. Nevertheless, the MVNO market has never taken off with only a handful of small operators that, still, never managed to put a dent in the customer base of the market leaders. The reason for this is that, in attempt to gain market shares, the MVNOs started offering large data packages at low prices, as is happening in Georgia. Over time, the market followed suit and mobile plans became cheaper. This situation gave rise to two things:

- Proof that there was an element of competition in the market; and
- It left MVNOs to struggle to remain profitable.

In the case of Ireland, the three MVNOs each offered good customer service, loyalty schemes and access to 4G, which was not even available to some MVNO customers. Another issue was poor network connectivity, making it even easier for customers to switch back to an MNOs.

Moreover, countries which GNCC studied their experience of encountering barriers to entry in the telecommunications market, such as Finland, Norway, Czech Republic, and Cyprus all ranked behind Georgia at 87th, 169th, 187th and 214th place, respectively. Indeed, all of them are far behind Georgia’s ranking, which continues to prove that the pricing in Georgia is very competitive and can in no way be deemed as ‘high’.

Furthermore, in a cross-country comparison with the EU 28 countries, Georgia ranks in 5th position in 2020 (see Figure 2), just after Denmark and France and before Romania, Austria and Ireland. In addition, in 2020, the average price of 1GB decreased by 72% from \$3.33 in 2019 wherein it previously ranked at 10th place. Therefore, as opposed to the GNCC affirmations that prices are not competitive, this study clearly shows that in both years Georgia ranked amongst the upper quartile of countries offering the cheapest prices in the EU28, and became even competitive than its European counterparts in 2020.

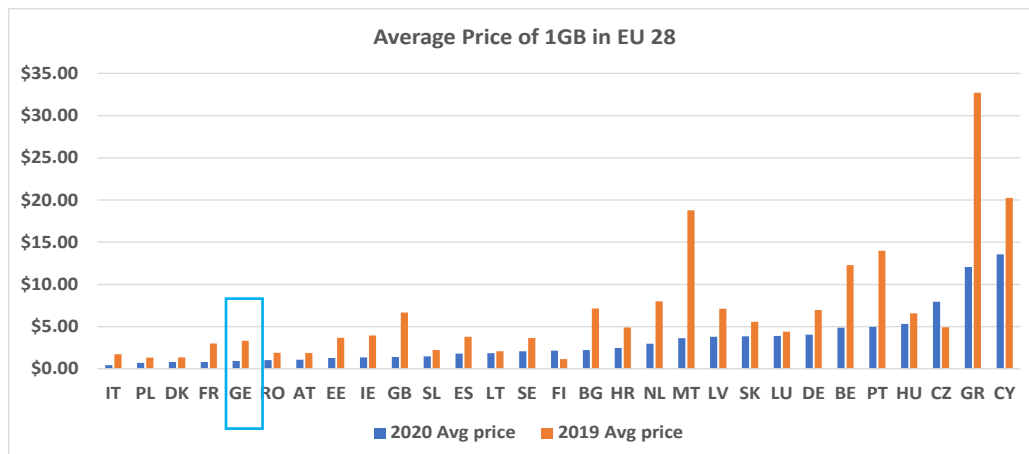


Figure 2: Average Price of 1 GB in EU28, 2020 [Source: cable.co.uk]

⁷ Luke Kehoe: ‘The MVNO Flop: Why Ireland’s MVNOs have failed to make an impact’, dated 2nd August 2018.

To further prove that Magticom is very competitive when compared to its European counterparts, comparisons of MagtiCom’s tariff plans in 2019⁸ for mobile data and hybrid bundles were made with the EU28 countries.

More specifically we have made comparisons to the baskets of the EU28 countries in the EC 2019 report on Mobile Broadband Prices⁹. For instance, in relation to mobile data bundles, Georgia ranked amongst the cheapest for the 5GB and 20GB baskets. In relation to the 2GB basket, the compared prices for MagtiCom are for 3GB rather than 2GB, in which case it is still competitive and ranks just above Poland, which is the least expensive country.

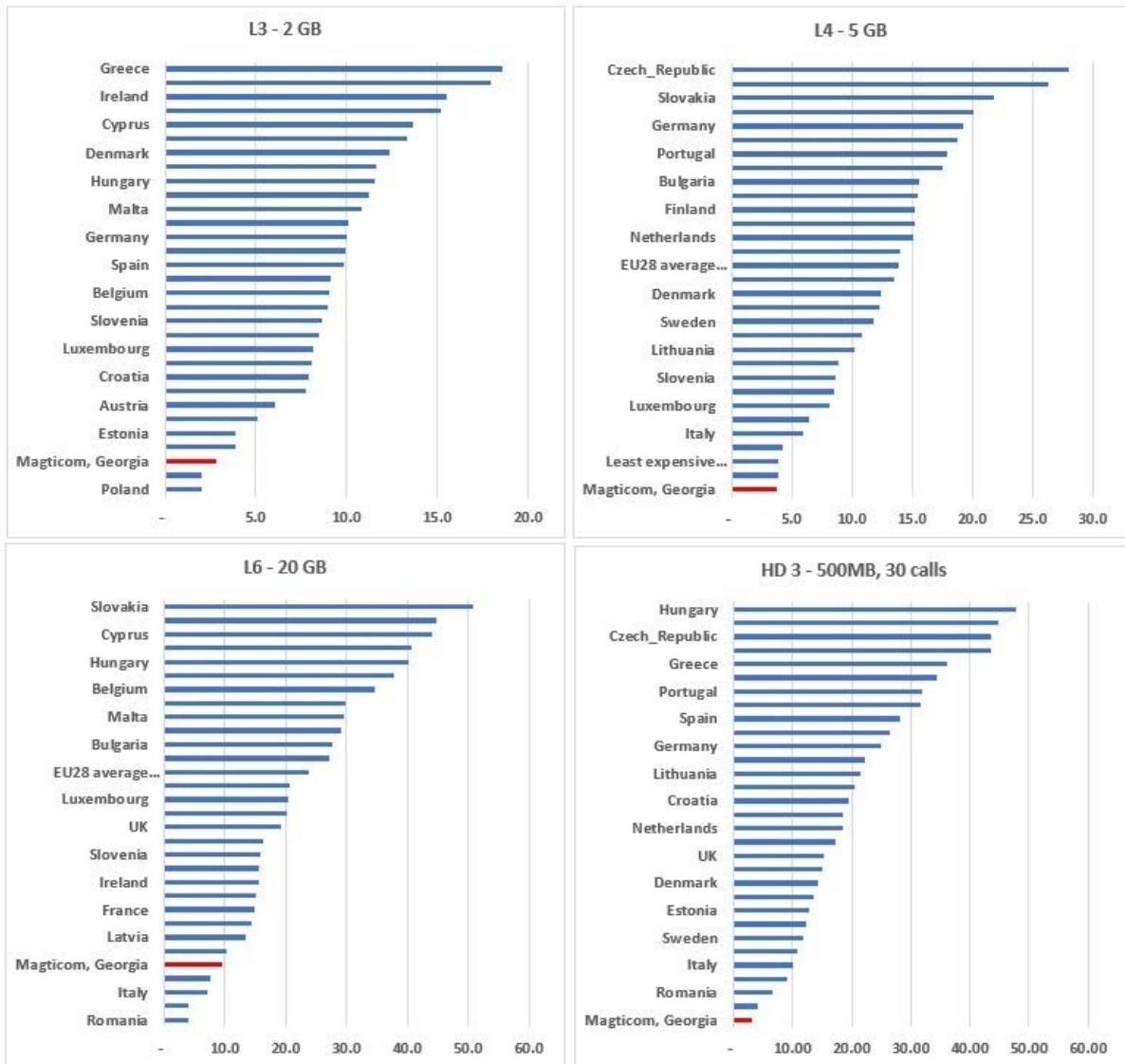


Figure 3: Comparisons to the EU 28 mobile baskets, 2019 [Source: Mobile Broadband Prices in Europe 2019, MagtiCom]

In relation to hybrid bundles, a very close comparison could be made to the ‘500MB, 30 calls’ basket, wherein MagtiCom also offers unlimited on-net calls and unlimited SMS in this band of 500MB. Offering unlimited calls and SMS over and above its European counterparts, MagtiCom, with this basket is still placed as the cheapest country amongst the EU28 countries.

⁸ A yearly average exchange rate of EUR/Gel 3.15526082 was used. <https://www.nbg.gov.ge/index.php?m=582&lng=eng>

⁹ European Commission: ‘Mobile Broadband Prices in Europe 2019’

The above cross-country analysis therefore concludes without any doubt that the MNO, enjoying circa one-third of the market in Georgia, as represented by MagtiCom, is very competitive amongst its European counterparts. Given this outcome, GNCC's assertions that - Georgia's prices when compared to other EU member countries are not affordable or not competitive enough - are absolutely unfounded.

Therefore, **it is clearly evident that Georgia's mobile retail prices are highly competitive when compared to operators in leading European countries and this is in total contradiction to the GNCC's conclusions that prices are much higher than those offered by leading European countries. Our conclusion therefore is that the prices in Georgia stand at the lowest of the price range in Europe and therefore are extremely competitive. In view of the differing conclusions reached with regard to competition and quality of services, the Commission's decision to take certain actions upon the basis of its conclusions to enforce the introduction of the MVNO regulation will not reach the intended scope to improve competition and quality of service. As set out in Item 9, the opposite of the GNCC's intentions may actually happen.**

4. Point 2, 1st Paragraph and last Paragraph

"high-price operators (Magticom and Silknet/Geocell) still continue to hold a substantial share of the market (over 70%). In June 2020, the Commission conducted a retail mobile voice service market study to find that competition on the mobile service market is limited: the tariff offers between the two key market players (Magticom and Silknet/Geocell) and the third operator (Veon Georgia) are radically different. However, despite that, there is no customer outflow between the operators, namely, no customer flow into the network of the low-price operator (Veon)."

And

1. the rate of customer flows between the operators on the retail market is low, as there is almost no competition for affordable tariffs

Whilst not agreeing with the Commission's assertion that MagtiCom and Silknet/Geocell are high priced for the reasons outlined in the preceding section of this document, we now provide our counter view with respect to MagtiCom and Silknet/Geocell. We initially start our argumentation by taking a look at the evolution of mobile revenues over the last 10 years and how this revenue was shared amongst the three key players.

Revenue from mobile services experienced declines until 2015. Subsequently revenues started to increase albeit at a decreasing rate over the period 2018 and 2019. In terms of market shares, over the period 2010 to Aug 2020, VEON and MagtiCom increased their share by 7 p.p. and 2 p.p., respectively, whilst Silknet's market share decreased by 9 p.p. Whilst MagtiCom holds the strongest market position in terms of mobile revenue for mobile services at c. 45%, which primarily results from holding the largest share of mobile subscribers of c. 40% until Aug 2020 (Figure 1), it is key to note that MagtiCom does not control the market since it holds less than 50% of the market share.

In accordance with the SMP Guidelines (Page 9):

*"According to established case-law, very large market share held by an undertaking for some time — **in excess of 50 %** — is in itself, save in exceptional circumstances, evidence of the existence of a dominant position"¹⁰.*

And

"If the market share is high¹¹ but below the 50 % threshold, NRAs should rely on other key structural market features to assess SMP. They should carry out a thorough structural evaluation of the economic characteristics of the relevant market before drawing any conclusions on the existence of SMP."

¹⁰ AKZO Chemie v Commission, op. cit., paragraph 60; Case T-228/97, Irish Sugar v Commission EU:T:1999:246, para 70, Hoffmann-La Roche v Commission, op. cit, paragraph 41, AAMS and Others v Commission op. cit., paragraph 51. However, large market share can function as an accurate indicator only on the assumption that competitors are unable to expand their output by sufficient volume to meet the shifting demand resulting from a rival's price increase. Irish Sugar v Commission, op. cit., paragraphs 97 to 104.

¹¹ The Commission's experience suggests that dominance is not likely if the undertaking's market share is below 40 % in the relevant market..

Accordingly, it is not justified to combine the market share of Magticom and Silknet/Geocell and refer to them as high-price operators holding over 70% of the market. For a meaningful analysis, each operator is to be treated independently.

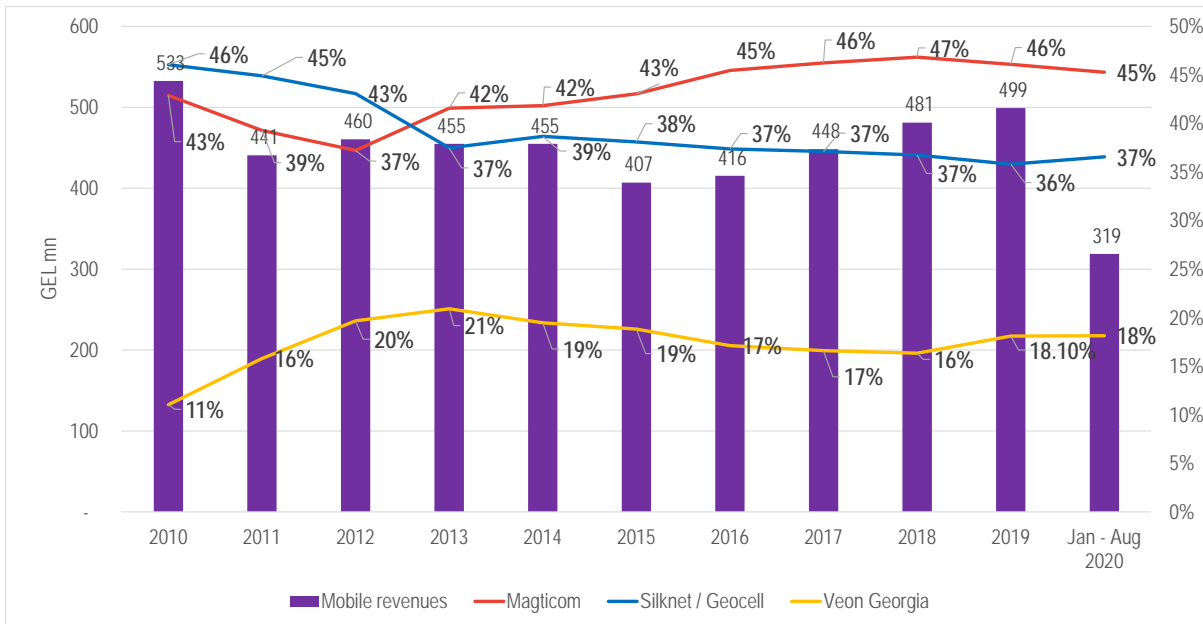


Figure 4: Market shares of revenue from mobile services [Source: GNCC portal]

Since 2010, the market for internet subscribers has been undergoing significant movements (Figure 5), with none of the players holding more than 50% of the market shares in terms of revenue (Figure 8). VEON’s focus on mobile data and the launching of relatively cheaper mobile data offers, has significantly contributed to the increase in its number of mobile internet subscribers - from 1.59mn in 2013 up by 78% to 2.8mn in Aug 2020, resulting in a market share of 30%.

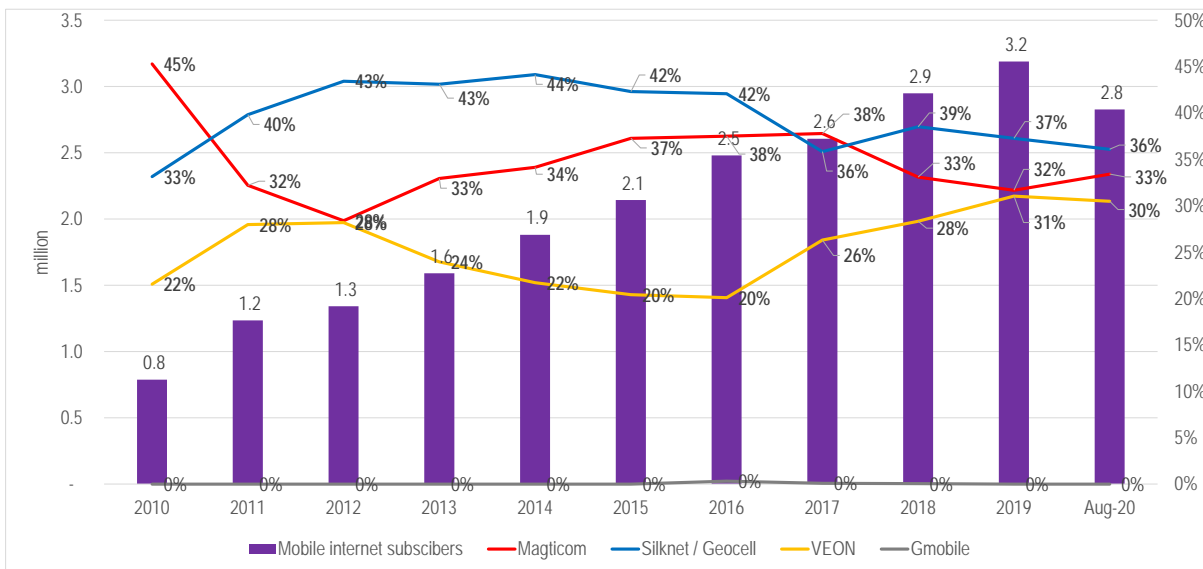


Figure 5: Market shares of mobile data subscribers [Source: GNCC 2018 annual report, GNCC portal]

As a result of its focus on mobile data and the launching of relatively cheaper mobile data offers, in 2019 VEON and Magticom’s share of mobile internet subscribers were very close at c. 31%.

As a result, of VEON’s positioning in the market for mobile internet, the percentage of mobile subscribers using mobile data is much higher than its competitors (Figure 6). Over the period 2017 to 2019, the operators experienced an increase in their mobile internet subscriber base, with VEON achieving the largest increase. By Aug 2020, MagtiCom experienced an increase in its mobile internet subscriber base as opposed to Silknet which experienced a drop of 4%.

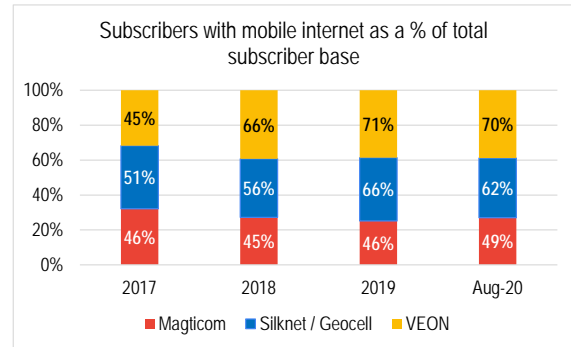


Figure 6: Subscribers with mobile internet as a % of total subscriber base [Source: GNCC portal]

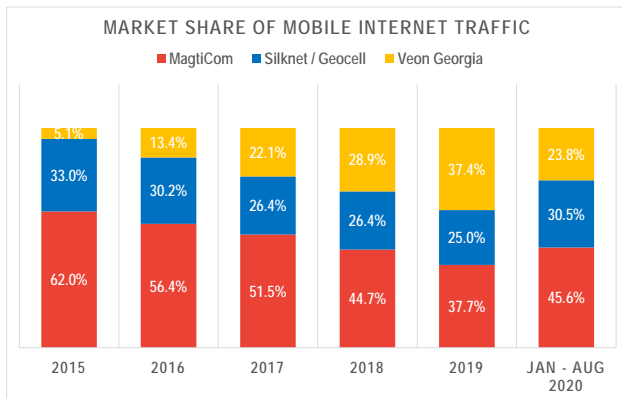


Figure 7: Market share of mobile internet traffic [Source: GNCC portal]

Again, notably VEON has significantly increased its market share in terms of mobile internet traffic (Figure 7) from 5.1% in 2015 to 23.8% in Aug 2020, which corresponds to loss in market share of MagtiCom and Silknet of 16.3% and 2.5%, respectively. MagtiCom’s strong position in the mobile internet traffic is consequent to holding a greater share of subscribers from Government and corporate entities (which are the greatest mobile internet users) and not as a result of limited competition.

From a revenue point of view for mobile internet, MagtiCom accounts for the largest share followed by Silknet. As shown in Figure 8, the decrease in the market share from mobile internet revenue by MagtiCom and Silknet of 1% and 7% from 2018 to Q3 2019, respectively, was gained by VEON. Since 2017 MagtiCom lost 4% whilst MagtiCom lost 3% of the market share, a combined loss of 7% won by VEON.

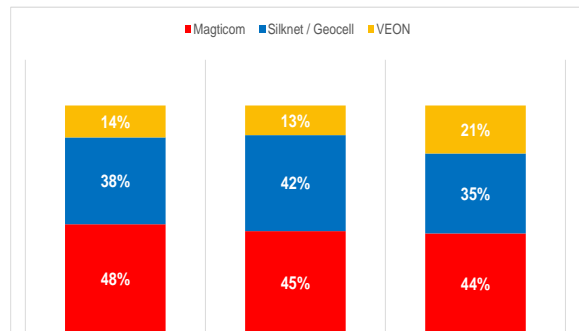


Figure 8: Share of mobile internet revenues [Source: GNCC Resolution]

Furthermore, as already discussed in Item 1, over the period 2008 to Aug 2020, VEON experienced great increase in the number of subscribers – a multiple of 5.6 times, from 0.19 mn in 2008 to 1.23mn in Aug 2020, capturing a total of 25.3% share of the total subscribers. On the other hand, over the same period, MagtiCom’s market share decreased from 49.7% to 40.1%, whilst that of Silknet/Geocell’s shares decreased from 43.7% in 2008 to 34.4%.

The final element that has to be assessed prior to concluding whether competition is effective in the mobile service market is the range of product packages and corresponding tariff offers. This element is considered in the next Item.

5. Point 2, 2nd paragraph

The Commission concluded that:

“...there is no essential competition in terms of prices. This is well demonstrated even by the fact that despite a substantial growth in the customer base and traffic, the third operator (Veon Georgia) has failed to increase the market share of the total revenues from mobile services and continues to remain in a low-price niche where competition is low (customer growth from 19.7% to 25.2% led to only a 2% growth in the market share)”

As a starting position, there must be a common understanding for analysing competition that the different elements of pricing, customer base, volume of traffic, product offerings and revenues generated from mobile services cannot be treated in isolation and the combined results of pricing, customer base and volume yield the overall market revenue.

We shall therefore look into a comparison of product offerings on the market and use this basis to assess competition. New product packages¹² have been and are being launched and these are relatively different in the structure and tariff plans.

In terms of variety of data-plans, we conducted a high-level comparison of market offers during Q1 of 2020. Silknet offers the largest selection with seven bundles starting from 750MB at Eur 1.27 to 20000MB at Eur 9.51. MagtiCom was identified as the only service provider to offer unlimited mobile internet at a price of Eur 47.54 for 30-days. Therefore, this implies that there does not seem to be a basis for tacit collusion when it comes to pricing.

Figure 9 clearly shows that VEON distinguishes itself from its competitors by offering more data for the same monthly tariff. A comparison for a 30-day bundle shows how the pricing structure of VEON is focused on internet usage, since its target market is the youth segment. Veon offers double the amount of data (2000MB) when compared to MagtiCom and Silknet (1000MB), for the same price of Eur 1.58. This indicates that prior to its entry on the market, competition may have been limited and VEON is now fiercely competing by differentiating its prices. The same is said for larger data bundles, where for a 30-day price of Eur 4.75, VEON customers have 10000MB, whilst Silknet offers only 8000MB. MagtiCom, on the other hand does not cater from this range and offers a much larger bundle of 20000MB for Eur 9.51, which is still 20% higher than Veon's 30000MB bundle selling at Eur 7.92.

Comparison of retail prices for mobile internet in Georgia

Mobile Internet	MB	Magticom Eur	Silknet Eur	Veon Eur
30 Day	750		1.27	
30 Day	1000	1.58	1.58	
30 Day	1200		1.90	
30 Day	2000			1.58
30 Day	3000	2.85	2.85	
30 Day	4000			2.85
30 Day	5000	3.80	3.80	
30 Day	8000		4.75	
30 Day	10000			4.75
30 Day	20000	9.51	9.51	
30 Day	30000			7.92
30 Day	Unlimited	47.54		

Average for Silknet

Figure 9: Comparison of some of the current retail prices for mobile internet in Georgia [Source: MagtiCom]

SMS's	Qty	Magticom Eur	Silknet Eur	Veon Eur
30 Day	100	0.32		
	150	0.48	0.48	
	400	0.79		
	500		0.95	
	1000	1.58		
	Unlimited	3.17	2.22	1.58

Figure 10: Comparison of retail prices for SMS in Georgia [Source: MagtiCom]

(Mag) to Eur 0.95 for 500 SMS (Silk) and Eur 1.58 for 1,000 SMS (Mag).

The 30-Day tariff plans for voice bundles start at bundles of 30min from MagtiCom at Eur 1.58 to Eur 45.07 for VEON's Unlimited plan. MagtiCom offers the largest choice of bundles (5) followed by Silknet (4) and VEON (3). VEON is the only service provider to offer an unlimited plan followed by Silknet that has a plan at Eur4.75 for 500minutes and MagtiCom that offers only 150min for Eur 4.75.

The same trend can be seen in the prices for the other services, namely, SMSs (Figure 10) and voice bundles (Figure 11). VEON is the cheapest provider at Eur 1.58 per month for unlimited SMSs which is 50% lower than the rate charged by MagtiCom. VEON's customers are however, limited to its one 'Unlimited' plan, whilst MagtiCom offers 4 additional plans of 100, 150, 400 and 1000 SMS's, whilst Silknet offers 2 additional plans of 150 and 500 SMS's. Their rates range from Eur 0.32 per 100 SMS

Voice Bundles	Min	Magticom Eur	Silknet Eur	Veon Eur
30 Day	30	1.58		
	50		0.95	
	80	3.17		
	100		1.58	0.63
	150	4.75		
	200			0.63
	300		3.17	
	400	9.51		
	500		4.75	3.17
	1000	19.02		
	Unlimited			5.07

Figure 11: Comparison of retail prices for SMS and Voice in Georgia [Source: MagtiCom]

¹² A yearly average exchange rate of EUR/Gel 3.15526082 was used. <https://www.nbg.gov.ge/index.php?m=582&lng=eng>

For both services, VEON offers more affordable plans, ranking it cheapest among the three MNO's, followed by Silknet and Magticom. On the other hand, both MagtiCom and Silknet offer a wider variety of plans, as opposed to VEON that provides less variety for its customers.

The various Hybrid bundles offered by each service provider highlights how, collectively, the current operators offer consumers in Georgia a large variety of options that are packaged and priced differently. With the number of mobile internet users growing rapidly due to the increasing media literacy, smartphones, demand for online information and the dynamic behaviour of mobile users for telecoms services¹³; together with the average monthly minute of use ("MOU") in 2019 having remained at the same levels in 2018 at 167 minutes¹⁴, subscribers would be more interested in data and hybrid bundles, particularly since mobile data usage is continuously increasing. In addition, we note that increasing 'value for money' is being offered to the end consumers both through revisions in tariff plans and the various promos and campaigns issued from time to time.

Therefore, the foregoing amply proves that the different tariff offered by the MNOs are radically different and they have indeed instigated movements in market shares triggered by flows of customers shifting amongst the MNOs. In this Item we have clearly shown that the elements for competition cannot be treated in isolation but the different aspects and the holistic impact on the market must be considered prior to reaching a conclusion.

The movements shown in Figure 4 and Figure 5 provide robust evidence of customer flow into the network of Veon and demonstrates how the outflow in the subscribers of MagtiCom and Silknet resulted in the inflow to the third operator. Accordingly, the Commission's conclusion that there is "*no customer flow into the network of the low-price operator (Veon)*" is incorrect.

The GNCC states that "*Veon continues to remain in a low-price niche where competition is low*". In 2007, VEON (Beeline) entered the market, providing only mobile services and has over the last 12 years, captured c. 25% of the Georgian mobile service market, by positioning itself as the cheapest mobile operator by focusing on the price-sensitive, promotion-oriented segment. Consequently, its offerings comprise low-price, highly discounted offers and packages. Therefore, its market positioning appears to be the result of its mission, strategy and perception of which market segments match its risk appetite and yield the returns which are acceptable to it. However, Veon's choice of market positioning, whilst enabling it to capture market share in terms of subscribers and also a good portion of the revenue in the market, it is not contributing to grow the overall market in terms of revenues. Of course, this is a consequence of the low pricing strategy that they chose to adopt.

Therefore, the GNCC's conclusions that competition is limited notwithstanding "*radically different tariff offers*" from the third operator is unfounded, since as demonstrated herein, there have been various movements in the operators' market shares, including gains by the low-priced operator. Such movements are therefore a clear indication of a competitive market, wherein customers respond to different prices, bundles and quality offerings of the operators.

In light of the foregoing, we deem that both from a national perspective as well as at an international level, Georgia and the MNOs offer competitive consumer outcomes in terms of both prices and value for money.

6. Point 2, 4th (last) paragraph

GNCC asserts that *the technical process of porting is relatively difficult and the Commission is working hard to streamline the process.*"

At MagtiCom, mobile number portings are effected within 24 hours. Furthermore, Article 2 of the Law provides for MNP empowering users to switch MNOs at no cost and inconvenience of a change of their phone number. As set out in Figure 12, Whilst there has been a downward trend in portings from 2013 to 2016, the

¹³ GNCC 2019 annual report

¹⁴ GNCC 2019 annual report

portings have stabilised since 2017. In 2019, 52 thousand numbers were ported between MNOs, which is 3,000 more than in 2018. By September 2020, ported numbers amounted to 39,000 (simple extrapolation to full year shows that portings in 2020 will be at the same level of 2019). Since 2018, the number of port-outs of MagtiCom exceeded its port-ins. This is contrary to what Silknet has been experiencing since 2017. On the other hand, whilst Veon experienced higher port-outs than port-ins in 2017, in 2018 and for the period January to September 2020 port-ins were equal to the port-outs.

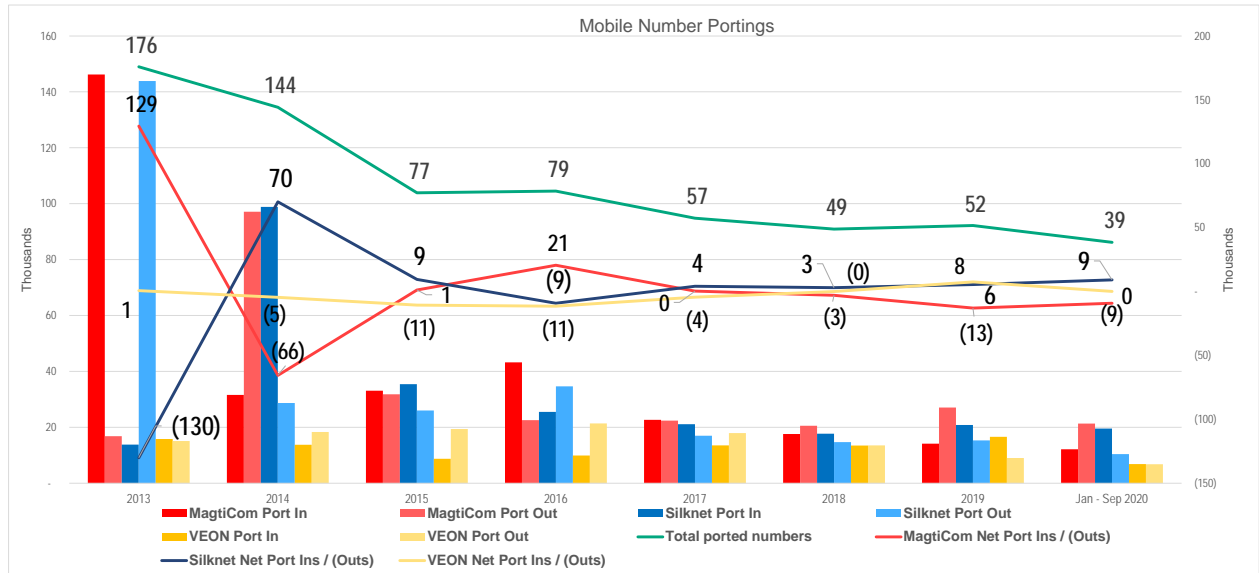


Figure 12: Mobile number portability [Source: GNCC portal, MagtiCom for Jan - Sep 2020]

The movements observed over the period 2013 to 2019, imply enhanced competition among network operators. Moreover, the high degree of changes in the market shares of the subscriber base, is a clear indication that mobile customers have been responding to the various tariff plans which have been launched, and number portability has facilitated the process of switching from one operator to the other. This evidence nullifies the GNCC argument that the technical process of porting is relatively difficult.

Question 2 and 3 of the response - The advisory documents assert that the regulatory framework was defined “incorrectly”, and the Commission mishandled the so-called Three Criteria Test.

7. Question 2: Point 2, 1st paragraph and Point 3, 2nd paragraph, and Question 3: Point 3, 5th paragraph.

“A high cost of the frequency spectrum license and the natural limitation on the available frequency resource in addition to a very high profit margin serve as the necessary precondition for introducing the MVNO regulation.

and

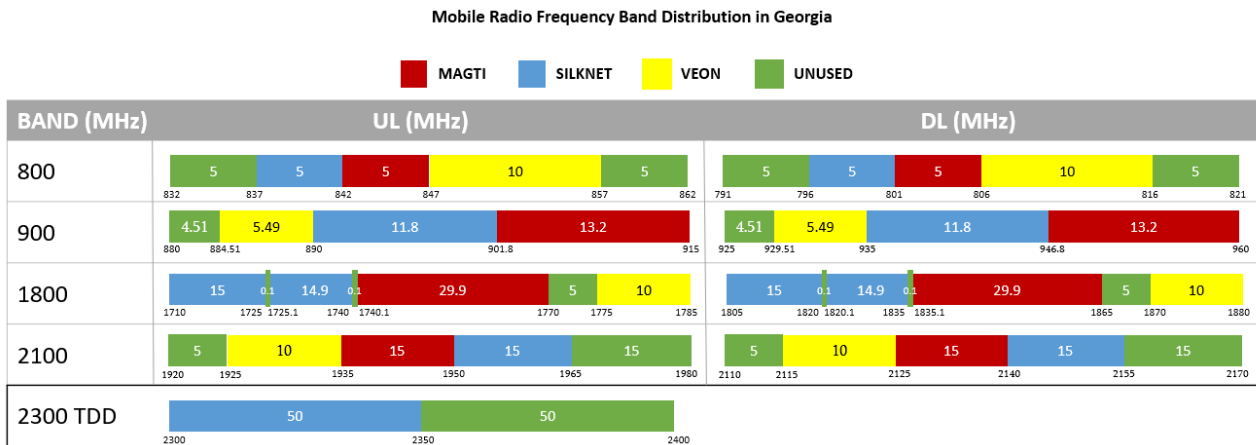
national regulatory authorities need to take into account the market entry barriers, too”.

Besides, according to the document, “the scarcity of frequency resources as well as a hard-to-double telecommunications infrastructure is also seen as a serious structural barrier.”

and

“the entry of a new telecom operator to the Georgian telecommunications market is limited due to the fact that the frequency resource for the existing technologies is limited. Consequently, there is such structural barrier as a hard-to-double infrastructure, as an alternative authorized undertaking could develop such infrastructure only on a long-term basis.”

In view of its availability, spectrum is not a constraint for allowing a new MNO wanting to invest in its own mobile network infrastructure in the foreseeable future, since a number of spectrum bands remain



unassigned. The amounts of frequencies under the Uplink (“UL”) and Downlink (“DL”) bands, which to date have not been assigned to the existing mobile operators, are set out in the figure below.

Figure 13: Spectrum allocation in 2020 [Source: MagtiCom Ltd]

In addition, the capital expenditure to invest in a new infrastructure is not deemed as a barrier to entry, as indeed a third operator, VEON has successfully entered the market in 2007. In that respect, VEON did not find the duplication of an infrastructure so hard to the extent that it was precluded from entering the market and also managed to acquire 25.5% of the market share of mobile subscribers by Aug 2020.

8. Question 2 - Point 1, 2nd paragraph and 3rd paragraph

“Although the Law of Georgia on Electronic Communications had already contained such obligation since 2005, the small and medium operators on the Georgian telecommunications market had failed for years to negotiate on commercial terms with the operators with significant market power.”

and

“Considering that despite the existence of the relevant legal framework since 2005 no MVNO services have developed on commercial terms in Georgia, the Commission thought it expedient to take effective steps. The Commission resolution of 31 December 2019 regarding the MVNO regulations specifies commercial and technical parameters of access for the network operators to provide MVNOs with such access, imposes the obligation to ensure the transparency of information, namely the time frames for the network operators to provide MVNOs with such access if so requested. It is noteworthy that with that resolution (in line with the practices of some European countries) the Commission does not intervene into the tariff regulation, leaving the pricing aspect on commercial terms between the operators.”

1. MagtiCom has never received comprehensive and sufficiently detailed enquiries from potential MVNOs for access to its network and that were worthy to actively follow up. As a result, no MVNO service could have been developed on commercial terms in Georgia and the threat of barring potential competition through the refusal of serious requests for network access does not appear to exist. Furthermore, as of today, there were no cases which resulted in the GNCC intervention to address any refusals of commercial requests or rejections by MNOs to negotiate commercial terms with MVNOs that requested access to MNOs. In addition, no claims had been made in court on matters of refusal of requests for MVNO access.
2. A request for MVNO access from an MNO is essentially a business transaction, and in a competitive market a business transaction is entered into if the commercial terms allow both parties to gain something. In a competitive market, the absence or limited number of MVNOs may indicate that

whilst opportunities for serving market niches not yet addressed by the MNOs might exist, these do not provide a sufficient rate of return at a particular point in time. In a competitive market, an MVNO that does not provide a differentiated offer or reach an untapped segment, has little chance of successfully negotiating on commercial terms with any MNO. Furthermore, due to the inherent high fixed cost which MNOs are faced with, MNOs have an incentive to increase volumes on their networks. Therefore, if a potential MVNO having a valuable and strong business proposition and can contribute towards increasing substantially an MNO's volume, the MNO would want to deal with the MVNO, especially since it would risk losing a business opportunity to its rivals. Therefore, unless potential MVNO present an attractive business proposition, it is likely that an MNO will not see much benefit from having an MVNO if the MNO can compete effectively by addressing segments of the market which are not served effectively by the other competitors¹⁵. For instance, Silknet is the only mobile operator with a significant number of Machine to Machine clients, whilst MagtiCom is the leading MNO serving the corporate segment. Similarly, if there is competition between the MNOs and they are able to serve the various niches an MVNO proposes to target, the business case may not exist for an MVNO.

3. The statement in the third paragraph seems to be misleading since, although prima facie the GNCC does not directly regulate the tariff, in the case where an MVNO and MNO do not reach an agreement on tariffs, the GNCC can intervene and the methodology which must be applied is the "Retail Minus" method¹⁶. Therefore, this indirectly implies that the pricing aspect between the operators are regulated by the GNCC and is not intended to be "freely" achieved on a commercial base.

9. Question 2 - Point 2, 1st paragraph and Point 3, 2nd paragraph

The GNCC stated that *"regard should be given to ITU (International Telecommunication Unit) definitions and recommendations for regulatory authorities as to how, by what essential principles and in what cases to introduce the mandatory MVNO access regulations (<https://www.itu.int/itu-news/issue/2001/08/mvno.html>). At the example of a variety of countries, the article discusses approaches to the mandatory MVNO access regulation and the factors behind the obligation to grant such access. The ITU recommendations also deal with the fact that the Access Directive (2002/19/EC)¹⁷ does not make the existence of the MVNO access regulation on the mobile network for EU countries a mandatory requirement, leaving the matter within the margin of appreciation of national regulators. Although the Access Directive (2002/19/EC) does not introduce a mandatory MVNO access regulation, the ITU document discusses situations where European regulatory authorities seek to facilitate the introduction of the MVNO regulation on the mobile network. As ITU recommends, if the EBITDA of the mobile network operators on the telecommunications market is very high (over 25%), national regulatory authorities introduce the MVNO access regulation."*

and

"In analysing the resolution introducing the MVNO access regulation, it is important to evaluate the EBITDAs for the operators with significant market power on the Georgian telecommunications market and give regard to the ITU recommendation stating that if the EBITDA of a mobile network operator on the telecommunications market exceeds 25%, European regulators may introduce the MVNO access regulation."

Upon delving into these matters and the relevant sources, we noted that the Commission makes the source appear to be a recommendation by the ITU. However, we noted that the source is essentially an article on MVNOs¹⁸ which discusses arguments in favour and against the imposition of regulation for MVNOs. It is in no way a recommendation or guidelines issued by the ITU. In addition, this article is based on an ITU Strategic Planning Workshop on licensing 3G mobile which took place in Geneva, between 19 to 21 September 2001.

¹⁵ NERA Consulting: 'Competitive effects of MVNOs and assessment of regulated MVNO access – Spark New Zealand, Dated 26th October 2018.

¹⁶ GNCC Resolution of 31st December 2019

¹⁷ Access directive - 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

¹⁸ ITU: 'What are MVNOs?' <https://www.itu.int/itu-news/issue/2001/08/mvno.html>

Essentially this article is based on a news magazine issued by the ITU not bearing the remotest legal/regulatory standing.

Therefore, references made to an article based on events which occurred 20 years ago in justifying a current market regulation of this significance, are baseless. Furthermore, the GNCC quoted only parts of the article that were relevant to its intentions and refrained from citing other sections in the article, such as:

“It has been argued that such cost-based charging for access to a 3G operator's network by MVNOs would become less necessary as the market becomes more competitive. It has also been claimed that cost-based access charges for MVNOs could damage incentives to invest in infrastructure, particularly in the early stages of investment in 3G systems. These arguments should be assessed within the context of the overall objective of promoting and strengthening the competitive framework for mobile services, which is the prime rationale for allowing MVNOs to operate in the market in the first place.”

Apart from the fact that this article does not hold any legal standing by way of regulations, guidelines or recommendations and since 20 years ago the market environment has evolved substantially; notwithstanding, in this article a word of caution was still provided. This article specifically mentioned that MVNOs could damage incentives for MNOs to invest in infrastructure, particularly in the early stages of investment. This is more so in today's current environment where technology has continued to evolve and advance and an investment in 5G is becoming a reality.

10. Question 2 - Point 5, 3rd Paragraph

“Relying on an advisory document issued by PriceWaterHouseCoopers, the Commission had developed a methodology and conducted a market study and analysis, inter alia, by using the so-called Three Criteria Test, and had assessed all the necessary preconditions.”

Through the response document, it is evident that the GNCC is filling in the gaps that existed in the market study and analysis. Apart from strengthening economic points not addressed in the earlier study, the latest documents have a much more pronounced legal emphasis. Notwithstanding, we still refer to the latest European Union (“EU”) Recommendation¹⁹ on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation (Recommendation 2014/710/EU) and identification of relevant markets, which requires NRAs to demonstrate that the following three criteria are met:

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

These criteria are required to be met cumulatively, to the effect that failure to meet one of them should mean that regulation is not warranted. In addition, meeting the three criteria test does not automatically mean that regulation is warranted. Regulation is only warranted if, in a market that meets the three-criteria test, one or more operators is/(are) found to have significant market power (“SMP”).

On the basis of the three-criteria test listed above and the framework directive and guidelines issued by the Commission with regard to determination of joint dominance or whether there exists SMP identified in the relevant market on the basis of meeting the three criteria cumulatively, the resolution of the GNCC remains doubtful that the three MNOs in Georgia are found to have SMP and therefore the introduction of MVNO is the favourable next step in regulation.

¹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014H0710>

11. Question 3 - Point 1, 2nd paragraph

“...the market environment when MVNO first entered such countries as the Netherlands, Denmark, Canada and Great Britain was more competitive by HHI (had a low HHI) than found by the 2019 study into the MVNO access in Georgia. According to the international standard, any index higher than 2500 is indicative of high concentration, and it is 3900 for Georgia.”

We agree with the GNCC that on the basis of the HHI index computed by the GNCC, the market is being viewed as highly concentrated since it exceeds the 2,500 units. However, over the period 2017 to Sep 2019 the HHI for internet subscribers has decreased by 46, and by 346 for internet revenues showing a continuous decline year on year.

HHI	2017	2018	Sep-19
By Internet subscribers	3,404	3,382	3,358
By Internet revenues	3,940	3,962	3,594

Table 4: HHI Index [Source: GNCC Resolution]

As evidenced in our counter-views to Question 1 of the Response, market power today is no longer held by the two incumbent operators but is distributed among the three MNOs; with the latest operator VEON having already captured 25.5% of the mobile subscribers (Figure 1) and 30.5% of the mobile internet subscribers (Figure 5) by Aug 2020. VEON’s efforts of offering cheaper tariffs particularly for data, by Sep 2019, has reaped the benefits and has captured a further increase of 8 p.p. in the market share for mobile internet revenues (Figure 8) over 2018.

Although market concentration is still high today by the HHI standard, the entry of the third operator into the market cannot be ignored and this index alone or the present market conditions do not present any possible incentive for operators to potentially collude and coordinate practices. With market shares today quite uneven and operators launching their own distinct products and pricing strategies, it is unsustainable and outside any scope of the operators to coordinate practices to preclude competition. Moreover, Georgia’s placing on the world map in this context cannot be disregarded. As set out in Figure 14 below, **Georgian HHI index in 2018 is lower than the rest of the world which is in the region of 4,000 points.**

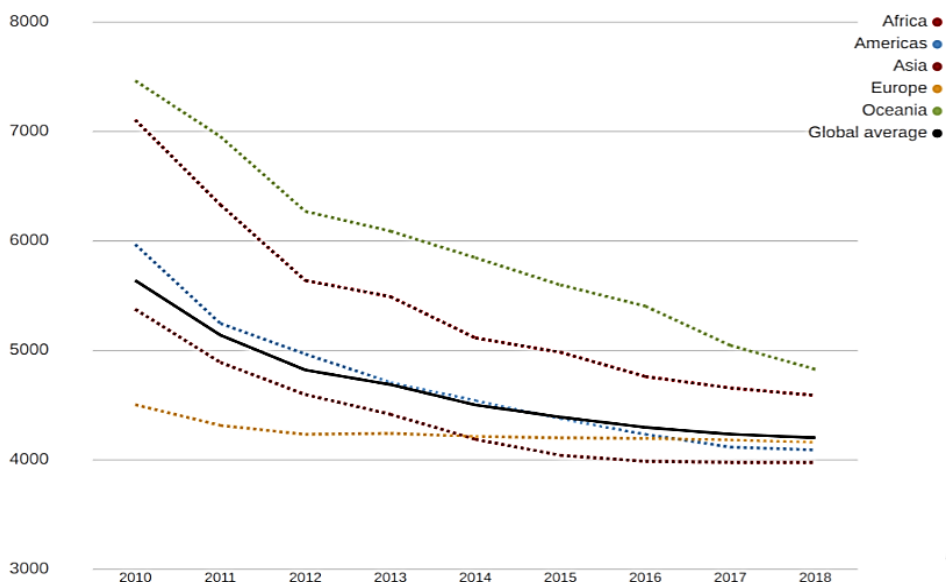


Figure 14: Mobile broadband market competition, as HHI [Source: Spectrum futures using Alliance for Affordable Internet²⁰]

²⁰ Spectrum Futures: “Mobile market is highly concentrated, and will always be”, dated 26th October 2019 <https://spectrumfutures.org/mobile-market-is-highly-concentrated-and-always-will-be/>

Accordingly, the market environment of more than 18 years ago when MVNO first entered countries such as the Netherlands, Denmark and Great Britain cannot be used as a comparative basis since the market conditions pre-existing at the time of introduction was very different from today's market. Of particular mention is the Netherlands where access regulation was imposed but which decisions were later withdrawn. The Dutch Trade and Industry Appeals Tribunal ruled that the Authority for Consumers & Markets ("ACM") had failed to demonstrate the existence of collective dominance. The ACM did not prove that the fixed networks of Dutch telecom providers - KPN and VodafoneZiggo - would tacitly coordinate their behaviour in the absence of regulation. As a result, the decision of the ACM requiring Dutch telecom providers KPN and VodafoneZiggo to open up their fixed networks to other providers was reversed²¹.

Question 5 of the Response - The advisory documents stated that "the Commission resolution fails to consider financial and market risks, operating and service quality risks as well as macro-economic factors."

12. Point 1, 5th Paragraph

"...as has been the case with many European countries, the entry of MVNOs in Georgia will help liberalize retail service prices and introduce new, market niche services to customers. This will effectively promote competition and eventually have a positive impact on ARPU and reflect on the revenues of operators, too."

The presence of MVNOs in a market is not the sole contributing factor in achieving competitive outcomes. Furthermore, access regulation is only deemed necessary when a market at retail level is not competitive and fulfils the 'Three criteria' test as discussed in Item 10 of this document. In the case of Georgia, the mobile retail market is already very competitive and is affirmed by the GNCC in the 2019 annual report²², wherein it states that the decline in the rate of growth of mobile revenues in 2019 as opposed to the prior years where mobile revenue growth rates exceeded GDP growth rates, is a result of the **saturation of the market and increased competition**. The intensified competition is also noted in the latest report²³ of the independent research and consultancy company, BuddeComm, on the Georgian telecoms market wherein it is stated that *"The country still faces economic challenges, which have impacted on the telecom sector" and that "revenue from the mobile sector has been under stress from intense competition, compounded by the fall in messaging traffic as subscribers migrate to alternative OTT services."*



Figure 15: ARPU in Georgia, 2016 - 2019 [Source: GNCC 2019 annual report]

Therefore, the already declining mobile revenues experienced in 2019, coupled with our arguments in the preceding Items, the introduction of MVNOs will not necessarily reflect in higher ARPUs for the operators. It is noteworthy mentioning that since prices for mobile services in Georgia are already significantly lower when compared to the European markets (refer to Item 3 of this document), the resulting average ARPU earned by Georgian mobile operators is also low. In fact, ARPU is estimated to be 4.5 times lower (in 2018) than the average ARPUs earned in Europe (Figure 16)²⁴. One can also

²¹ <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/highest-dutch-court-annuls-acms-joint-dominance-decision-in-telecoms-sector>

²² <https://comcom.ge/uploads/other/5/5875.pdf>

²³ BuddeComm: 'Georgia - Telecoms, Mobile and Broadband - Statistics and Analyses', 22nd September 2020. <https://www.budde.com.au/Research/Georgia-Telecoms-Mobile-and-Broadband-Statistics-and-Analyses>

²⁴ G&T Research

see that the ARPU for Georgia was following the same reducing trend as was being experienced in Europe. In 2019, the ARPU (excl. VAT) marginally increased to US\$3.39²⁵ (GEL 8.6) from US\$ 3.27 (GEL 8.3) in 2018.

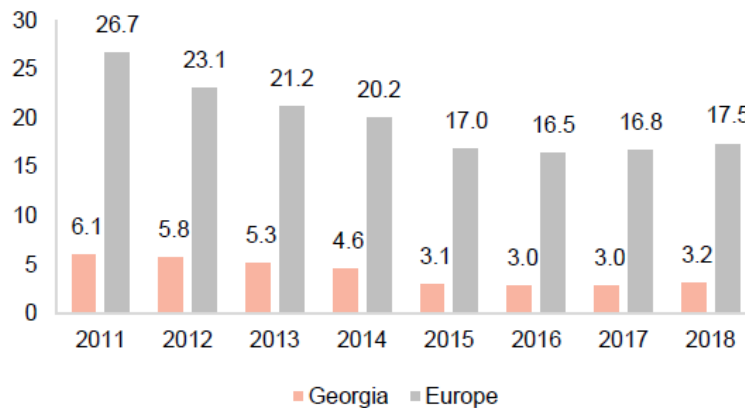


Figure 16: Mobile ARPUs in Georgia vs Europe in US\$ [Source: G&T]

Question 7 of the Response - The advisory documents discuss technological risks and likely “dangers” associated to data protection

13. Point 2, 1st paragraph

“Under the Law of Georgia on Electronic Communications, the obligation to grant wholesale access to network requires from MVNO the necessary security preconditions similar to those set for the authorized undertaking currently operating on the market... The resolution in no way prejudices the national security of Georgia, as mobile network operators are bound under the applicable laws with precisely the same obligations as other authorized undertakings (the existing network operators) and they are fully subject to the security regulations. Thus, the resolution poses no additional risks to national security.”

Requiring MVNOs to abide to the security preconditions similar to those set for the authorised undertakings currently operating on the market do not mean that MVNO will have the capacity to abide by the conditions imposed by the resolution. In line with the ITU report “*T X.805 - Supplement on security guidelines for mobile virtual network operators*” dated 2017, it is confirmed that MVNOs face serious security threats due to **inadequate security practices, requirements and capabilities, which are generally weaker than those of a traditional MNO**. Generally, the security requirements of MVNOs are regarded as a subset of MNOs based on the following:

- MVNO build a guaranteed response-time security mechanism in response to security events needing more processing fields that span across MVNOs and MNOs.
- MVNOs that have few assets, would focus their security capabilities on their own IT assets, while MNOs' security operations would focus much more broadly on their widespread network infrastructure.

Moreover, according to the report uploaded on GSMA website by Positive Technologies “*SS7 Vulnerabilities and Attack Exposure Report*” published in 2018, research on SS7 security analysis for 2G and 3G networks and on Diameter signalling system for 4G networks, shows that both signalling systems are **prone to intruders who exploit their flaws and vulnerabilities to intercept calls and SMSs, bypass billing, steal money from mobile accounts, or affect mobile network operability**. The concluding remarks of Positive Technologies in this report are:

²⁵ Exchange rate of USD/GEL (Period average) of 2.5345 (of 2018) was used.
<https://www.geostat.ge/en/modules/categories/92/monetary-statistics>

“the level of security of mobile communication networks is still low. The overwhelming majority of networks remain vulnerable, which allows criminals to intercept subscribers' voice calls and messages, perform fraudulent operations, and disrupt service availability for subscribers.”

In light of the above, we do not agree with GNCC that *the resolution poses no additional risks to national security.*