

RESPONSE TO COMCOM'S MARKET REVIEW OF THE FIXED BROADBAND MARKET

11 JULY 2024

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1 Introduction

In December 2023, the National Communications Commission (ComCom) shared with fixed broadband operators its market review of the retail and wholesale fixed broadband markets in Georgia for informal consultation.¹ In June 2024, ComCom then published its official fixed broadband market review findings.²

This report, prepared by Frontier Economics Limited on behalf of JSC Silknet (“Silknet”), sets out our response to ComCom’s fixed broadband market review.³

In this report we review in detail, ComCom’s approach to its fixed broadband market review, the assumptions and information it has used and the conclusions it has drawn from these, as presented in (the English version of) ComCom’s June 2024 “Market review of the Fixed Broadband market” report. In so doing we highlight the areas where, in our view, ComCom has either erred in its analytical approach or failed to justify properly its conclusions. As part of this, we highlight some available evidence that suggests Georgian consumers benefit from competition in these markets, such that ex-ante regulatory intervention of the type proposed by ComCom is not only unnecessary but also potentially harmful. As such, we conclude that ComCom must redo its analysis, correcting for the errors and omissions we have identified.

1.1 Executive summary

For the reasons set out in this report, we believe that ComCom’s approach to the market review features several errors and is inconsistent, both with best practice and ComCom’s own approach to market reviews, as set out in its recently published SMP Guidelines.⁴ Given these errors and inconsistencies, ComCom has failed to provide sufficient or reasonable evidence that there are any market failures in the relevant markets it has identified. As a result, its market review does not provide a sound basis for the imposition of the ex-ante regulatory measures it proposes. Indeed, if imposed such remedies could have a significantly negative effect on the overall market and reduce the likelihood of further infrastructure competition emerging. As such, ComCom must redo its analysis before it decides to impose such remedies.

¹ “Facility for the Implementation of the EU – Georgia Association Agreement – II: Market review of the fixed broadband market – 08.12.2023”

² Market review of the Fixed broadband market , published separately in English and Georgian.

³ Note: We have focussed our review on the English version of the June 2024 Market review document. As such, any comments in this report are related to that document.

⁴ Decree on Approving Methodology and Procedures for Determining Market Competitiveness and Authorised Persons with Significant Market Power dated 22 February 2024 (the “SMP Guidelines”)

Our consultation response, as replicated in the executive summary below, sets out each of the errors and inconsistencies in ComCom's approach. In particular:

- ComCom's retail market definitions do not properly take into account the potential competitive constraint imposed by mobile and fixed wireless access (FWA) services on the 'higher-speed' retail broadband market;
- ComCom has applied incorrectly the Modified Greenfield Approach (MGA). For example, ComCom has ignored the role currently played by duct access rental services and taken the unusual decision to define a single market for wholesale local and central access services;
- ComCom has failed to consider for the impact of existing regulatory obligations on operators in the relevant upstream markets;
- The only market failure identified by ComCom is the observed price for a single retail service (100 Mbps fixed broadband) being higher than those observed elsewhere;
- When conducting its geographic market assessment, ComCom has not assessed the overlaps between different operators;
- ComCom has not taken full account of the competitive constraint imposed on each other by two large national infrastructure providers; and
- The remedies proposed by ComCom can be actively harmful to the operators, as well as the market.

The competitive constraint imposed by mobile and FWA services

We disagree with ComCom's dismissal, without full consideration, of the extent of the competitive constraint that mobile and FWA can and will place on fibre services.

ComCom concludes that the basic broadband market is currently and prospectively competitive, given the large number of FWA and xDSL providers, as well as the competitive constraints imposed by mobile broadband services. However, ComCom does not consider the possibility that mobile broadband and FWA services could also impose a competitive constraint on higher speed fixed broadband services. Instead, ComCom concludes that mobile broadband access is unlikely to represent a substitutable service to high-speed fixed broadband, due to the general difference in speeds and service quality of the existing technologies underlying mobile broadband service provision.

This conclusion dismisses an important mechanism that even if a service is not part of the same retail market, it is still possible for it to place some competitive constraint on services in that market and therefore prevent anti-competitive outcomes. This is a clear principle recognised by the European Commission, for example in its Guidelines on market analysis.⁵

⁵ European Commission (2018). Guidelines on market analysis and the assessment of significant market power. Para 36

The likelihood of mobile broadband and FWA providing a competitive constraint is further increased when looking at the portfolio of fixed broadband users in Georgia. While ComCom has inexplicably defined a single category for all services between 30 Mbps and 100 Mbps, the actual usage figures suggest that most fixed broadband users in Georgia are subscribed to services that offer speeds up to 35 Mbps only. Silknet (and other mobile operators) already achieves such speeds on their 4G/LTE mobile and FWA networks in various parts of the country, further suggesting that mobile and FWA broadband services represent a credible competitive constraint to fixed broadband services.

Additionally, as set out in our response to ComCom's market review of the mobile market, ComCom has significantly understated the likely development of 5G-enabled mobile services in Georgia over the period of the market review. If this is appropriately taken into account, 5G-enabled mobile broadband and FWA services can offer even higher speeds than those offered over mobile currently, further strengthening the case for mobile and FWA services to impose a material competitive constraint on the higher speed fixed broadband services.

As such, all of ComCom's subsequent market analysis is based on this erroneous conclusion that neither mobile broadband nor FWA services are imposing a competitive constraint on fixed broadband services.

We therefore consider it important for ComCom to redo its assessment of retail fixed broadband markets, taking into account of the competitive constraint imposed by mobile broadband and FWA broadband services.

ComCom's definition of the Wholesale Local and Central Access markets and the application of the Modified Greenfield Approach

We disagree with the wholesale market definition adopted by ComCom in its market review. In particular, ComCom has fundamentally misunderstood the supply chain underlying the provision of fixed broadband services and has inaccurately defined the upstream markets relevant to fixed broadband services, undermining significantly much of its subsequent analysis.

ComCom has defined wholesale local and central access as part of the same product market. However, the market definition adopted by the EC in its 2020 Recommendation on relevant markets⁶ (which appears to be the basis for ComCom's analysis) separately defines the wholesale local access (WLA) market and the wholesale central access (WCA) market, with the WLA market typically considered to be upstream of the WCA market.

As such, following the Modified Greenfield Approach (MGA), the correct process for ComCom (assuming it identified competition concerns in the retail market) would have been to:

⁶ European Commission (2020) Recommendation on relevant markets, Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020H2245>

- First consider whether the imposition of regulatory remedies in the upstream WLA market would sufficiently resolve any perceived competition concerns in the relevant downstream markets.
- Only if it concluded that this was unlikely to be the case, to then consider the need to impose regulatory remedies in the WCA market.

In contrast, defining and assessing jointly the two markets does not capture the underlying market dynamics and misrepresents the structure of competition in both these markets. This by itself invalidates ComCom's conclusions.

We therefore consider it important for ComCom to redo its assessment of the susceptibility of the wholesale fixed broadband access markets to regulation, after having corrected its market definition to accurately capture the vertical relationship between the WLA and WCA markets. Absent this exercise, ComCom's conclusions on the need for ex-ante regulation of wholesale local and/or wholesale central access services are not robust or substantiated.

Existing obligations faced by fixed broadband operators

In line with the Modified Greenfield Approach, it is also important take into account any existing regulatory obligations in the relevant upstream markets that are not linked to SMP findings. Without doing so, it is not possible to ensure that any proposed regulatory obligations in downstream markets are proportionate and do not impose an unnecessary regulatory burden on the operators.

In Georgia this is important because fixed broadband providers already face symmetric obligations to provide access to their (i) network resources (active or passive) based on Law on electronic Communications and (ii) physical infrastructure based on recently introduced Physical Infrastructure Access Law. However, ComCom has not taken this into account as part of its market review.

Therefore, any conclusions arrived at by ComCom are, by definition, incomplete and do not reflect the actual regulatory requirements faced by the operators in the absence of these proposed obligations.

We again consider it essential for ComCom to redo its assessment of the susceptibility of the wholesale fixed broadband access markets to regulation, by applying correctly the Modified Greenfield Approach, as set out in its own SMP Guidelines, including the need to fully take into consideration existing regulatory obligations in upstream markets.

ComCom has failed to identify any market failures that require ex ante intervention

Across the entire market review, ComCom has only identify a single market failure, in terms of the observed retail price of the 100 Mbps fixed broadband service being high relative to the

price of similar services in other European countries. All of ComCom's subsequent analysis of the wholesale access market, and the identification and imposition of regulatory remedies is tied to this perceived market failure .

We disagree with ComCom's unwarranted emphasis on the 100 Mbps fixed broadband service. While this is indeed a service offered by the Georgian operators, it is only used by 2% of subscribers, meaning that the prices faced by these customers cannot be used to make inferences regarding the representative user.

While ComCom appears to imply that there is a causal link between the relatively high prices and low usage levels for 100+ Mbps services, it has again failed to present any evidence to substantiate this claim.

On the other hand, for the vast majority of speeds **less than 100 Mbps** (which represent 98% of total usage), retail prices in Georgia are considerably lower than the European average (as recognised by ComCom in its assessment), which suggests that the average prevailing price levels are unlikely to constitute a market failure.

As such, ComCom must revise its assessment and only if it can clearly identify prevailing market failure(s) in the fixed broadband market, ComCom should consider imposing ex-ante regulations to address these perceived market failures.

ComCom's approach to defining geographic segments

While ComCom does not define separate geographic markets, it defines different market segments for the imposition of its proposed remedies, for each of the settlements in Georgia. It applies a number of cumulative criteria based on the number of operators and their local market shares to identify different geographic 'clusters' based on their contestability.

We disagree with ComCom's approach to defining different geographic market segments. This is because it is overly simplistic and inaccurately captures the actual competitive dynamics in these parts of the country. Instead, ComCom must take into account the degree of network overlaps between the various operators in a local area. For example, a large number of fringe operators with low settlement-level market shares may still impose a competitive constraint on larger operators if the overlaps between the different networks prevent the larger operators from acting independently. As such, any assessment based on market shares alone can only be indicative of the level of competition, and cannot form the basis for the imposition of regulatory remedies.

ComCom also defines additional criteria to assess contestability in a settlement, including the size of the settlement. In particular, ComCom states that if a settlement has more than 100,000 inhabitants it is unlikely to be contestable, even if it passes ComCom's own other tests on contestability. As such, it concludes that such markets should still be subject to ex-ante regulation. **We strongly believe that ComCom's proposed treatment of these larger**

settlements is inappropriate. A lack of data is not an acceptable reason to potentially impose egregious and burdensome regulation on geographic areas that otherwise seem to pass the criteria (as defined by ComCom) for contestability.

It is clear that ComCom needs to re-evaluate how it undertakes its geographic market definition and the assessment of the susceptibility of these segments to ex-ante regulation. Ideally this would include collecting more granular information on the nature of competition in these settlements, including information on network overlaps.

The potential competitive constraint imposed by two large, independent fixed network operators

We also note that our conclusions above and in this report are in line with international precedent across Europe.

In particular, in many European countries the presence of three, or even two, competing fixed broadband networks is considered to be sufficient to give rise to effective competition. In this regard, ComCom has not sufficiently explained why the situation in Georgia does not warrant a similar conclusion, given the presence of two competing national networks and multiple local providers

The remedies imposed by ComCom can be potentially harmful to the market

As set out in the European Commission's recommendation on relevant markets⁷, NRAs should impose ex ante regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-users. Additionally, the imposed regulatory measures should be necessary and proportionate.

Within the context of the Georgian market, and given the absence of any clear market failures, imposing the ex-ante remedies proposed by ComCom are unfounded and disproportionate, and as such may adversely affect the development of the Georgian broadband market. In particular the imposition of disproportionate regulatory obligations can:

- suppress the level of investment in the broadband market; and
- inadvertently impact organic growth in infrastructure-based competition.

As such, imposing regulatory remedies without a clear market-driven reason for doing so, can actively hinder ComCom's responsibility to encourage the growth of the fixed broadband market and foster increased competition.

ComCom has also presented reference wholesale charges for bitstream and VULA access services, as part of its proposed access obligations. However, in line with the remainder of its

⁷ European Commission. Recommendation on relevant markets. Available from: <https://digital-strategy.ec.europa.eu/en/news/commission-updated-recommendation-relevant-markets>

review, ComCom has failed to provide sufficient clarity and transparency as to the methodology underlying its approach to deriving these charges which hinders our ability to comment on the accuracy of ComCom's charges. Setting regulated wholesale charges requires a separate consultation process on the approach to and calculation of these charges.⁸



James Bellis, Director

⁸ We have undertaken a high-level comparison of ComCom's proposed bitstream charges to those in other jurisdictions and found them to be significantly lower than the charges observed in those comparator countries, on average

1.2 The structure of this response document

The remainder of this response is structured as follows:

- Section 2 sets out our observations on the errors and inconsistencies in ComCom's approach to the market review.
- Section 3 then presents our concerns with ComCom's assessment of the likely impact of its proposed regulatory remedies.
- And finally, Section 4 presents our conclusions.

2 ComCom's approach to the market review

ComCom's approach to the fixed broadband market review is marred with methodological errors and logical inconsistencies. Together, these undermine greatly ComCom's conclusions regarding the level of competition observed in the retail and wholesale fixed service markets, as well as ComCom's subsequent assessment of the susceptibility of the wholesale fixed access markets to ex ante regulation.

In this section, we set out these errors and inconsistencies to demonstrate why ComCom should revisit its assessment. Only if ComCom, having corrected for these issues, is able to identify any clear market failures, would there be a case for the proposition of regulatory remedies.

On the other hand, if ComCom found, after addressing our concerns set out in this report, that the retail fixed broadband market(s) were prospectively competitive, there would be no need to define upstream wholesale market(s), and assess their susceptibility to ex-ante regulation. Indeed, as set out in the European Commission's 'Guidelines on market analysis and the assessment of significant market power',⁹ *'Having identified the relevant retail market(s) and established whether absent regulatory intervention upstream, a risk of consumer harm due to a lack of competition in the retail market(s) would persist, NRAs should then identify the corresponding wholesale market(s)'*.

The remainder of this section presents, in turn, our observations on ComCom's analysis. These are as follows::

- ComCom's retail market definitions do not properly take into account the potential competitive constraint imposed by mobile and fixed wireless access (FWA) services on the 'higher-speed' retail broadband market;
- The only "market failure" identified by ComCom is the fact that it claims the observed price for a single retail service (100 Mbps fixed broadband) is higher than benchmarks;
- ComCom has applied incorrectly the Modified Greenfield Approach (MGA). For example, ComCom has ignored the role currently played by duct access rental services and taken the unusual decision to define a single market for wholesale local and central access services;
- ComCom has failed to consider the impact of existing regulatory obligations on operators in the relevant upstream markets;
- When conducting its geographic market assessment, ComCom has not assessed the overlaps between different operators;
- ComCom has not taken full account of the competitive constraint imposed on each other by two large national infrastructure providers; and
- The remedies proposed by ComCom can be actively harmful to the operators, as well as the market.

⁹ European Commission. Guidelines on market analysis and the assessment of significant market power. Available from: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0507\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0507(01))

2.1 The competitive constraint imposed by mobile and FWA services

ComCom defines separate retail markets for 'basic fixed broadband access services' (speeds up to 10 Mbps) and 'higher-speed fixed broadband access services' (speeds over 10 Mbps). It bases this differentiation on the difference in speed ranges, tariffs and usage levels across these two service groups:¹⁰

- ComCom's basic fixed broadband access market includes retail fixed broadband access via FWA, xDSL, as well as mobile broadband services.
- ComCom's higher-speed fixed broadband access market consists of the FTTx-based broadband access services offered at speeds above 10 Mbps but crucially, does not include mobile broadband services.

Following its separate definition of markets for basic and higher-speed broadband services, ComCom concludes that the basic broadband market is exhibiting effective competition, as a result of:

- A large number of FWA and xDSL providers (84 and two respectively) being present in the market; and
- The additional competitive constraints imposed by the three mobile network operators through the national coverage of their mobile broadband services.

As such, ComCom concludes that while there are some barriers to entry into this market, the market exhibits effective competition. In particular, it concludes that the potential competition from the mobile networks will not allow the smaller players to exercise SMP.¹¹

However, in its assessment of the prospective competitiveness of the high-speed broadband market, ComCom does not consider the possibility that mobile broadband services could also impose a competitive constraint on those higher speeds. Instead, ComCom concludes that mobile broadband access is unlikely to represent a substitutable service to high-speed fixed broadband, due to the general difference in speeds and service quality of the existing technologies underlying mobile broadband service provision and fixed broadband provision. We believe this is a significant omission in the report and ComCom's analysis.

In particular, even if ComCom is right not to include mobile broadband in the higher speed market, this conclusion dismisses an important mechanism that even if a service is not part of the same market, it is still possible for it to place some competitive constraint on services in that market and thereby preventing anti-competitive outcomes in that market.

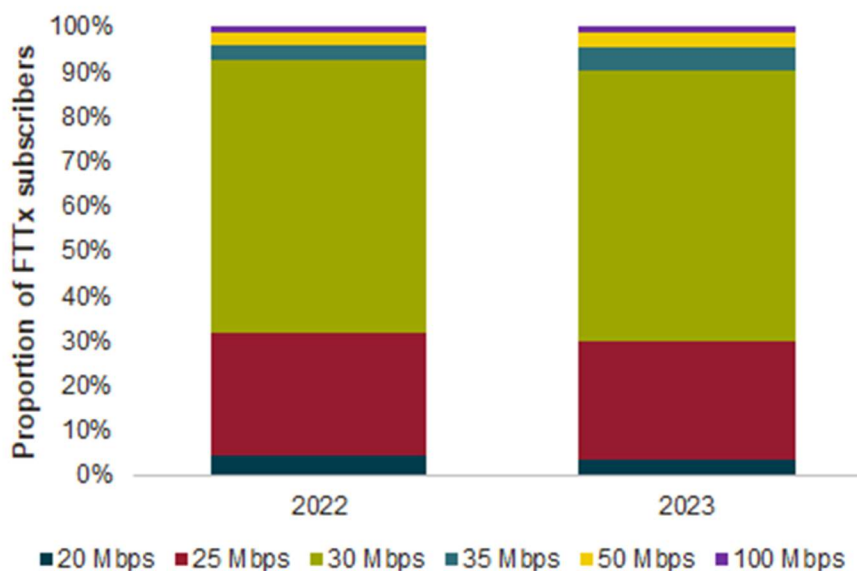
In reality, we believe that mobile broadband is likely to place some competitive pressure on fibre services. In this regard, it is important to note that, based on data from ComCom's own 2022 Annual Report, the majority of fibre subscribers in Georgia use speeds of between 25

¹⁰ ComCom. Market review of the Fixed Broadband market, p. 60

¹¹ ComCom. Market review of the Fixed broadband market. p.80

Mbps and 30 Mbps. that is, as demonstrated in Figure 1, almost 90% of subscribers use services that offer speeds of between 25 Mbps and 30 Mbps.

Figure 1 Distribution of fibre subscribers in Georgia



Source: ComCom 2022 Annual Report

Such speeds are routinely achieved by existing mobile broadband services offered over 4G LTE technology. Indeed, Silknet’s mobile broadband services offered over 4G speeds provide average download speeds of between 20 and 50 Mbps in various parts of the country. Further, based on ComCom’s own drive test results¹², the average speeds offered by fixed broadband services were very similar to the average speeds offered by similarly priced mobile broadband services.

This suggests that mobile broadband services can impose a credible and important competitive constraint on “higher speed” fixed broadband services, at least up to the sorts of speeds that the vast majority of consumers in Georgia use.

In addition, while ComCom does note that *‘the quality-of-service differential could reduce significantly when 5G retail services are introduced in Georgia’*¹³, it concludes that 5G services are not expected to sufficiently materialise in Georgia over the forward-looking time horizon of this market review such that they could provide some competitive constraint.

We disagree with ComCom’s perspective on this point. This is because, as set out in our response to ComCom’s market review of the mobile market, ComCom has significantly understated the likely development of 5G-enabled mobile services in Georgia over the period

¹² ComCom Drive test results. <https://comcom.ge/ge/regulation/sixshiruli-da-numeraciis-resursi/mobiluri-komunikaciebis-xarisxis-kontroli>

¹³ ComCom. Market review of the Fixed broadband market. p.70

of the market review. For instance, ComCom has failed to take into account the fact that two of the three mobile network operators, namely, Cellfie and Silknet, have already launched 5G services across a portion of their coverage.¹⁴ Additionally, Cellfie has announced significant planned investment to modernise its nationwide network in preparation for the deployment of 5G services, following its acquisition of 5G spectrum in the August 2023 spectrum auction.

If this activity is appropriately taken into account, it is clear that ComCom at least must consider properly whether both, current 4G as well as 5G, mobile broadband services can be expected to impose a material competitive constraint on the higher speed fixed broadband services (up to reasonable speeds. This is an important point because the inclusion of mobile broadband services in a higher speed market will increase the number of competing networks available in most parts of the country (over the expected time horizon of the review) by one, namely, Cellfie's mobile network (given that Silknet and Magticom are already present in the fixed broadband market).

Indeed, critically, even if ComCom continues to conclude that mobile broadband services do not form a sufficient competitive constraint to be considered part of the high speed broadband market, this does not mean that such services cannot provide some pricing constraint on high speed (fixed) broadband. For example, this possibility has also been noted in other jurisdictions, including in jurisdictions where there is greater take-up of very high speed fibre services. For example, mobile network operators in the UK identified that 5G FWA could offer an alternative to fixed broadband services in the short-term, particularly for customers that do not have access to fibre networks, or in locations where mobile coverage is particularly good, as well as for customers with lower bandwidth requirements.¹⁵ This is also a clearly recognised principle in regulation. For example, in its Guidelines on market analysis, the European Commission¹⁶ considers the impact of OTT services¹⁶ on fixed and mobile termination services, despite those not being in the same market.

2.2 ComCom has failed to identify any market failures that require ex ante intervention

Across the entire market review, the only potentially substantive market failure that ComCom has identified is the allegedly high retail prices associated with 100Mbps fixed broadband services. However, it is not clear that this is really a market failure. Rather, this may instead reflect the fact that such high speeds are rarely used in Georgia.

¹⁴ Note that these are non-standalone (NSA) 5G services

¹⁵ Ofcom. Wholesale Fixed Telecoms market Review 2021-26. Available from: https://www.ofcom.org.uk/data/assets/pdf_file/0023/216086/wftmr-statement-volume-2-market-analysis.pdf

¹⁶ European Commission (2018). Guidelines on market analysis and the assessment of significant market power. Para 36

In particular, ComCom has stated that usage trends over recent years suggest a clear trend towards 30-100 Mbps speeds¹⁷, at the expense of lower speeds. While we agree that global demand trends are moving increasingly towards high-speed data, we do not believe that ComCom has provided sufficient evidence to argue that there is an increasing demand for very high speed services (>50 Mbps) in Georgia.

For example, in its market review, ComCom presents the share of fixed broadband access accounted for by different speed ranges (as defined by ComCom)¹⁸, which shows that the share of usage accounted for by services with speeds of 30 to 100 Mbps increased to 59% in 2022 from 21% in 2021. ComCom uses this as a basis to argue that there is an increasing demand trend towards higher speeds of 30-100 Mbps. However, ComCom's conclusions in this regard suffer from two key flaws.

2.2.1 The 30 to 100 Mbps band includes a very wide range of speeds

In its assessment, ComCom has defined one band for speeds up to 10 Mbps, one band for speeds between 10 Mbps and 30 Mbps, and a single band for all speeds between 30 Mbps and 100 Mbps. However, there is significant heterogeneity between the use case for services that offer speeds of close to 30 Mbps, and those that offer speeds of close to 100 Mbps. As such, it is not clear that the usage trends of these services can be assessed jointly. For example, common use cases for speeds of close to 30-40 Mbps include video streaming on a single device, or video conferencing, whereas the common use cases for speeds of close to 100 Mbps include multiplayer online gaming and multiple consecutive online streams.

Further, given the availability of 50 Mbps and 70 Mbps retail products in the Georgian market, it would be more appropriate to assess the trends in the usage of narrower speed ranges, to develop a clearer picture of demand patterns in Georgia.

Indeed, Figure 1 in Section 2.1 above clearly shows that the majority of users (almost 90%) within the wide '30-100 Mbps' band actually use services that offer speeds of up to 35 Mbps, with only a very small proportion of users opting for higher speeds. Fewer than 2% of subscribers opt for speeds of 100 Mbps, as acknowledged by ComCom's Market Review¹⁹, as well as its own 2022 Annual Report²⁰. This suggests that while there is indeed a movement towards higher speed broadband services in Georgia, the extent of this growth is more limited than that suggested by ComCom's market review.

¹⁷ ComCom. Market review of the Fixed Broadband market, Figure 25

¹⁸ ComCom. Market review of the Fixed Broadband market, Figure 25

¹⁹ ComCom. Market review of the Fixed Broadband market, p.56

²⁰ ComCom 2022 Annual report. <https://comcom.ge/uploads/other/11/11972.pdf>

2.2.2 ComCom has misinterpreted the increase in the share of usage accounted for by the 30-100 Mbps band

The data presented by ComCom shows an increase in the share of fixed broadband usage accounted for by services with speeds of 30 to 100 Mbps, from 21% in 2021 to 59% in 2022. However, it is important to note that this was not a gradual increase over time, but an abrupt spike in usage shares. Indeed, as presented in Figure 25 of the market review, the share of usage accounted for by the different bands was very stable between 2019 and 2021 (at ~20% for the 30-100 Mbps band).

Indeed, analysing this sudden change, we have found that the increase in the usage share accounted for by the 30-100 Mbps band is not a result of a sudden increase in customer demand, but rather a change in the terms of service by both, MagtiCom and Silknet. As clearly set out in ComCom's 2022 Annual Report, in 2022 MagtiCom and Silknet replaced their basic 20 Mbps fixed broadband service with a 30 Mbps offer, upgrading all of the subscribers from the lower to the higher usage band. Therefore, the scale of the observed change in the distribution of speeds in 2022 was driven, in a very large part, by a supply side decision, rather than by demand trends.

As such, any growth in the demand for high-speed broadband services is limited to speeds of between 30 and 50 Mbps, and does not extend to the very high speed services. Therefore, the assessment of the 'higher-speed' fixed broadband market should focus more on the lower range of speeds rather than the higher range. This is, in turn, important for ComCom's analysis of possible retail market failures, where it places undue emphasis on 100Mbps products (as well as, as set out previously, considering the role played by mobile broadband and FWA services).

2.2.3 Fixed broadband services offered at lower than 100 Mbps speeds exhibit favourable retail prices

As compared to European benchmarks, the Georgian fixed broadband market generally exhibits relatively strong price competition. As such, there is also no evidence, in terms of the price levels, that there is any "market failure" or harm to customers which needs to be remedied through regulatory intervention.

This conclusion is, indeed, clear from ComCom's own study which benchmarked headline prices across various mass market retail broadband products in Georgia,²¹ to average prices for similar products across 23 other European jurisdictions (comprising EU Member States and the UK). This benchmarking exercise showed that the retail prices for fixed broadband services in Georgia were at similar levels, or slightly lower than, prices for similar products across the benchmark countries, for a majority of speeds and usage levels.

²¹ ComCom. Market review of the Fixed broadband market. p.81

Despite this broadly positive outlook, ComCom's latest Fixed Market Review document states that there is a "strong indication that there may already be some pricing/ affordability issues with higher speeds using FTTx in Georgia that results in harm to end users". We do not agree with this conclusion because there does not appear to be any basis for ComCom's statement based on the outcomes of the price benchmarking study.

Indeed, the benchmarking study²² shows that prices in Georgia are, in general and with the exception of services with speeds of 100 Mbps (which we consider in more detail, below), more favourable than those experienced in other European markets. This confirms that the Georgian retail broadband market is delivering good, competitive outcomes to consumers, without the need for ex ante regulatory intervention.

Using data from the updated benchmarking study, **Error! Reference source not found.**, below, compares Georgian retail prices and the European average price for a range of retail fixed broadband services of different speeds, as well as Georgia's rank out of the 24 countries in the sample. Given the difference in retail prices between Tbilisi and the rest of Georgia, the table presents both sets of prices. This again shows that in many instances (i.e., excluding services of 100 Mbps and beyond), prices in Georgia are relatively low compared to others in Europe.

Table 1 ComCom's price benchmarking study – Residential fixed broadband

	Georgia (USD/PPP)		EU24 average (EUR PPP)	Georgia's rank (out of 24)		Georgia to European average	
	Tbilisi	Rest		Tbilisi	Rest	Tbilisi	Rest
All technologies							
>=0.25 Mbps, 15 GB	28	28	36	6	6	-23%	-23%
>=10 Mbps, 10 GB	28	34	37	7	10	-23%	-7%
>=25 Mbps, 20 GB	39	34	39	14	8	1%	-12%
>=100 Mbps, 40 GB	112	112	46	24	24	145%	145%
Fibre only							
>=0.25 Mbps, 15 GB	39	34	40	12	9	-3%	-16%
>=10 Mbps, 10 GB	39	34	40	12	9	-3%	-16%
>=25 Mbps, 20 GB	39	34	41	12	6	-5%	-17%
>=100 Mbps, 40 GB	112	112	47	24	24	136%	136%

Source: TechInsights (on behalf of ComCom). 2023 Telecoms Retail Pricing Market Study

²² Note that the results presented here are from an updated study conducted by ComCom after Silknet noticed and informed ComCom of a fundamental methodological flaw in the original study. This correction in the methodology presented a more accurate picture of the more favourable prevailing broadband prices in Georgia, as compared to other European countries.

RESPONSE TO COMCOM'S MARKET REVIEW OF THE FIXED BROADBAND MARKET

Note: A low rank indicates lower prices, relative to those observed in other countries within the benchmarking sample. Based on ComCom's updated methodology following Silknet's comments on the first study and sourced from the TechInsights report prepared for ComCom²³

Specifically, as the table shows, **for the vast majority of speeds less than 100 Mbps, retail prices in Georgia are considerably lower than the European average.**

While the Georgian prices are indeed higher for the 100 Mbps services, we believe that ComCom has placed an unduly high weight on this market segment. This is because, as noted in the TechInsights report, only 2% of subscribers use services that offer such high speeds, meaning that the prices faced by these customers cannot be used to make inferences regarding the representative user.

While ComCom appears to imply that there is a causal link between the relatively high retail prices and low usage levels for 100+ Mbps services, it has not presented any evidence to substantiate this claim.

Instead, there are several potential reasons that could explain the low take-up of very high speed fixed broadband services in Georgia. For instance, the take-up of such services is more likely to be higher in developed markets. However, the Georgian telecommunications sector is still relatively nascent and is steadily moving toward usage patterns observed in more developed European markets. This can be observed in the trends in the demand for such high speed fixed broadband services in Europe over the last six years.

- For example, and based on information from the Digital Economy and Society Index 2023²⁴, **Error! Reference source not found.** presents the take-up of fixed broadband services offering speeds of 100 Mbps for each of the EU Member States, as of 2022, compared to 2017. The figure shows that as the telecommunications sectors have developed over time, the availability of, and demand for, very high speed broadband services has increased significantly: in 2022, take-up 100 Mbps broadband was roughly 55% across all EU households, ranging from 20% in Greece to 87% in Spain. However, in 2017, this average was much lower at 15% across the EU, ranging from 0.1% in Greece and Cyprus, to 48% in Sweden.
- Indeed, the GDP per capita in Georgia (USD 6,674 as of 2022) is significantly lower than the EU average (USD 37,433) and is also less than half of the GDP per capita of Bulgaria (USD 13,974), which has the lowest value of the EU27 countries (and also one of the lower take-up figures for 100Mbps services).²⁵

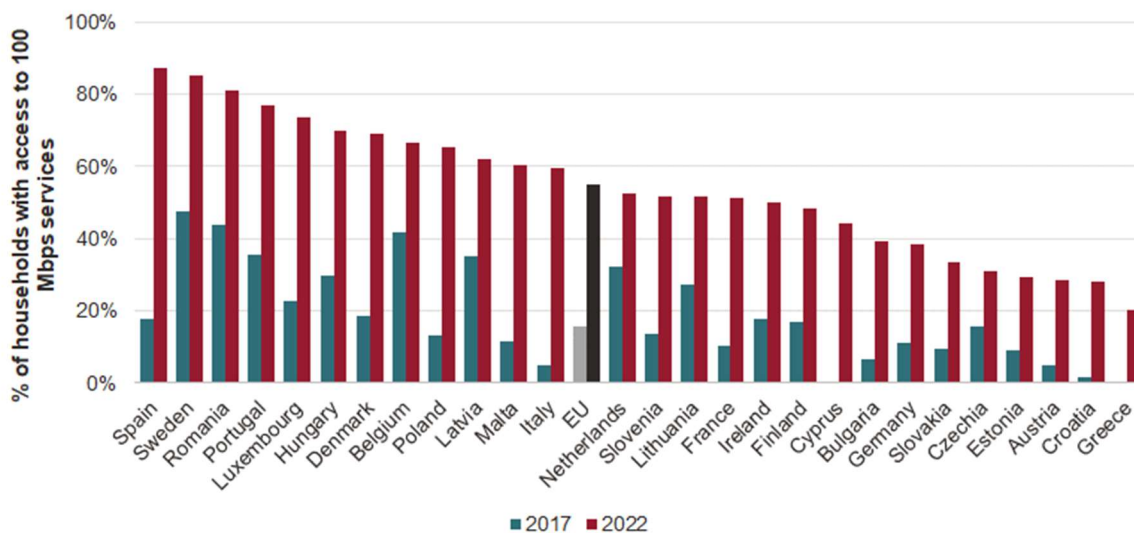
As such, the take-up rate of very high speed broadband services in EU countries does not represent an accurate barometer of the expected take-up of similar services in Georgia, given the very different macroeconomic context.

²³ TechInsights. 2023 Telecoms Retail Pricing Market Study

²⁴ EU. DESI 2023 Indicators. Available from : <https://digital-decade-desi.digital-strategy.ec.europa.eu/datasets/desi/charts>

²⁵ World Bank. GDP per capita (current US\$). Available from: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>

Figure 2 Evolution of the proportion of household with access to fixed broadband services offering speeds of 100 Mbps across Europe, 2017 to 2022



Source : European Union, DESI 2023 Indicators

It is possible that the limited take-up of very high-speed broadband services in Georgia is a result of relatively low demand given the overall development of the digital sector in Georgia. While this demand may increase over time, for the forward-looking horizon of this market review, we believe that ComCom has placed an unsubstantiated weight on this market segment, given current demand trends.

2.2.4 ComCom’s updated benchmarking study

As with its study for the mobile retail prices, the approach adopted by ComCom in its original benchmarking exercise included methodological errors. In particular, ComCom did not appropriately assess purchasing power parity (PPP), with the result that it overstated prices in Georgia. That is, the method used to convert prices from the local currency to USD (accounting for PPP) resulted in the Georgian prices appearing higher than they should have been. Specifically, in ComCom’s assessment, the retail prices across all countries were collected in March 2023 and converted to USD PPP using foreign exchange rates in 2023, but the Comparative Price Levels (CPL) from 2021, as published by the World Bank.

At the time Silknet highlighted to ComCom the shortcoming in its approach²⁶, in response to which ComCom undertook an updated benchmarking exercise. As discussed above, this second exercise gave rise to markedly different conclusions regarding the relative price levels in Georgia compared to the European sample. thus the original benchmarking study, on which

²⁶ Silknet’s letter to ComCom N 5204-/05-8 22/09/2023

ComCom appears to have based its conclusions on in this Fixed Market Review, significantly overstates the retail price levels in Georgia, relative to elsewhere across Europe.

2.3 ComCom's definition of the Wholesale Local and Central Access markets and the application of the Modified Greenfield Approach

ComCom defines a single wholesale access market that encompasses local access to fibre infrastructure (fibre unbundling), virtual unbundled local access services (VULA), and bitstream access services (BSA). It does so on the basis that BSA can be offered at various 'handover points' in the network, including at the local (OLT) level.²⁷

ComCom argues that the choice of handover point is likely to be driven by the degree to which the access seeker has invested in its core network, implying that BSA services at all points of handover are likely to be perceived by an access seeker to be substitutable.

We strongly disagree with ComCom's decision to define wholesale fixed local access (WLA) over FTTx and wholesale central access (WCA) in the same relevant product market.

This is because combining the two services into a single market misrepresents the value chain in telecommunications networks. Below, we describe how the markets for WLA and WCA services are generally defined, as well as how they interact with each other and with other, related markets, again pointing out shortcomings we perceive in ComCom's analysis and conclusions.

2.3.1 The WLA market

Wholesale local access services refer to connections provided in the access network between a point of aggregation at the local exchange level and the end user premises.^{28,29} This includes a range of wholesale products, including passive infrastructure (such as, in a copper network, sub-loop unbundling and local loop unbundling, or LLU), as well as 'active' products (for example, in a fibre network, VULA).

²⁷ ComCom. Market review of the Fixed Broadband market, p.89-90

²⁸ Ofcom (2018). Wholesale Local Access Market Review. Available from: https://www.ofcom.org.uk/data/assets/pdf_file/0020/112475/wla-statement-vol-1.pdf

²⁹ ComReg (2016). Market Review of WLA and WCA markets. Available from: https://www.comreg.ie/media/dlm_uploads/2016/11/ComReg-1696.pdf

This is in line with the European Commission's 2014 Recommendation on Relevant Markets³⁰ which includes non-physical or virtual wholesale access products as part of the WLA market, as long as they fulfil the following criteria:

- Access occurs locally (i.e. close to the customer premises);
- Access is generic and provides access seekers with a service-agnostic transmission capacity uncontended in practice, i.e. providing guaranteed bandwidths according to the access seekers' needs; and
- Access seekers have sufficient control over the transmission network.

In practice, this means the WLA market includes services that allow the access seeker to gain control of the copper or fibre loops between a point of interconnection close to the end-user and the end user premises. This means a WLA service provides the opportunity for downstream access seekers to offer a range of differentiated retail services to end-users. It also means that an access seeker purchasing WLA services must invest in its own core network and backhaul connectivity to the local Point of Presence (PoP), to be able to deliver its retail services to end users.

2.3.2 The WCA market

Wholesale central access services refer to the rental of an active broadband connection from end user premises to an aggregation point further into the core of the network (i.e., beyond the local exchange). This includes Bitstream Access (BSA) products provided over copper or fibre networks.^{31,32} As such, a WCA service includes some use of the access provider's backhaul network. However, it **excludes direct access to the local copper or fibre loop**.

The EC's 2014 recommendation also states that WCA products are '*typically provided [relative to WLA] to the access seekers at a higher and more central layer in the network architecture*' such as '*regional or national hand over points*'.

Since access is sought on a relatively upstream point in the network, access seekers taking a WCA product are likely to have less control of their service, compared to local access, since less investment is required into the access seeker's core and/or backhaul network, whilst the access seeker also does not have direct control of the local fibre (or copper) loop.

The European Commission's 2014 Recommendation (EC 2014) states that given the existence of several non-physical and virtual access products along the value chain, it is important to assess the key characteristics of such access products to draw clear boundaries

³⁰ EC (2014). Explanatory note accompanying the Recommendation on relevant product and service markets within the electronic telecommunications sector. Available from: <https://www.pts.se/globalassets/startpage/dokument/legala-dokument/eu-regler/explanatorynote-201410091.pdf>

³¹ Ofcom (2018). Wholesale Broadband Access Market Review. Available from: https://ofcom.org.uk/data/assets/pdf_file/0030/116994/statement-wba-review.pdf

³² ComReg (2016). Market Review of WLA and WCA markets. Available from: https://www.comreg.ie/media/dlm_uploads/2016/11/ComReg-1696.pdf

between the WLA and the WCA markets. In particular, *'access products...allowing access seekers to provide only standardised retail services or services supporting limited features, or which leave reduced possibilities for access seekers to differentiate their retail offers due to their limited control over the network (and the ancillary services and systems), should be presumed to fall into the WCA market'*.

This unequivocally sets out a basis for a clear distinction between services included in separate WLA and WCA markets. Despite this, ComCom has defined WLA and WCA services in one market.

2.3.3 The value chain and relationship between WLA and WCA markets

reflecting these differences, regulators elsewhere have typically considered the WCA market to lie downstream of the WLA market, but upstream to the retail broadband market.³³

The WLA market is considered to be further upstream than the WCA market because access seekers are required to build deeper infrastructure (i.e. closer to the end user premises). This enables an access seeker using WLA services to, in turn, provide its own WCA services to other access seekers, since it has its own core and backhaul network, which it uses to provide retail services to its customers.

Following the “modified greenfield” approach (MGA) and the principle that remedies should be focused as far upstream as possible, this implies that a regulator should only intervene in the WCA market if it concludes that intervention in the WLA market is insufficient to support effective competition in retail markets. So by combining WLA and WCA services into a single market, ComCom misses this step.

Table 2 Key differences between services in the WLA and WCA markets

Dimension	WLA	WCA
Point of handover	Local exchange or ODF level	Regional or national
Investment in own network	Higher investment in core and backhaul network	Limited investment in core and backhaul network
Control over services (retail differentiation)	Very high degree of control and retail service differentiation	Limited degree of control and retail service differentiation

Source: EC (2014), ComReg (2016), Ofcom (2018)

³³ EC 2014, ComReg 2016, Ofcom 2018

2.3.4 The wholesale markets for access to physical infrastructure

In addition to the WLA and WCA markets, the value chain for the provision of broadband services also includes other related markets, including the wholesale market for access to the communications ducts infrastructure (Duct access).

To accurately undertake an assessment of the WLA and WCA markets, it is important to correctly identify the implications of any existing regulation in this market on WLA and WCA markets and hence, ultimately, on retail broadband markets. Without doing so, it is not possible to ensure that any obligations on WLA and WCA services are proportionate and do not impose an unnecessary regulatory burden on the operators.

Indeed, as set out in the European Commission's 2014 Recommendation, *'the most upstream market [for the provision of retail broadband services] consist of or include more generic cross-market wholesale products such as physical infrastructure access (e.g. duct access) or passive access products.'*

In other words, the wholesale duct access market is generally considered to be upstream to the WLA (and therefore, the WCA) market. As such, under the MGA ComCom's assessment of the susceptibility of the WLA (and WCA) market to ex ante regulation should account for any SMP-related and symmetrical obligations in the wholesale duct access market, as well as the recently introduced physical infrastructure access law which requires all operators to provide access to their physical infrastructure, including ducts, poles and masts, at fair and reasonable prices.

While ComCom states in its market review that ex-ante regulation on duct access does not sufficiently address the identified competition concerns in the downstream markets,³⁴ it reached this conclusion on the basis of retail market outcomes that ComCom deems to be indicative of a lack of competition. However, for a more complete and accurate assessment, ComCom should have considered the expected impact of the (existing) ex-ante obligations in the market for access to passive infrastructure, on the downstream WLA and WCA markets. In particular, it should have assessed the likelihood and incentives for any SMP operators in the duct access market to refuse to deal with, or provide unreasonable terms to, access seekers in the infrastructure, and the implications of such dealing on the downstream WLA and WCA markets.

2.3.5 Conclusion on the definition of the WLA and WCA markets

There is abundant precedent for the WLA and WCA markets to be defined separately, and therefore assessed separately. In particular, the WLA market should be defined to include passive and active access services that have a local point of connection and provide the access seeker with sufficient control over their network to differentiate their retail services from those of the access provider. In contrast, the WCA market should be defined to include active

³⁴ ComCom. Market review of the Fixed broadband market, p.82

wholesale access services (or bitstream access services) at a regional or national point of handover, such that access seekers require limited investment in their own core/backhaul network, but as a result, have less ability to differentiate their retail services.

While ComCom appears to identify some of these distinctions between the different services, it appears not to have taken these into account in its market definitions exercise.

Further, an assessment of the susceptibility of these markets to ex-ante regulation should, in line with the MGA, first consider regulation in upstream markets, and only if this is deemed to be insufficient, move to markets further downstream, taking into account any SMP-related obligations already in place in the upstream markets. In particular:

- First, ComCom should assess the retail broadband market to identify any current or prospective market failures. Only if there is clear evidence of anti-competitive outcomes in that market, should the assessment proceed further upstream.
- Only if there is evidence of a clear market failure in the retail market, should ComCom assess whether ex-ante regulation in the wholesale duct access market is needed and would sufficiently address the concerns it has identified in the downstream retail market. If ComCom concludes this is unlikely, the assessment should move on to the WLA market, since the WLA Market lies upstream from the WCA market.
- In so doing, in accordance with the MGA, ComCom should assume that ex-ante regulation is absent in the WLA and any (retail and wholesale) downstream markets, but should account for the impact of any regulation imposed in the (upstream) duct access market.

ComCom's subsequent examination of the WCA market should then account for the impact of any regulation imposed in the (upstream) WLA market, but absent regulation in the WCA market itself.

In contrast to this established approach, it is clear that ComCom's approach to defining the wholesale broadband access markets is unusual and does not fully capture the dynamics underlying the supply chain. As such, any conclusions regarding the susceptibility of these markets to ex ante regulation cannot be considered to be robust and in line with best regulatory practice.

2.4 Existing symmetric obligations faced by fixed broadband operators

In line with the MGA, it is also important take into account any existing regulatory obligations in the relevant upstream markets that are not linked to SMP findings. Without doing so, it is not possible to ensure that any proposed regulatory obligations in downstream markets are proportionate and do not impose an unnecessary regulatory burden on the operators.

In Georgia this is important because fixed broadband providers already face two separate symmetric obligations to provide access to their physical infrastructure to access seekers on fair and reasonable prices based on newly introduced Physical Infrastructure Access Law .

Firstly, under Article 19(2)(d) of Georgian Law on Electronic Communications there is a default obligation on all operators covered by a general authorisation to provide unlimited access to their free network elements, functional resources and capacities (active and passive).

Secondly, the recently introduced Physical Infrastructure Access Law requires all operators to provide access to their physical infrastructure, including ducts, poles and masts, at fair and reasonable prices.

However, ComCom has not taken these obligations into account as part of its market review.

That is, Article 19 of Georgian Law sets out the general rights and obligations of authorised persons as follows:

An authorised person shall:

a) [...]

d) upon request, ensure unlimited access of an interested authorised person to the relevant free elements of its own network and to their functional resources and capacities.

In addition, ComCom has the power to intervene to resolve disputes between operators concerning access under the law on electronic communications and the Physical Infrastructure Access law without a finding of dominance or SMP.

Despite this, ComCom's Fixed Market Review document omits to consider the impact of Article 19(2)(d) of the Law on electronic communications as well as the Physical Infrastructure Access Law. This is contrary to both the Explanatory note of the European Commission's 2014 Recommendation and paragraph 17 of the EU SMP Guidelines, which state that a market analysis should take into account the effects of other types of regulation applicable to the relevant retail and related wholesale market(s) throughout the relevant period.

Furthermore, under the EU regulatory framework (in particular, the MGA adopted thereunder) and now ComCom's SMP Guidelines as well, regulatory authorities should, when conducting market analysis, take into account existing market conditions, including other types of regulation affecting the market, as well as expected or foreseeable market developments over the course of the next review period in the absence of SMP based regulatory obligations .

Accordingly, we are of the opinion that the fixed market review conducted by ComCom is inconsistent both with the EU framework as well as Georgian SMP Guidelines.

In addition, ComCom has also previously imposed ex-ante regulation on the "wholesale access to backhaul and backbone leased lines and dark fibre" market, with ComCom having defined the presence of SMP across several geographic market segments. As part of the regulatory remedies for these markets, ComCom requires both Silknet and MagtiCom to provide access to their backbone and backhaul networks.

ComCom has again overlooked this existing obligation in its current market review, which could have important implications as to its conclusions given the overlap between this market and the markets under consideration (namely, WLA and WCA). This again shows that any conclusions arrived at by ComCom are, by definition, incomplete and do not reflect the actual regulatory requirements faced by the operators in the absence of these proposed obligations.

In conclusion and reflecting these shortcomings, we believe it is essential for ComCom to redo its assessment of the susceptibility of the wholesale fixed broadband access markets to ex-ante regulation. In so doing, it must apply correctly the Modified Greenfield Approach, as set out in its own SMP Guidelines, including the need to fully take into consideration existing regulatory obligations in upstream markets.

2.5 When conducting its geographic market assessment, ComCom has not assessed the overlaps between different operators

ComCom notes in its Fixed Market Review that there are differences in the competitive dynamics it observes in different geographic regions, due to variations in the number of competing networks, their market shares, and the overlaps in their coverage.

While ComCom does not deem this sufficient to define separate geographic markets, it does reflect this heterogeneity by defining different market segments for the imposition of its proposed remedies. In particular, it applies the following cumulative criteria to each settlement to identify different 'clusters' based on their contestability:³⁵

- **The number of active FTTx network operators:** For a settlement to be contestable, there must be at least three competing active FTTx network operators.
- **MagtiCom's share of the FTTx broadband access subscribers:** For a settlement to be contestable, MagtiCom's local market subscriber share must be less than 40%.
- **The subscriber share of the second and third operators:** Both the second and third operators must have at least a 10% share of the FTTx broadband access subscribers in that settlement, for the settlement to be contestable.

However, in addition to these three main criteria, ComCom also defines additional criteria to assess contestability in a settlement. One of these criteria looks at the size of the settlement. In particular, ComCom states that if a settlement has more than 100,000 inhabitants the three main criteria may misrepresent the actual competitive situation in the settlement. This is because, according to ComCom's logic, while an operator may have a presence in a city, it may not necessarily be present in the same parts of the city as the other operators.³⁶ ComCom believes this also needs to be taken into account, to reduce the risk of incorrectly identifying these large settlements as contestable.

³⁵ ComCom. Market review of the Fixed Broadband market, p.130

³⁶ ComCom . Market review of the Fixed Broadband market, p.131

However, due to the limitations of the data available to ComCom for this exercise, it cannot clearly identify whether the presence of operators in these larger cities overlaps with each other. This means, according to ComCom, that it is possible for there to be some variation in the competitive dynamics at different points within a settlement.

ComCom therefore adopts an approach wherein it presumes that a settlement with more than 100,000 inhabitants is not likely to be contestable even if it passes all three of the main criteria. This is because, due to *'their size and the unavailability of more granular FTTx network coverage data, it is not possible to conclude if these [2] settlements are generally contestable'*.^{37, 38}

As a result, ComCom defines a separate cluster for the two cities of Rustavi and Kutaisi, which it has deemed to be 'contestable but too big'. This means that whilst these cities both fulfil all three criteria to be defined as contestable, they will still be – under ComCom's proposals - subject to ex-ante regulation.³⁹

2.5.1 Our response to ComCom's approach

Whilst do not disagree on ComCom's decision to segment the market for the purpose of defining appropriate remedies, we fundamentally disagree with ComCom's approach to doing so. This is because it is overly simplistic and inaccurately captures the actual competitive dynamics in these parts of the country.

Instead, ComCom must take into account the degree of network overlaps between the various operators in a local area. For example, a large number of fringe operators with low settlement-level market shares may still impose a competitive constraint on larger operators if the overlaps between the different networks prevent the larger operators from acting independently. As such, any assessment based on market shares alone can only be indicative of the level of competition, and cannot form the basis for the imposition of regulatory remedies.

In addition, we do not think that ComCom's proposed treatment of the larger settlements is appropriate. The lack of data is not an acceptable reason to potentially impose egregious and burdensome regulation on geographic areas that otherwise seem to pass the criteria (as defined by ComCom) for contestability.

Further, it is actually more likely that the larger cities exhibit greater competition than smaller settlements because of a larger number of competing providers, as well as being a greater focus of promotional schemes. For instance, as identified in ComCom's market review, Tbilisi has the highest coverage of telecommunication networks including four FTTx providers, two

³⁷ ComCom . Market review of the Fixed Broadband market, p.144

³⁸ For the other two of the four large cities, ComCom has concluded that they are not contestable, since they do not pass the three main criteria. In particular, Magticom has a greater than 40% share in Tbilisi and in St Gori, the third operator has a less than 10% market share

³⁹ ComCom . Market review of the Fixed Broadband market, p.147

xDSL providers, and two FWA providers. The presence of competing networks is likely to result in stronger competitive constraints on the operators, thus weakening the need for ex ante regulation.

This pattern is also observed in international precedent, where large cities have been defined as separate geographic markets and are generally subject to relatively less, or no, ex-ante regulation as compared to smaller geographic units. For example, in Italy in 2019, the city of Milan was defined as a separate market, and all regulatory obligations on the SMP operator were lifted, due to the number of competing providers present in the area.

Therefore, it is clear that ComCom should re-evaluate how it categorises and assesses these major settlements. Ideally this would include collecting more granular information on the nature of competition in these settlements. If this is not possible, ComCom should drop its “contestable but too big” nomenclature and simply judge these settlements on the same criteria it applies to others, recognising the likely reality of competition in these areas.

2.6 The potential competitive constraint imposed by two large, independent fixed network operators

Our response to ComCom's market review of the fixed broadband market clearly demonstrates the need for ComCom to revisit its assessment, taking into account the flaws and inconsistencies in its approach.

We also note that ComCom's conclusions regarding the lack of competitiveness in the retail fixed broadband market and the need for ex-ante regulation in the wholesale market are inconsistent with international precedent across Europe. In particular, in many European countries the presence of three, or even two, competing fixed broadband networks is considered to be sufficient to give rise to effective competition.

In this regard, ComCom has not sufficiently explained why the situation in Georgia does not warrant a similar conclusion, given the presence of two competing national networks and multiple local providers.

2.7 The remedies imposed by ComCom can be potentially harmful to the market

Under the European Commission's 2014 Recommendations, the identification of an operator with SMP and the imposition of regulatory remedies on this SMP operator(s) is undertaken to address any market failures that have been identified during the assessment of competition in the market.

Given the clear evidence we have presented in this report on the prevailing and prospective competitiveness of the retail fixed broadband market, as well as the fact that the wholesale market does not meet the three criteria test (or indeed, the fact that the competitiveness of the

retail market means conducting a three criteria test at the wholesale market level is not even required), it is clear that there are no market failures that need to be addressed. As such, there is no basis for ComCom to designate an SMP operator(s) and subsequently impose regulatory remedies.

That is, any SMP designation exercise initiated by ComCom would necessarily be based on an incorrect premise of the wholesale fixed broadband access market being susceptible to ex ante regulation.

Therefore, we conclude that there is no economic justification for ComCom to undertake an SMP assessment in the wholesale fixed broadband access market.

As set out in the European Commission's 2020 Recommendations on relevant markets⁴⁰, regulatory authorities should impose ex-ante regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-users and relax or lift such obligations as soon as that condition is fulfilled. Additionally, the imposed regulatory measures should be necessary and proportionate such that they achieve, but do not hinder objectives set out in Article 3(2) of the European Electronic Communications Code (EECC).⁴¹ This Article states that the regulatory authority must implement policies to achieve, among other objectives:

- Promoting competition in the provision of electronic communications networks, **including efficient infrastructure-based competition**; and
- Contributing to the development of the market by removing obstacles to investment in electronic communications networks and services by **developing common rules and predictable regulatory approaches**.

Indeed, the European Commission's 2020 Recommendations seek to ensure that any regulatory obligations issued by regulatory authorities should promote the objective set out above.

Within the context of the Georgian market, and given the absence of any clear evidence of market failures, it is clear that the imposition of the ex-ante remedies proposed by ComCom are indeed unnecessary and disproportionate, and as such may adversely affect the development of the Georgian broadband market. In particular:

- The imposition of disproportionate regulatory obligations can suppress the level of investment in the broadband market by unduly increasing the risk faced by investors, and artificially reducing the expected rate of return. Further, if a regulatory regime is not based on a robust underlying assessment of actual and prospective competitive trends, it can

⁴⁰ European Commission. Recommendation on relevant markets. Available from: <https://digital-strategy.ec.europa.eu/en/news/commission-updated-recommendation-relevant-markets>

⁴¹ European Electronic Communications Code. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>

lead to increased regulatory uncertainty which can further reduce the attractiveness of the markets to investors.

- Secondly, the imposition of regulatory obligations can inadvertently impact organic growth in infrastructure-based competition. For example, the introduction of regulated access obligations can weaken the incentives for an operator to build its own network to serve previously unserved areas, in favour of seeking access on an existing network. While we understand the importance of access obligations and similar regulation in markets where one or more operators have a clear and significant competitive advantage with regards to coverage and capability, this is not the case in Georgia. In contrast, the Georgian market features two national end-to-end competing networks, as well as number of smaller end-to-end local operators, all of whom have established their networks without relying on the infrastructure of the incumbents. In the absence of access obligations, each of the operators will have stronger incentives to continue to invest in their own network, thus intensifying further the degree of infrastructure-based competition in the long run.

Given the reasons above, we do not agree, in principle, with ComCom's proposed regulatory remedies on the basis of the current approach to its market review. Any regulatory remedies must be imposed only if ComCom can identify market failures once it has addressed the flaws in its approach discussed above.

ComCom has also presented reference wholesale charges for bitstream and VULA access services, as part of its proposed access obligations. However, in line with the remainder of its review, ComCom has failed to provide sufficient clarity and transparency as to the methodology underlying its approach to deriving these charges which hinders our ability to comment on the accuracy of ComCom's charges. Setting regulated wholesale charges requires a separate consultation process on the approach to and calculation of these charges.

3 ComCom's impact assessment of its proposed regulatory remedies

In its Fixed Market Review document, ComCom has provided a high-level illustration of the expected impact of its proposed regulatory obligations set out in both, Fixed and Mobile Market Review documents, on each of the operators currently operating in the relevant markets, as well as on potential new entrants.⁴² We note that while this illustration is presented as part of the fixed broadband market review, it covers the assessment of and impact on both, fixed and mobile, operators and subsequently, the remedies proposed in both markets.

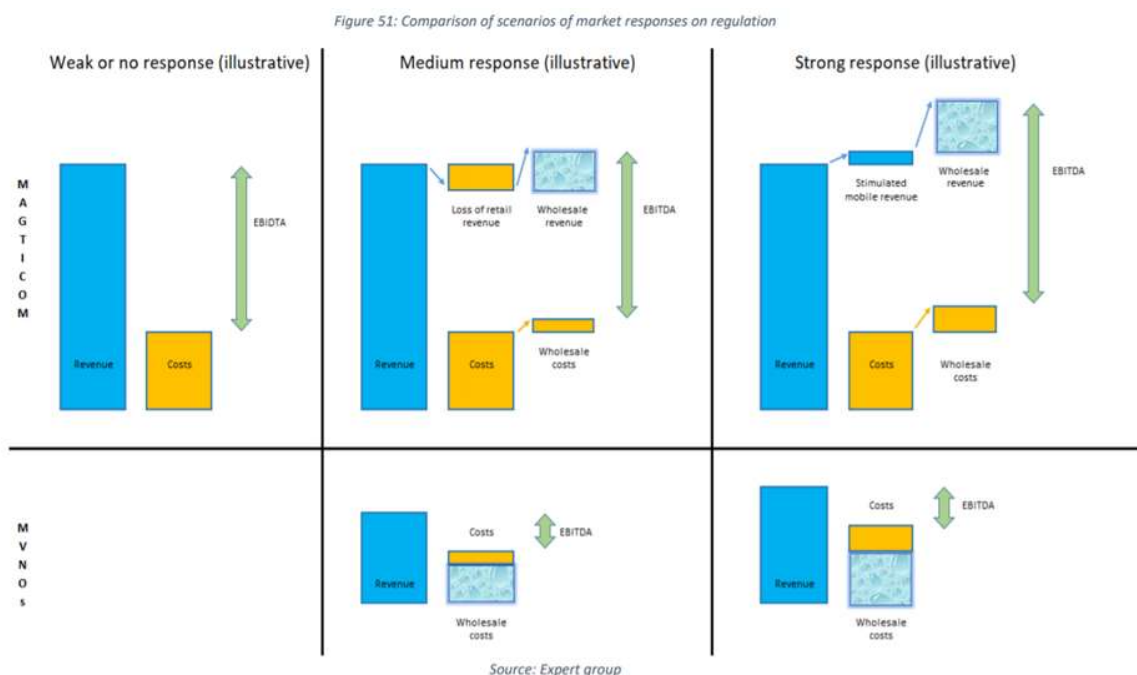
In this section, we discuss ComCom's expected outcomes in both markets since it adopts similar arguments and reasoning to arrive at its overall conclusion on the likely impact of its proposed remedies. In particular, ComCom's conclusions regarding the likely opportunities and risks faced by the current operators are identical across both markets, so our observations below apply to the markets equally.

For this illustration, it defines three scenarios, one with a "weak" market response, one with a "medium" market response, and one with a "strong" market response to its proposed remedies. Despite varying outcomes across the three scenarios, ComCom suggests under the medium and strong response scenarios, MagtiCom would be expected to exhibit a net increase in its EBITDA and subsequently, its profitability.⁴³

⁴² ComCom . Market review of the Fixed Broadband market, p.182

⁴³ ComCom . Market review of the Fixed Broadband market, Figure 51

Figure 3 ComCom's illustration of the likely impact of its proposed remedies on MagtiCom's financial outcomes



Source: ComCom . Market review of the Fixed Broadband market, Figure 51

In addition to the figure above, ComCom has also set out the expected opportunities and risks for the existing and potential new market players as a result of the proposed regulatory remedies, under each of the hypothetical scenarios.⁴⁴ ComCom's illustrations are summarised below.

Table 3 ComCom's expectation of opportunities and risks under Scenario 1: Weak market response

MagtiCom	Silknet	Cellfie	MVNOs	Fixed operators	Overall
Opportunities					
Limited wholesale revenues	None	None	Limited entry	None	Very limited
Risks					

⁴⁴ ComCom . Market review of the Fixed Broadband market, p.184-186

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MagtiCom	Silknet	Cellfie	MVNOs	Fixed operators	Overall
Implementation costs and pressure on ARPUs	Pressure on ARPUs	None	Marketing costs	None	Possible negative impact from lower ARPUs

Table 4 ComCom's expectation of opportunities and risks under Scenario 2: Medium market response

MagtiCom	Silknet	Cellfie	MVNOs	Fixed operators	Overall
Opportunities					
Wholesale revenues from bitstream services and limited wholesale revenues from MVNOs	None	Revenues generated from fixed mobile convergence and reduced cost of expanding coverage	Expansive entry	Additional revenues from new areas reached by bitstream	Stimulated competition
Risks					
Loss of fixed and mobile retail market shares and lower ARPUs	Loss of fixed and mobile retail market shares and lower ARPUs	Loss of mobile retail market shares	Marketing costs	Cost of launching MVNOs	Loss of retail market share by MagtiCom and Silknet and lower ARPUs

Table 5 ComCom's expectation of opportunities and risks under Scenario 3: Strong market response

MagtiCom	Silknet	Cellfie	MVNOs	Fixed operators	Overall
Opportunities					

RESPONSE TO COMCOM'S MARKET REVIEW OF THE FIXED BROADBAND MARKET

MagtiCom	Silknet	Cellfie	MVNOs	Fixed operators	Overall
Increased wholesale revenues from bitstream services and MVNOs. Increased retail revenues from market stimulation	Increased retail revenues from market stimulation and potential launch of wholesale offers	Increased retail revenues from market stimulation and revenues generated from fixed mobile convergence	Expansive entry	Additional revenues from new areas reached by bitstream	Stimulation of overall market revenues and competition
Risks					
Loss of fixed and mobile retail market shares.	Loss of fixed and mobile retail market shares.	Loss of mobile retail market shares		Cost of launching MVNOs	Loss of retail market share by MagtiCom and Silknet

Source: ComCom . Market review of the Fixed Broadband market, p.184-186

ComCom’s EBITDA illustration is based on the assumption that any loss of retail revenues experienced by MagtiCom due to the potential entry of new operators following the imposition of access obligations will be lower than the additional wholesale revenues earned by MagtiCom through the provision of wholesale access, for which it has provided no clear evidence or substantiation.

In addition, the opportunities and risks presented by ComCom clearly identify the potential costs that the existing operators are likely to face in the form of a reduction in market shares, ARPUs, and therefore, overall revenues. This is particularly the case for Silknet and Cellfie who, according to ComCom, would be faced with a similar loss of retail revenues as demonstrated for MagtiCom, but they would not benefit from a countervailing increase in wholesale revenues. Indeed, based on ComCom’s illustration, the primary ‘benefits’ for Silknet and Cellfie are likely to be in the form of increased retail revenues from ‘market stimulation’ which we consider to be speculative, particularly given the lack of any explanation by ComCom as to how this stimulation is likely to materialise. As such, this further brings into question ComCom’s ‘illustrative’ impact assessment: whilst remedies should support the market as a whole rather than specific players, it would clearly be odd to introduce measures that the regulator thinks will actually boost the returns of the SMP operator at the expense of other two infrastructure operators.

Indeed, given ComCom’s own expectations of the likely costs faced by the existing operators as a result of its proposed regulatory remedies, it is clear that ComCom’s proposed regulatory intervention may impede existing infrastructure-based competition and negatively impact competition in the fixed broadband and mobile markets.

4 Conclusion

In this response, we have presented our views on ComCom's approach to conducting a review of the retail and wholesale fixed broadband markets.

For the reasons set out in detail earlier, we believe that there are a number of fundamental errors and inconsistencies in ComCom's overall approach which harm the validity of ComCom's conclusions regarding the state of competition in the retail market and the susceptibility of the wholesale market to ex ante regulation. Unless ComCom corrects these flaws and revisits its market review, any conclusions from this exercise should not form the basis for the imposition of potentially unnecessary regulatory remedies.

Therefore, we conclude that **ComCom must redo its assessment of the fixed broadband market in Georgia, having corrected for the flaws discussed in Section 3 and 4 of this report. Only then, and if still relevant, it can propose and consult on any regulatory remedies to correct for perceived market failures.**

We also note that ComCom's conclusions are inconsistent with international precedent across Europe. In particular, many European markets consider the presence of three, or even two, competing broadband networks to be sufficient to give rise to effective competition. In this regard, ComCom has not sufficiently explained why the situation in Georgia does not warrant a similar conclusion, given the presence of two competing national networks and multiple local providers, who have emerged into the market without relying on access to existing infrastructures.

Indeed, in a recent decision,⁴⁵ the European Commission has vetoed a proposal by the Malta Communications Authority (MCA), to regulate the wholesale physical and virtual infrastructure access market (including access to copper and fibre networks, as well as access to the physical infrastructure layer). Following the decision, the MCA is compelled to retract its proposed draft measure aimed at regulating the wholesale physical and virtual infrastructure access market in Malta.

The MCA concluded, following an analysis of the wholesale market, that GO, the national incumbent held SMP in the market and therefore, the retail broadband market was not prospectively competitive, absent wholesale regulation. However, the European Commission noted⁴⁶ that the Maltese fixed broadband market already comprised of two parallel networks, in addition to a third operator which had entered the market with its own network and was progressively expanding. The first provider covered two-thirds of dwellings and the second

⁴⁵ European Commission (2024). European Commission vetoes proposed regulation of the wholesale broadband market in Malta following in-depth investigation. Available from: <https://digital-strategy.ec.europa.eu/en/news/european-commission-vetoes-proposed-regulation-wholesale-broadband-market-malta-following-depth>

⁴⁶ European Commission (2024). Commission opens in-depth investigation into the proposed regulation of the wholesale broadband market in Malta. Available from: <https://digital-strategy.ec.europa.eu/en/news/commission-opens-depth-investigation-proposed-regulation-wholesale-broadband-market-malta>

covered 50%, which the European Commission deemed sufficient to render the market not susceptible to ex ante regulation.

Further, the European Commission also noted the high-levels of investment, retail price levels, and already existing infrastructure-based competition in the market suggested that this market was already tending towards effective competition.

Applying the logic of the European Commission in this case to the situation in Georgia would lead clearly to a conclusion that ex ante intervention is not warranted in the broadband market, at least in the bulk of the country. The European Commission's veto decision highlights the importance of a competitive analysis that considers all market dynamics but does not prejudge the presence of a competition problem at the retail level, which still should be proven by the regulatory authority.

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