



Report of the Malta Communications Authority on its monitoring and findings in accordance with Article 5 of Regulation (EU) 2015/2120 concerning the European Net Neutrality Rules.

Report to the European Commission

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1 Introduction

The Malta Communications Authority (hereafter the 'MCA') is the authority responsible for enforcing Regulation (EU) 2015/2120 (hereafter 'Open Internet Regulation' or 'OIR'), which came into force on 30th April 2016. To this effect, the MCA has prepared this report, covering the period between 1st May 2023 and 30th April 2024, in compliance with the annual reporting obligations specified in Article 5 of the Open Internet Regulation. This report is also in line with the relevant BEREC Guidelines on the Implementation by National Regulators of the European Net Neutrality Rules.

The report considers the MCA's work regarding the supervision and monitoring of open Internet access rules as reflected in the Open Internet Regulation.

The OIR establishes various obligations onerous on Internet Access Services (hereafter 'IAS') providers, including ensuring that:

- i. All end-users of IAS can access and distribute information and content, use and provide applications and services of their choice irrespective of the location of their device or the location, origin and/or destination of the information, content, application or service;
- ii. IAS providers apply fair traffic management policies which respect the OIR and the rights of end-users;
- iii. IAS providers clearly explain their traffic management policies and how these may affect end-users' experience as well as how these could impact their privacy and personal data;
- iv. End-users can access clear information regarding the IAS they use (such as speeds, volume limitations and other quality parameters);
- v. IAS providers have simple and clear mechanisms which end-users may use to make complaints; and
- vi. IAS providers clearly explain the remedies available to end-users in cases where their experience deviates significantly and repeatedly from the IAS to which they are subscribed.

The Office of the Information and Data Protection Commissioner (IDPC) is the entity responsible for enforcing the data protection obligations arising from the OIR. The MCA actively collaborates with the IDPC on such matters.

Section 2 provides a high-level market overview and an overall description of the national situation regarding compliance with the OIR.

Section 3 provides a high-level overview of the main activities carried out by the MCA in order to fulfil its monitoring and supervisory functions.

Section 4 provides a detailed account of the monitoring and supervisory functions carried out by the MCA based on an article-by-article basis.

The MCA notes that there are no concerns regarding open internet access in Malta.

During the reporting period, the MCA is also in a position to report that all pending items from the report dated June 2023 are now resolved.

The MCA will continue to monitor the market in order to ensure that compliance is maintained and, where this is not the case, ensure that compliance is effectively restored.

2 Market Overview

The largest three fixed IAS providers in the Maltese market, namely GO plc (hereafter 'GO'), Melita Ltd (hereafter 'Melita') and Epic Communications Ltd (hereafter 'Epic'), together account for over 99% of the clients of internet services in Malta. In terms of market shares by operator as at the end of March 2024, Melita and GO accounted for 47.1% and 46.6% of the local fixed broadband client base, respectively. Epic accounted for a 6.1% market share, while Vanilla Telecoms Ltd ('Vanilla') accounted for a 0.1% market share.

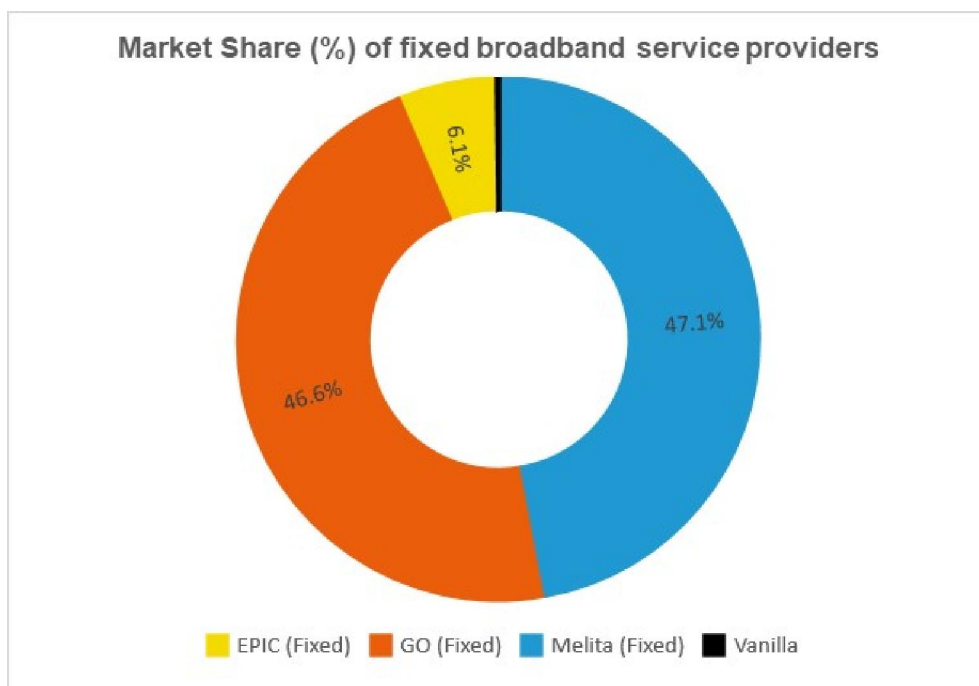


Figure 1 Market share of fixed broadband service providers

GO, Melita and Epic deliver their fixed broadband service using a blend of technologies. All three providers make use of fibre-to-the-home (FTTH) technologies and wireless infrastructure based on 4G/4.5G and 5G platforms. In addition, GO and Melita provide fixed broadband service using DSL and DOCSIS 3.1 technologies respectively. Vanilla Telecoms operates its own wireless infrastructure suitable to provide fixed broadband services¹.

FTTH technologies make up 34.1% of all fixed broadband subscriptions in Malta. In addition, all the three providers are each deploying their FTTH technologies. The number of dwellings that have potential to access an FTTH stands over 80%.

¹ Vanilla Telecoms operates its wireless network using spectrum under the light-licencing regime.

Epic, GO, and Melita also own a nationwide mobile infrastructure over which they offer mobile broadband services in Malta.

At the end of March 2024, the number of mobile telephony subscriptions totalled 754,926 corresponding to a mobile penetration rate of 135.7%.

Epic's subscribers accounted for a 42.2% market share, followed by GO's at 34.75% and Melita's at 23.02%.

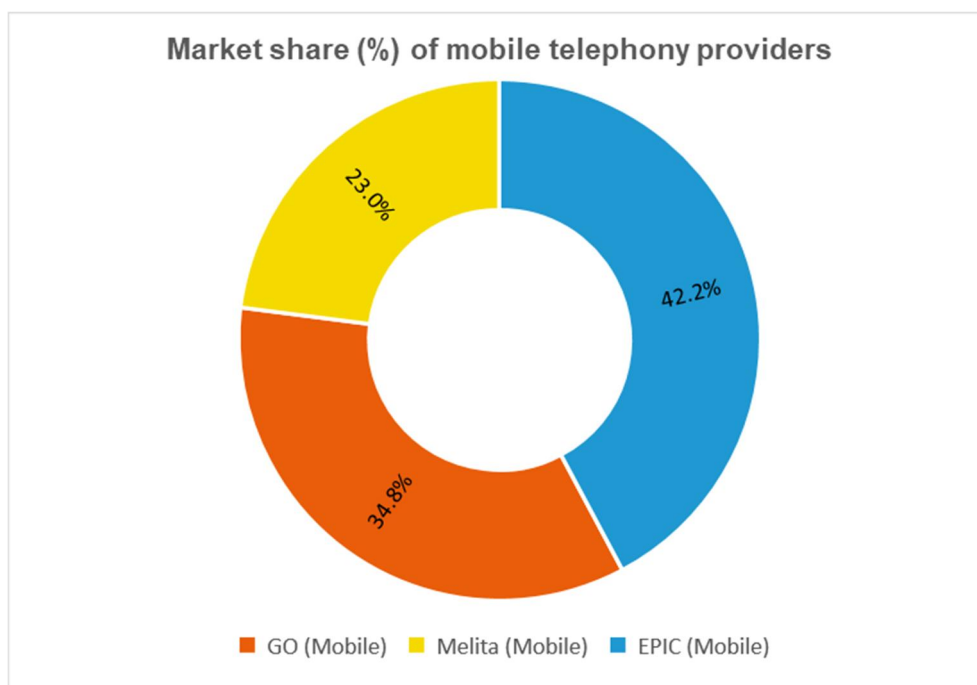


Figure 2 Market share of mobile providers based on the number of subscriptions

While all mobile subscriptions in Malta have access to mobile broadband, not all users actively use the service. Referring to the latest DESI figures for 2023², updated and published by the European Commission, 86.8% of all individuals in Malta (aged 16 to 74 years) actively used mobile broadband. The EU average also stood at 86.5% for the same cohort of people³.

² https://digital-decade-desi.digital-strategy.ec.europa.eu/datasets/desi/charts/compare-countries-progress?indicator=desi_2b1&breakdown=ind_total&unit=pc_ind&country=EU

³ The EC defines 'Mobile Broadband penetration' as the number of active mobile broadband SIM cards per 100 people

3 The National Situation Regarding Compliance with The EU Open Internet Regulation

During the current reporting period, the MCA analysed all IAS products that were newly placed on the market as well as those which were modified and/or updated. As part of this regulatory activity, the applicable terms and conditions offered by IAS providers were analysed and matched against the requirements prescribed by the OIR to study the extent of compliance or lack thereof. The MCA notes that during this exercise no major issues were reported. Other minor issues were identified which issues were rectified immediately by the providers following intervention by the MCA.

As part of its monitoring tasks, during this reporting period, the MCA recorded five (5) complaints regarding discrepancies between the contracted speed and the actual speed performance of the service, and one (1) complaint whereby a subscriber complained in an issue related to the ability to use the terminal equipment of own choice.

While the MCA considers this as an indication that there are no significant issues in the market, it maintains an ongoing assessment of new IAS products on the market to ensure that these are in line with the requirements of the OIR.

Moreover, based on its regulatory powers as described in Article 5(2) of the OIR, the MCA requested Epic, GO, and Melita, all fixed and mobile IAS providers, to complete a self-assessment questionnaire aimed at providing the MCA with details about their commercial and technical practices in relation to the products they offer. The results obtained from the questionnaire will be expanded upon in the subsequent sections according to the relevant article of the OIR.

4 Detailed Analysis of Compliance in relation to Articles 3, 4, 5 and 6

4.1 Article 3 – Safeguarding of Open Internet Access

Article 3 of the EU Open Internet Regulation

(1) End-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the information, content, application or service, via their internet access service.

This paragraph is without prejudice to Union law, or national law that complies with Union law, related to the lawfulness of the content, applications or services.

(2) Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the rights of end-users laid down in paragraph 1

As part of the self-assessment questionnaire sent to the indicated IAS providers, respondents were asked to submit information pertaining to the technical and commercial practices in the context of their impact on end-users.

The MCA also monitored the commercial and technical conditions related to the provision of Internet access services by checking all the publicly available information primarily available on IAS providers' web pages, including relevant terms and conditions and other material. Such monitoring is an ongoing activity to ensure that compliance is maintained.

The self-assessment questionnaire, sent to all fixed and mobile broadband IAS providers, requested information about their respective traffic management practices. The MCA also queried about the potential existence of commercial practices that IAS providers may offer to their subscribers which may, in the long term, have an impact on end-users' rights. From this market research, the following main findings emerge:

- i. none of the operators engaged in traffic management practices that are in breach of the OIR; and

- ii. none of the operators engaged in commercial practices that may restrict end-users' rights to choose and transmit the content of their choice.

Zero-rated commercial practices

Following the publication of the CJEU judgement on the admissibility of zero-rated products within the context of the OIR, the zero-rating offers in Malta were withdrawn.

In its annual report on the implementation of the Open Internet Report for the year 2023, it was stated that one provider was zero-rating its own website and could not stop the practice due to technical limitations. The provider has since resolved the issues and has now stopped the practice.

Article 3 (3) of the EU Open Internet Regulation

(3). Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.

The first subparagraph shall not prevent providers of internet access services from implementing reasonable traffic management measures. In order to be deemed to be reasonable, such measures shall be transparent, non-discriminatory and proportionate, and shall not be based on commercial considerations but on objectively different technical quality of service requirements of specific categories of traffic. Such measures shall not monitor the specific content and shall not be maintained for longer than necessary. [...]

Omissis

Traffic management practices

Where applicable, the MCA monitored the traffic management policies established by the IAS providers as published in their relevant terms and conditions. The policies were found to comply with the OIR in terms of the technical aspects as well as in terms of the level of information required.

The self-assessment questionnaire sent to all IAS providers also treated the subject of technical practices. The results indicate that currently, there are no issues in the market, and all IAS providers have been compliant with the OIR in this respect.

Article 3 (3) of the EU Open Internet Regulation (continued)

...

Providers of internet access services shall not engage in traffic management measures going beyond those set out in the second subparagraph, and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof, except as necessary, and only for as long as necessary, in order to:

(a) comply with Union legislative acts, or national legislation that complies with Union law, to which the provider of internet access services is subject, or with measures that comply with Union law giving effect to such Union legislative acts or national legislation, including with orders by courts or public authorities vested with relevant powers;

Omissis

Blocking of IP traffic to prevent the transmission of unlicensed content

During 2022, La Liga Nacional e Futbol Profesional, (La Liga) a legal entity registered in Spain holding the international audiovisual rights of the matches of the first and second divisions of the Spanish football league, and Infront Sports & Media AG, a legal entity registered in Switzerland separately filed a number applications in Court (First Hall of the Civil Court – Malta) requesting the issue of warrants of prohibitory injunction against the three largest IAS providers in Malta, namely, Melita Ltd, GO Plc and Epic Communications Ltd. The court upheld all the requests presented to it requiring the ISPs to block a number of IP addresses indicated to them by a study carried out by PriceWaterHouseCoopers as instructed in the same court order. The blocking of the IP addresses was restricted to cover the period of the respective football leagues during 2022/2023.

All IP addresses which are blocked as a result of these court orders are permissible under the OIR justified under Article 3(3) subparagraph 3 (a). The Authority is aware that the IP addresses were blocked during the operative time window of the court order by at least one provider.

Blocking of DNS resolution

Since the 1st of March 2022, the EU Council published amendments to Regulation (EU) 833/2014, that required IAS providers to block any content transmitted by those legal entities identified in the Annex XV of the aforesaid Regulation. The Sanctions Monitoring Board within

the Maltese Ministry of Foreign and European Affairs and Trade periodically notifies all authorised ECS providers, including IAS providers, informing them of this Regulation while suggesting that the requirements arising from Regulation (EU) 833/2014 would be fulfilled when they apply DNS Resolution blocking of an indicated set of domain addresses related to the persons and entities identified by the Regulation.

From the perspective of compliance with the OIR, upon considering that the blocking of the resolution of DNS addresses is the result of an action required in the fulfilment of the requirements of an EU Regulation, then the provisions in Article 3 (3) subparagraph 3 (a) become applicable and, therefore, the blocking of IP traffic is therefore deemed permissible under the OIR.

Article 3(5) of the EU Open Internet Regulation

(5) Providers of electronic communications to the public, including providers of internet access services, and providers of content, applications and services shall be free to offer services other than internet access services which are optimised for specific content, applications or services, or a combination thereof, where the optimisation is necessary in order to meet requirements of the content, applications or services for a specific level of quality.

Providers of electronic communications to the public, including providers of internet access services, may offer or facilitate such services only if the network capacity is sufficient to provide them in addition to any internet access services provided. Such services shall not be usable or offered as a replacement for internet access services, and shall not be to the detriment of the availability or general quality of internet access services for end-users.

The status related to specialised services has remained unchanged since the last report. The specialised services offered in Malta include voice telephony and live TV streaming services. There are no indications that the offer of these specialised services harms the availability and quality of the IAS offered in Malta. Hence the MCA concludes that a formal assessment of the provision of specialised services was not necessary.

4.2 Article 4 – Transparency Measures

Article 4 (1) of the EU Open Internet Regulation

(1). Providers of internet access services shall ensure that any contract which includes internet access services specifies at least the following:

- (a) information on how traffic management measures applied by that provider could impact on the quality of the internet access services, on the privacy of end-users and on the protection of their personal data;*
- (b) a clear and comprehensible explanation as to how any volume limitation, speed and other quality of service parameters may in practice have an impact on internet access services, and in particular on the use of content, applications and services;*
- (c) a clear and comprehensible explanation of how any services referred to in Article 3(5) to which the end-user subscribes might in practice have an impact on the internet access services provided to that end-user;*
- (d) a clear and comprehensible explanation of the minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks, or of the estimated maximum and advertised download and upload speed of the internet access services in the case of mobile networks, and how significant deviations from the respective advertised download and upload speeds could impact the exercise of the end-users' rights laid down in Article 3(1);*
- (e) a clear and comprehensible explanation of the remedies available to the consumer in accordance with national law in the event of any continuous or regularly recurring discrepancy between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated in accordance with points (a) to (d).*

Providers of internet access services shall publish the information referred to in the first paragraph.

The MCA continued its monitoring activity whereby the terms and conditions of new products launched on the market or changes to the terms of existing products were reviewed. The terms and conditions were deemed to be compliant with the OIR, and therefore, with the exception of minor issues, the MCA did not consider it necessary to engage with the IAS providers on this aspect.

Article 4 (2) of the EU Open Internet Regulation

(2) Providers of internet access services shall put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article.

IAS providers already established transparent, simple and efficient procedures to address end-user complaints as prescribed by national legislation. The MCA frequently carries out testing in relation to such procedures, and all IAS providers maintain effective channels of communication with their customers, such as online chat services, customer care helplines and dedicated email addresses.

No change was registered compared to the MCA's previous reporting period.

Article 4 (3) of the EU Open Internet Regulation

(3). The requirements laid down in paragraphs 1 and 2 are in addition to those provided for in Directive 2002/22/EC and shall not prevent Member States from maintaining or introducing additional monitoring, information and transparency requirements, including those concerning the content, form and manner of the information to be published. Those requirements shall comply with this Regulation and the relevant provisions of Directives 2002/21/EC and 2002/22/EC.

Given the market-wide state of compliance, as well as the various measures already in place as prescribed by existing national and EU legislation, the MCA did not deem it necessary to impose any further requirements other than those imposed by such legislation.

Article 4(4) of the EU Open Internet Regulation

(4). Any significant discrepancy, continuous or regularly recurring, between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated by the provider of internet access services in accordance with points (a) to (d) of paragraph 1 shall, where the relevant facts are established by a monitoring mechanism certified by the national regulatory authority, be deemed to constitute non-conformity of performance for the purposes of triggering the remedies available to the consumer in accordance with national law.

Fixed broadband providers are required to provide the Typical Speed Range (hereafter 'TSR'), calculated on the basis of the access speed performance of a statistically sound sample taken from broadband connections of a given product. The TSR is established as the 20th and 80th percentile of the measured speeds at the access network level for each product used. Therefore, any connections performing at speeds that are lower than the 20th percentile are considered as being "significantly discrepant". No interpretation of the term 'regularly recurring' has been published.

At present, the remedies available to end-users, including IAS quality monitoring mechanisms available to them, are deemed to be adequate. For this reason, no additional remedies have been introduced for consumer redress in relation to the non-conformance of IAS with the contract terms.

4.3 Article 5 – Supervision and Enforcement

Article 5 (1) of the EU Open Internet Regulation

(1). National regulatory authorities shall closely monitor and ensure compliance with Articles 3 and 4, and shall promote the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology. For those purposes, national regulatory authorities may impose requirements concerning technical characteristics, minimum quality of service requirements and other appropriate and necessary measures on one or more providers of electronic communications to the public, including providers of internet access services. [...]

Omissis

At present, the MCA does not consider the deployment of specialised services to be to the detriment of IAS. The MCA, therefore, does not impose minimum QoS requirements on any IAS provider other than the definition of 'contractual speeds'.

4.3.1 QoS - broadband quality of service

As part of its monitoring measures, the MCA monitors the quality of broadband services based on the regulatory framework established in 2013 and revised later in 2016. The framework requires fixed broadband internet access service providers to measure a number of QoS parameters and submit their report to the MCA. IAS providers are also required to publish the TSR information related to each IAS product as a means of committing to a minimum access speed.

ECSN providers have recently carried out various network upgrades to improve the available broadband speeds and capacity. The existing monitoring solutions in compliance with this framework, have now become restrictive in terms of the QoS parameters that could be monitored. Cognisant of such limitations in the implemented monitoring solutions, the MCA is currently in the process of updating the 2016 framework in line with the latest developments in technology.

Furthermore, the MCA also monitors the quality of the broadband services through customer care complaints received. Data currently available does not indicate any matters of concern with regard to the QoS of the broadband services on the market.

Article 5(2) of the EU Open Internet Regulation

(2). At the request of the national regulatory authority, providers of electronic communications to the public, including providers of internet access services, shall make available to that national regulatory authority information relevant to the obligations set out in Articles 3 and 4, in particular information concerning the management of their network capacity and traffic, as well as justifications for any traffic management measures applied. [...].

Omissis

The MCA sent all IAS providers a self-assessment questionnaire in line with this article. The information was then used as a basis for corroborating the MCA's market monitoring of IAS providers' published information i.e. terms and conditions.

4.4 Article 6 - Penalties

Article 6 of the EU Open Internet Regulation

6. Member States shall lay down the rules on penalties applicable to infringements of Articles 3, 4 and 5 and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules and measures by 30 April 2016 and shall notify the Commission without delay of any subsequent amendment affecting them.

Under Article 33 of the Malta Communications Authority Act (Chapter 418 of the Laws of Malta), the MCA may impose an administrative penalty not exceeding three hundred and fifty thousand Euros (€350,000) for each infringement or failure to comply and, or twelve thousand euro (€12,000) for each day of infringement or non-compliance. In determining the amount, the MCA is required to give particular regard to the nature and extent of the infringement and its impact on competition and consumers.

If the MCA considers that the act/omission has especially significant effects on the market it may increase the administrative penalty to not more than 5% of the turnover of the undertaking concerned in the calendar year immediately preceding the year when the infringement was committed.

During this reporting period, no cases of non-compliance were identified, and therefore no administrative penalties were imposed.

4.5 Other activities

MCA officials actively participate and collaborate with other EU regulatory authorities within BEREC on matters concerning the Regulation.

5 Conclusion

After having carried out its work programme for the year 2023/2024 in ensuring the availability of open internet access services in line with the requirements of the OIR, the MCA concludes that IAS providers in Malta were generally compliant with the requirements of the OIR. The MCA also notes that ongoing monitoring and review of the terms and conditions remain important given that this sector undergoes continuous changes.