
Access to the public telephone network at a fixed location

**Identification and Analysis of Markets,
Determination of Market Power and Setting of Remedies**

Consultation Document

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Executive Summary

The current regulatory framework for electronic communications networks and services which entered into force in Malta on the 14th September 2004 is designed to create harmonised regulation across Europe and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. The basis for this framework are five EU Directives.

The new Directives require National Regulatory Authorities (NRAs), amongst other things, to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions. For a limited period, while those reviews are conducted and until the new Significant Market Power (SMP) conditions are imposed, parts of the regulatory regime which existed prior to the 14th September 2004 continue to be in force in line with Article 39 and 40 of the Electronic Communications (Regulation) Act.

This review sets out the Malta Communications Authority's (MCA) proposal for identifying relevant markets and making market power determinations. Those likely to be effected may forward their comments within the period ending on Friday 25th November 2005. Arrangements for submitting comments are explained in **Chapter 05**.

As required by Article 7 of the Framework Directive (as implemented by Article 4 of the Electronic Communications (Regulation) Act), the MCA's proposals will be notified to the European Commission.

Summary of Proposals

Identification of Markets

The group of products and services under consideration in this document consists of access products to the fixed public telephony network. In Malta, access to the fixed public telephony network is provided either through analogue exchange lines, cable access or digital exchange lines (ISDN BRA and PRA).

In relation to these services, the MCA proposes to identify the following relevant market in accordance with competition law principles:

1. Residential analogue and cable access lines provided over fixed public electronic communications networks.
2. Residential ISDN BRA access provided over fixed public electronic communications networks.
3. Non-residential analogue and cable access lines provided over fixed public electronic communications networks.
4. Non-residential ISDN BRA access provided over fixed public electronic communications networks.
5. Non-residential ISDN PRA access provided over fixed public electronic communications networks.

The details of the definition of this market, and the approach taken by the MCA when identifying these markets, are contained in **Chapter 02** of this document.

Assessment of Market Power

Based on the evidence presently available to the MCA and after having analysed the operation of these markets, and taken due account of the Commission's 'Guidelines on market analysis and the assessment of SMP' (SMP Guidelines), the MCA proposes that Maltacom plc. should be designated as having significant market power in all of the above mentioned markets. The main reasons justifying the proposed designation are:

- a 99% market share;
- no countervailing buyer power;
- high economies of scale and scope;
- vertically integrated provider; and
- high barriers to entry.

Full details of the MCA's draft decision and reasoning are contained in **Chapter 03** to this document.

Regulatory Implications

Given the position of dominance held by Maltacom plc in all of the markets for access to the public telephone network at a fixed location – i.e. their ability to behave to an appreciable extent independently of competitors, customers and ultimately consumers – the MCA proposes to impose the following conditions :

Wholesale Obligations:

- Access to/and use of specific network facilities
- Non-discrimination
- Transparency
- Price control & cost accounting
- Accounting Separation

Retail Obligations:

- Price Cap
- Cost Orientation for retail prices
- Cost accounting
- Transparency and non-discrimination

Full details of these remedies, including their effect and the reasons for proposing to set these conditions, are contained in **Chapter 04** of this document.

Chapter 01 – Introduction

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

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

The Framework Directive provides the overall structure for the new regulatory regime and sets out fundamental rules and objectives across all the new directives. Article 8 of the Framework Directive sets out three key policy objectives, which have been taken into account in the preparation of this consultation document, namely promotion of competition, development of the internal market and the promotion of the interests of the citizens of the European Union.

The Authorisation Directive establishes a new system whereby any person will be generally authorised to provide electronic communications services and/or networks without prior approval. The general authorisation replaces the former licensing regime. The Universal Service Directive defines a basic set of services that must be provided to end-users. The Access and Interconnection Directive sets out the terms on which providers may access each others’ networks and services with a view to providing publicly available electronic communications services.

These four Directives were implemented in Malta on the 14th September 2004. This was achieved via the entry into force of the Electronic Communications (Regulation) Act, 2004 (hereinafter referred to “ECRA”) and the Electronic Communications Networks and Services (General) Regulations, 2004 (hereinafter referred to “ECNSR”). The Directive on Privacy establishes users’ rights with regard to the privacy of their communications was transposed into national legislation through the Processing of Personal Data (Electronic Communications Sector) Regulations of 2003 and the Electronic Communications (Personal Data and Protection of Privacy) Regulations of 2003.

The Directives require National Regulatory Authorities (NRAs) such as the MCA to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions.

Each market review is divided in three main parts:

- definition of the relevant market or markets;
- assessment of competition in each market, in particular whether any companies have Significant Market Power (SMP) in a given market; and
- assessment of what are the appropriate regulatory obligations which should be imposed given the findings on SMP (NRAs are obliged to impose some form of regulation where there is SMP).

More detailed requirements and guidance concerning the conduct of market reviews are provided in the Directives, the ECRA, the ECNSR and in additional documents issued by the European Commission and the MCA. As required by the new regime, in conducting this review, the MCA has taken the utmost account of the two European Commission documents discussed below.

01.1 Market Review Methodology

The European Commission has identified in its Recommendation, a set of markets in which *ex ante* regulation may be warranted. The Recommendation seeks to promote harmonisation across the European Community by ensuring that the same product and service markets are subject to a market analysis in all Member States. However, NRAs are able to regulate markets that differ from those identified in the Recommendation where this is justified by national circumstances. Accordingly, NRAs are to define relevant markets appropriate to national circumstances, provided that the utmost account is taken of the product markets listed in the recommendation (Regulation 6 of the ECNSR).

The European Commission has also issued Guidelines on market analysis and the assessment of SMP ("SMP Guidelines"). The MCA has also published a document outlining the guidelines on the methodology to be used for assessing effective competition in the Maltese electronic communications sector¹. The MCA is required to take these guidelines into utmost account when analysing a product or service market in order to assess whether the market under investigation is effectively competitive or otherwise (refer to Regulation 8 of the ECNSR).

As required by Article 7 of the Framework Directive and Regulation 6 of the ECNSR, the results of this market review and the proposed draft measures need to be notified to the European Commission and to other NRAs. The Commission and other NRAs may make comments within the one month consultation period. If the Commission is of the opinion that the market definition, or proposals to designate an operator with SMP or proposals to designate no operator with SMP, would create a barrier to the single market or if the Commission has serious doubts as to its compatibility with Community law, and issues a notice under Article 7(4) of the Framework Directive, the MCA is required by Regulation 6 of the ECNSR to delay adoption of these draft measures for a further period of 2 months while the Commission considers its position.

The MCA has collected market data from a variety of internal and external sources, including users and providers of electronic communications networks and services and from consumer surveys commissioned by the MCA, in order to carry out thoroughly its respective market definition and market analysis procedures based on established economic and legal

¹ Link to market review methodology: <http://www.mca.org.mt/library/show.asp?id=513&lc=1>

principles, and taking the utmost account of the Relevant Markets Recommendation and the Guidelines.

01.2 Consultation

As required by Article 10 of the ECRA, the MCA is to publish the results of the market reviews and to provide operators the opportunity to comment on the findings prior to adopting the final proposals.

Furthermore, Regulation 6 of the ECNSR establishes that prior to adopting the draft measures proposed in the market review the MCA is required to notify the Commission with the findings of the market reviews, the proposed remedies and the outcome of the national consultation process.

In line with our national consultation process, the consultation period will run from Friday 14th October to Friday 25th November 2005, during which the MCA welcomes written comments on any of the issues raised in this paper.

01.3 Liaison with Competition Authority

Under Regulation 10 of the ECRA, the analysis of the markets must be carried out in accordance, where appropriate, with an agreement with the National Competition Authorities (NCAs).

In line with the co-operation agreement signed on the 20th May 2005 between the MCA and the Office of Fair Competition (OFC)², the MCA has initiated a two week consultation process with the OFC. The MCA has forwarded and presented the results of this review to the OFC. The OFC is in the process of forwarding its comments to the MCA in writing in the coming days. Upon receipt of this letter the MCA will make it available to the general public.

01.4 Scope of this Review

This review considers the markets for access to the public telephone services at a fixed location in Malta (hereafter referred to as the 'access markets'), which includes all products and services which allow end-users to access any public telephone network.

Q1. Do you agree with the scope of the MCA's review of the markets for access to the public telephone services in Malta?

² Link to Memorandum of Understanding between MCA and OFC:
<http://www.mca.org.mt/library/show.asp?id=656&lc=1>

01.5 Structure of the Document

The rest of the document is structured as follows:

Chapter 02 presents MCA's preliminary conclusions on the definition of the markets for access to the public telephony services in Malta. This section consists of a review of the market definition procedure and its scope, as well as demand side and supply side assessments at the retail level;

Chapter 03 presents MCA's market analysis for the access markets and outlines a preliminary view on whether this market is effectively competitive or those undertakings with significant market power.

Chapter 04 provides a discussion of the general principles associated with remedies and outlines the proposed remedies on SMP operators, under the new regulatory framework; and

Chapter 05 provides details with regard to the submission of comments on this consultation document.

Chapter 02 - Market Definition

Regulation 10 of the ECNSR provides that before a market power determination may be considered, the MCA must identify the markets which are, in its opinion, the ones which, in the circumstances of Malta are the markets in relation to which it is appropriate to consider such a determination and to analyse that market. In identifying the relevant markets, the MCA is required to take utmost account of all applicable guidelines and recommendations issued by the European Commission.

In formulating the MCA approach to market definition, the MCA has paid the utmost regard to the Commission's Recommendation.

Where the proposed market definition differs from the Commission's Recommendation the difference is identified and justification given in the light of the national circumstances which justify this departure, in the manner prescribed by the Recommendation.

Paragraph 3.1 of the Commission's Recommendation states that *'because market analysis is forward-looking, markets are defined prospectively taking account of expected or foreseeable technological or economic developments over a reasonable horizon linked to the timing of the next market review'*. The market analysis has been carried out on a forward looking basis and, where it is thought possible that market conditions may change significantly during the time of this review, these changes are identified and discussed.

The Recommendation states in Paragraph 4 that retail markets should be examined in a way which is independent of the infrastructure being used, as well as in accordance with the principles of competition law. Again this approach is at the heart of the MCA's analysis. The MCA's approach in assessing the markets is based on an analysis of competition levels and an assessment of the extent to which switching among services by consumers constrains prices, irrespective of the infrastructure used by the providers of those services.

This chapter outlines the MCA's findings setting out the different markets that the MCA has identified, and giving reasoning for his proposed conclusions.

02.1 Background to the electronic communications sector in Malta

As at December 2004 the total population of Malta stood at approximately 395,000. According National Statistics Office figure's there are approximately 128,000 residential households and 30,000 non-residential units. These figures indicate the small geographic size of Malta and this is reflected in the relatively small scale electronic communications services/networks available. Nonetheless, the electronic communications sector has in the past decade experienced an impressive growth both in terms of the number of operators and the variety of services offered. A perceptible amelioration in the quality of delivery of such services has also been recorded.

During the first nine months of 2004 the contribution of the electronic communications sector towards the Gross Domestic Product was just over 3 per cent, which shows a significant contribution to value added in the economy. For further details on the performance of the

electronic communications sector in the Maltese economy and other relevant statistics refer to the latest Electronic Communications Market Review published by the MCA³.

In Malta, the incumbent fixed telephony services operator - Maltacom plc⁴ - is the only undertaking that provides fixed access and calls over the public switched telephone network (PSTN). The incumbent has over the past decade developed its ubiquitous network from one predominantly focused on fixed-line telephone services including an international gateway, to one which incorporates other types of electronic communications services including; data communications (including internet and VoIP), mobile telephony and wireless applications.

Another infrastructure with almost ubiquitous coverage in Malta is the cable network operated by Melita Cable plc⁵. This is a typical hybrid fibre coaxial (HFC) cable network, the primary use of which is the delivery and provision of cable TV. Melita Cable undertook a network upgrade in the late 1990s in order to render their network bi-directional and thus be in a position to provide two-way communications. As a result, in 2000, it started offering high speed Internet access across its HFC network via cable modem. Furthermore, as from last July the cable operator started to offer a VoBB product. This product enables cable subscribers to make on-net and international calls only. To date the cable operator has not concluded any interconnection agreements with other operators and therefore subscribers cannot make off-net local calls.

02.2 Access to the public telephone network at a fixed location

The MCA is considering the provision of access to the public telephone network at fixed location in line with Article 26(2) of the Electronic Communications Networks and Services (General) Regulations 2004, that is, that the connection provided shall be capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access.

In Malta, fixed access to the public telephone network is provided through analogue exchange lines, digital ISDN exchange lines and cable.

Standard analogue exchange lines

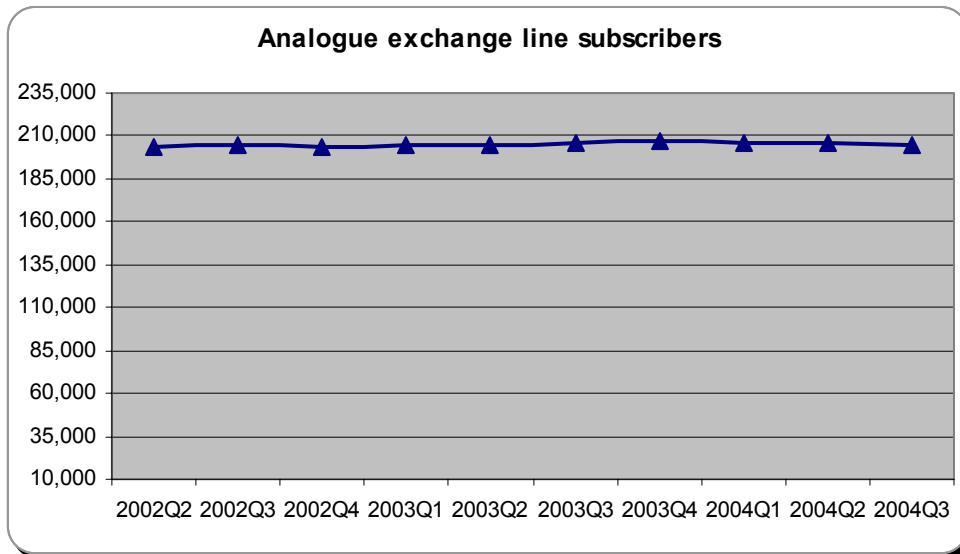
The analogue exchange line provides a single 64kbp/s channel, which supports voice as well as fax and data traffic with speeds of up to 56kbp/s.

At the end of September 2004, there were 204,721 basic analogue exchange lines in service. This is equivalent to a penetration of 51.4 lines per 100 inhabitants. The number of analogue exchange line subscriptions has remained stable over the past years.

³ Link to document on the MCA website: <http://www.mca.org.mt/library/show.asp?id=543&lc=1>

⁴ Hereinafter referred to as Maltacom

⁵ Hereinafter referred to as Melita Cable

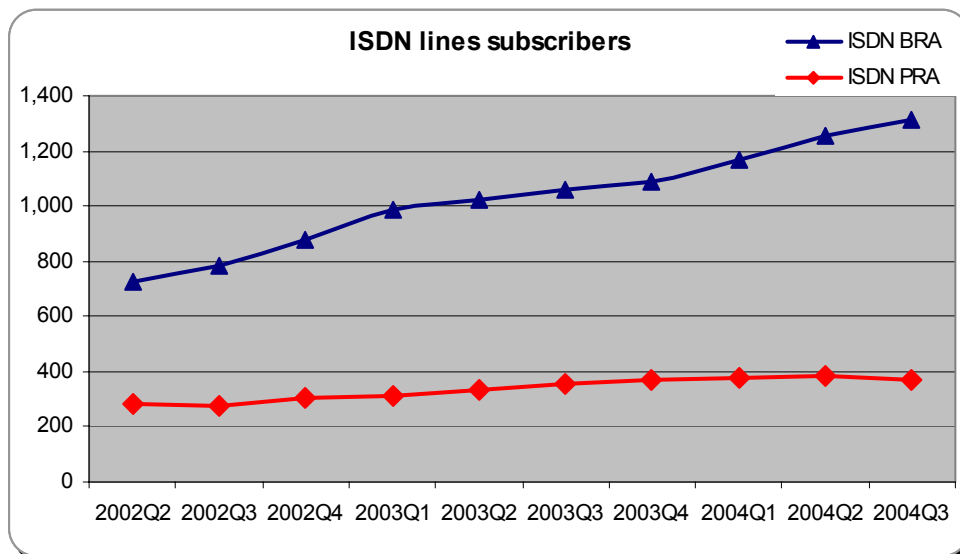


Digital ISDN exchange lines

Two categories of ISDN exchange line services are provided in Malta:

Basic Rate Access (BRA) - This is provided over the existing twisted pair subscriber line and can carry up to two simultaneous voice or data conversations (to the same or different locations). The two B channels can be combined for transmitting data at uncompressed speeds of up to 128Kbps.

Primary Rate Access (PRA) - This type of ISDN line is used mainly by medium and large sized enterprises and supports up to thirty 64kbp/s Bearer (B) channels and one 64kbp/s Data (D) channel. Another 64kbp/s channel is used for synchronisation purposes. Primary Rate Access ISDN can handle a total bandwidth of 2,048kbp/s.



As at the end of September 2004 the number of Basic ISDN lines stood at 1,310 and the number of Primary ISDN lines was 373. The number of basic ISDN lines is experiencing a

small but constant increase whilst that of Primary ISDN lines has been stable for the past three years. All primary ISDN lines are used by business customers.

A user typically purchases access to the fixed telephone network in the form of an initial connection charge and a subsequent monthly rental (paid in advance). This applies to access via both analogue exchange lines and ISDN lines. Customers using standard analogue exchange lines have also the opportunity to opt for a prepaid scheme (*easyline*). Users opting for this scheme have their access and call charges directly deducted from their prepaid card. Users of this prepaid scheme are bound to spend a minimum amount worth of calls annually.⁶

Access over the cable network for fixed telephony services has been available since July 2005 when the cable operator launched a VoBB service for its subscribers. Preliminary data available to the MCA show that as at September 2005 there were approximately 2000 subscribers using cable access for the provision of VoBB telephony services.

02.3 Delineation of access markets in Malta

The delineation of the markets is based on an analysis of demand and supply substitutability between different products and services which could potentially form part of the market under investigation. This section provides an analysis of the degree of substitutability between available access products in Malta, taking also a forward looking approach with respect to possible developments in the market under review.

2.3.1 Access and calls at a fixed location

At present, both residential and non-residential customers purchase fixed access and calls as a cluster of services. Nevertheless, the cost of the two services can be distinguished since the cost for access and for calls is listed separately in the bill received by the customer.

However, the fact that fixed access and calls are supplied as a bundle does not necessarily imply that these products fall within the same relevant market. In order to assess if these products are substitutes or otherwise, demand-side and supply-side substitution factors will now be considered.

Demand-side substitution

As mentioned earlier, at present customers purchase both access to the public fixed telephone network and fixed calls as a cluster of services. Although customers may perceive access and call services as being one product (since they receive one bill) they are functionally different. Access services are an input to the capability of making calls over the fixed network. Customers cannot substitute fixed access to fixed calls since the latter is dependent on the other. This implies that although they may be perceived as one product, the two are not substitutes but rather complementary products. Proof of this is the fact that through the introduction of Carrier Select (CS) and Carrier Pre-select (CPS), end-users have the ability to purchase calls from one operator while buying access separately from another.

To date in Malta, apart from the incumbent which offers an international calls CS service on its own network, there is no alternative operator providing such facilities. Nonetheless, if a

⁶ In order for a subscriber to continue to enjoy the *easyline* service a minimum of Lm38 (in the case of a residential subscription) and Lm75.00 (in case of a business subscription) worth of telephone calls must be made from the subscriber's telephone per annum, or such other minimum amount worth of telephone calls as Maltacom may decide in its sole discretion from time to time. In case of default Maltacom will migrate the *easyline* Service to the normal telephone line service.

competing CS or CPS operator enters the market, customers would be able to switch operator if a hypothetical monopolist applies a significant non-transitory price increase in the price of calls. This would allow customers to purchase access and calls from a different operator, therefore, not binding them to buy access and calls as a cluster from the same operator.

The MCA is of the opinion that given the different functionality of the mentioned products fixed access and fixed calls cannot be considered to constitute a single market.

Supply-side substitution

The MCA considers that it is highly unlikely that any CS or CPS operator (which offers call services only) would enter the access market during the timeframe of this review, if a hypothetical monopolist of access lines imposes a small but significant non-transitory increase in price of access lines.

Given the economies of scale and sunk costs involved in the construction of access networks, the MCA considers that there is no realistic possibility of supply-side substitution during the timeframe of this review.

Preliminary conclusions

The MCA considers fixed calls and fixed access to be complementary services and not substitutes and as a result they constitute separate markets.

2.3.2 Fixed and mobile access

Over the past three years since competition in the mobile market was introduced the number of mobile users have increased dramatically. Currently, mobile penetration stands at around 78 per 100 inhabitants. It is thus relevant to consider whether access to a mobile telephone network is a good substitute for fixed access.

In this section, the MCA will be considering the extent to which a user would choose to access a telephone network using a mobile connection as opposed to a fixed connection and whether an undertaking currently providing mobile access would enter the market for fixed access in response to a small but significant non-transitory price increase.

Demand-side substitution

There are several factors, which in the opinion of the MCA make mobile access functionally different from fixed access. The most obvious feature is mobility, that is, that while one can access a mobile network irrespective of location, fixed services can only be accessed from a fixed point. In this sense, it is possible for users to substitute these types of access in one direction only, that is, by replacing fixed access by mobile access but not vice versa.

Another characteristic is the reliability of the service. Although mobile quality in Malta has improved considerably especially in terms of coverage, owing to the nature of mobile communications, the reliability of mobile access partly depends on the mobile phone, partly on the network and partly on other electronic communications services to which the network is connected. Mobile access might be adversely affected by a number of factors including:

- a large number people trying to use the network at the same time within the area covered by a particular base station,

- by physical features (such as high buildings, tunnels and densely built-up areas),
- by atmospheric conditions or
- by other causes of interference.

On the other hand, access via the PSTN network is comparatively more reliable than access through the mobile network as most of these adverse effects are not present.

Another distinct characteristic between fixed access and mobile access is the speed of data transfer that the different technologies are capable of carrying. The advent of GPRS in mobile telephony extended the ways in which people communicate. It is now possible for one to connect either through a GPRS enabled computer card or an infrared-capable GPRS mobile phone to a computer to achieve wireless connectivity to the Internet or office environment. However, GPRS can only reach typical speeds of around 40kbits/sec. This is relatively much slower in comparison to the speeds that can be reached via a fixed line access.

With the advent of 3G technology data transfer over mobile networks has improved dramatically, thus reducing the difference between mobile and fixed access for data transfer purposes. However, two undertakings have to date been granted 3G frequency spectrum, this type of technology is not currently available in Malta and the MCA is of the opinion that its take-up will be insignificant during the timeframe of this review.

One also has to note that a fixed connection may be shared by a number of users, while a mobile connection is generally more personal and associated with a single user. Thus, the cost of access from a fixed location may be shared by a number of people.

When assessing the potential demand-side substitution of mobile access to fixed access, it is important to consider the extent to which fixed access users would switch their fixed line access with mobile access if the price of fixed line access were to increase. Due to the different pricing structures of mobile tariff plans it is very difficult to separate the charge for access from the charge for calls. Mobile access and calls are sold as a single bundle. It is therefore hard to compare the cost of fixed access (which excludes calls) with the cost of mobile access (access and calls bundled together). Appendix A shows the current price schedule for fixed access and calls, and some comparative analysis of the cost incurred by a user when calling from a mobile and a fixed line.

In comparing fixed line tariffs with mobile tariffs on a best deal basis, it is evident that there is still a considerable price differential. A person switching completely from fixed access to mobile would find that the cost of communicating would more than double. Hence, although retail mobile costs are decreasing, it is still not a feasible alternative for a user to substitute fixed access with mobile access.

In conclusion, when one considers the general price premium for accessing the network from a mobile phone and the existing functional differences between mobile access and fixed access, given an increase in the price of fixed line access, users will not substitute their fixed line access with a mobile access.

Supply-side substitution

In considering supply-side substitution, there appears to be few opportunities for substitution between fixed and mobile access services. Supply-side substitution would involve a mobile operator responding to a price increase in fixed access by switching production and offering fixed access. A mobile provider seeking to enter the fixed access market would need to provide a product that matched the price and quality of a fixed line. This would require either the construction of an access network or the development of a wireless product that more

closely resembled the fixed access product. The high costs involved in developing such infrastructure render supply-side substitution unlikely during the timeframe of this review. Consequently, from a supply-side perspective the MCA deems fixed access and mobile access to be in separate markets.

Preliminary conclusions

The MCA considers fixed access and mobile access to constitute separate markets

2.3.3 Different access products and networks

As mentioned earlier there are currently four access products on the market provided through a fixed connection namely, analogue exchange lines, two types of ISDN lines and cable access lines.

Demand-side substitution

The main question to ask in assessing demand-side substitution amongst these forms of fixed access is the extent to which consumers would be prepared to switch from one type to another in response to a small but significant non-transitory price increase.

Functionality

All the above mentioned access products are considered to be substitutable by the fact that they allow end-users to make and receive voice calls, faxes, and support data communications. While both voice or data connections on analogue exchange lines and ISDN access lines are set up by dialling up to a switched network, call-making on the existing cable infrastructure is completely packet based.

There are however some key functional differences in how these services can be and are utilised. While an ISDN connection can be seen as a bundle of multiple analogue exchange lines, this service provides the possibility to access data at greater bandwidth if more than one channel is available for connection. ISDN service is capable of very rapid connection without the need of a modem training sequence. Moreover, ISDN service users enjoy a wider range of enhanced supplementary services. However, unlike analogue lines, ISDN connections do not support DSL.

When it comes to PRA ISDN connections, which in Malta are only demanded by businesses, the difference in functionality is even starker. Currently, PRA ISDN access is used to connect large business PBXs that can support multiple extensions.

The MCA considers that access over the cable network is functionally substitutable to the analogue access lines provided over the PSTN network. However, cable access is not considered to be a substitute to the ISDN BRA and PRA access products since the latter types of access products offer different functionality than the available cable access.

Pricing structure

From a pricing point-of-view as already explained, in order to access either analogue exchange lines or ISDN a customer needs to pay a one-off connection fee and a rental charge which is paid on a monthly basis by residential customers and on a bi-monthly basis by business customers.

The table below illustrates the charges in Maltese Lira⁷ (inclusive of VAT) per year associated with analogue exchange line, cable access, BRA ISDN and PRA ISDN.

	Analogue exchange lines	Cable access	BRA ISDN	PRA ISDN
Connection Fee				
Residential	23.60	23.20* / 15.39 ⁺	30.00	
Business	47.20	34.15* / 30.00 ⁺	77.00	944.00
Annual Rental				
Residential	30.84	19.92	76.00	
Business	80.28	19.92	188.00	1550.00

Source: Maltacom and Melita Cable website

* Installation fee for Cable TV

+ Installation fee for Cable internet

A hypothetical monopolist in the provision of analogue exchange lines who attempts to raise its prices by a small but significant amount would find that its subscribers would not switch to BRA ISDN for a number of reasons, including:

- its higher connection fee and rental cost;
- the need to buy ISDN-specific end user equipment; and
- in the case of subscribers using only one analogue exchange line having to subscribe to an extra line which they do not require.

On the other hand, users currently using BRA ISDN are unlikely to switch to analogue exchange lines given a small but significant price rise in BRA ISDN. These users are unlikely to be willing to give up the extra functionalities inherent in the BRA ISDN line for an analogue exchange line.

The functionality, different use, and price differentials of PRA ISDN suggests that a change in price of analogue exchange line access or BRA ISDN access do not constrain PRA ISDN.

With regards to the cable access service, the cable operator charges a fixed monthly rate which compares well with the line rental for analogue access lines. It is therefore evident that price-wise cable access and standard analogue exchange line access are substitutable.

Supply-side substitution

In considering supply-side substitution, the key question to ask is whether an existing supplier would enter the market in response to a small but significant increase in price of fixed access by a hypothetical monopolist.

A potential substitute for the fixed access services currently provided by the PSTN and Cable networks is broadband wireless access (BWA). On the 12th October 2005 the MCA allocated frequency spectrum to three undertakings for the deployment of a national BWA network. The investment needed to enter the market for this type of access is a significant one and it would take a significant amount of time to deploy a network with nation-wide coverage. The MCA believes that operators using broadband wireless technology are unlikely to have an impact during the timeframe of this review. In any case, the provision of access services over

⁷ Exchange rate 1€ = Lm0.43

broadband wireless networks would in the future be a potential substitute for the current available fixed access products.

Preliminary conclusion

Based on the evidence provided above, analogue exchange lines or equivalent products over the cable network fall within the same relevant market.

BRA ISDN or equivalent products and PRA ISDN or equivalent products are currently not considered to be substitutes of analogue exchange lines and cable access and therefore constitute separate markets. The two types of ISDN are also not substitutes to each other and are therefore further split into individual markets.

2.3.4 Residential and non-residential access

In its Explanatory Memorandum to the Recommendation on Relevant Markets, the European Commission stated that it may be appropriate to distinguish end user categories in the markets defined since it is common to distinguish between business and residential markets because the contractual terms of access and service may vary and because the economics of serving customers in the two locations may be significantly different.

At present, a customer may only apply for a residential service if he/she intends to use the line for purely residential purposes. The customer is obliged to apply for a business service if he plans to use or is using the telephone access for profit making purposes. There is no customer choice in the category to which they are assigned.

Demand-side substitution

Even though access to business and residential customers is functionally identical since it is provided over the same infrastructure and provide same quality of services, business and residential users have different needs. Business users tend to require a greater range of services and use access primarily to make calls. Internet access is usually achieved through single high-speed ADSL or Cable-modem connections shared throughout the organisation. Residential users on the other hand, need fewer value-added services and use their access line for making calls and connecting to the Internet

The ability to distinguish successfully between business and residential customers for essentially the same service is an indication that there are separate markets for business and residential access. This is based on the undertaking's ability to single out business customers with sufficient accuracy and to require that they utilise only the business service provided. It is not possible for a business subscriber to switch to a residential status when faced by a hypothetical price increase in access. The undertaking will not supply the residential service to a subscriber who will be using the line for business purposes.

There is also some differentiation between business and residential customers in the terms and conditions of supply. Business customers may benefit from enhanced service quality of service guarantees. This may include, for example, a shorter time to get a connection, or faster fault repair. Business and residential customers have different also billing arrangements – for example the incumbent's business customers are billed each month while the residential customers are billed on a bimonthly basis. From a marketing and sales strategy point of view, business and residential customers are also treated differently.

Under these conditions of supply and the fact that there is no undertaking that provides access to both residential and business subscribers with indiscriminate conditions of supply, indicates that from a demand-side perspective there is no possibility of substitution.

Supply-side substitution

With respect to supply substitution, the ubiquity of both the PSTN and the cable network implies that costs associated with supply are not substantially different for business and residential customers. At a general level, an undertaking serving the business market may easily switch to supplying residential users in response to a small but non-transitory price increase by a hypothetical monopolist since the relevant network facilities required for such supply are similar.

Nonetheless, for potential market entrants, differences in the cost of supply would be relevant. Where a new access network has to be built then a potential market entrant could take into consideration the different areas of concentration of business and residential users respectively.

Preliminary Conclusion

MCA's analysis of the conditions of the supply of business and residential services indicates that there is currently no possibility for demand side substitution. This indicates that at present, despite the potential supply side substitution, residential and non-residential services in Malta fall in separate relevant markets.

02.4 Relevant Geographic Market

A relevant geographical market comprises the area in which the undertakings concerned are involved in the supply and demand of products and/or services, in relation to which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different to those areas.

According to the EU Guidelines, in the electronic communications sector, the definition of the geographical scope of the relevant market is generally determined with reference to the area covered by a network, and to the existence of legal and other regulatory instruments.

Based on these definitions and the market conditions described earlier on the MCA takes the view that the relevant geographic market for the markets considered in this review are the Maltese Islands.

02.5 Preliminary markets

Following the analysis presented here the MCA found the following relevant access markets in Malta:

1. Residential analogue and cable access lines provided over fixed public electronic communications networks.
2. Residential ISDN BRA access provided over fixed public electronic communications networks.
3. Non-residential analogue and cable access lines provided over fixed public electronic communications networks..
4. Non-residential ISDN BRA access provided over fixed public electronic communications networks.
5. Non-residential ISDN PRA access provided over fixed public electronic communications networks.

Q2. Do you agree with the conclusions derived from the above preliminary market definition exercise?

Chapter 03 - Market Analysis

Having identified the relevant market as discussed in **Chapter 02** the MCA is required to analyse the market in order to assess whether any person or persons have significant market power as defined in Regulation 8 of the ECNSR (Article 14 of the Framework Directive).

03.1 Method to Assess Significant Market Power

Under the new EU Communications Directives and Article 4(8) of the ECRA, SMP has been newly defined so that it is equivalent to the competition law concept of dominance. Article 14(2) of the Framework Directive states that:

"An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers."

Further, Article 14(3) of the Framework Directive states that:

"Where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking".

Therefore, in the relevant market, one or more undertakings may be designated as having SMP where that undertaking, or undertakings, enjoys a position of dominance. Also, an undertaking may be designated as having SMP where it could lever its market power from a closely related market into the relevant market, thereby strengthening its market power in the relevant market.

In assessing whether an undertaking has SMP, this review takes the utmost account of the Commission's SMP Guidelines as well as the MCA's equivalent guidelines, as referred to in Chapter 01 above.

03.2 Assessment of SMP Against Relevant Criteria

The remainder of this chapter considers whether single dominance is likely to exist in the identified markets. In the MCA's view the assessment is fully compliant with the Commission's Guidelines. The SMP assessment set out is based on the evidence available to the MCA.

Single dominance can be assessed using a large number of criteria, as described in the Commission's and the MCA's guidelines on SMP assessment. In the MCA's view, the most important ones are

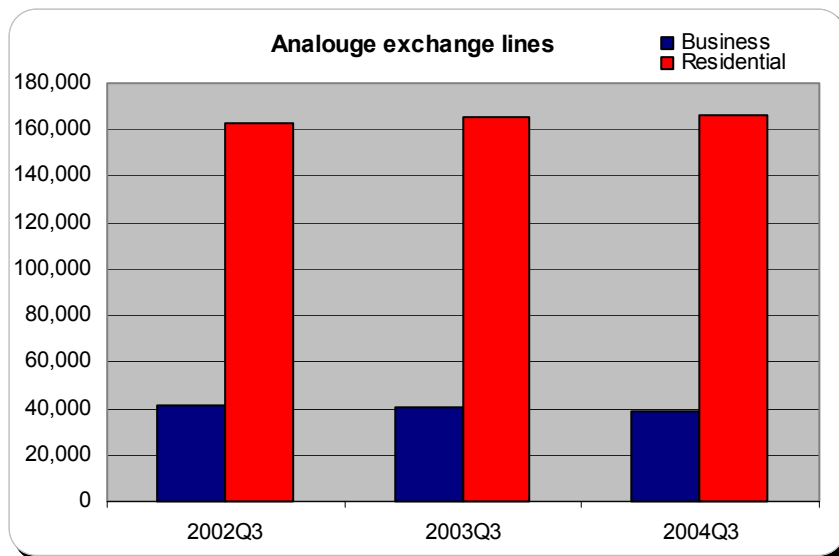
- Market share analysis
- Barriers to entry
 - ✓ Economies of scale and scope

- ✓ Sunk cost
- ✓ Vertical integration
- Potential competition
- Countervailing buyer power

3.2.1 Analysis of market shares

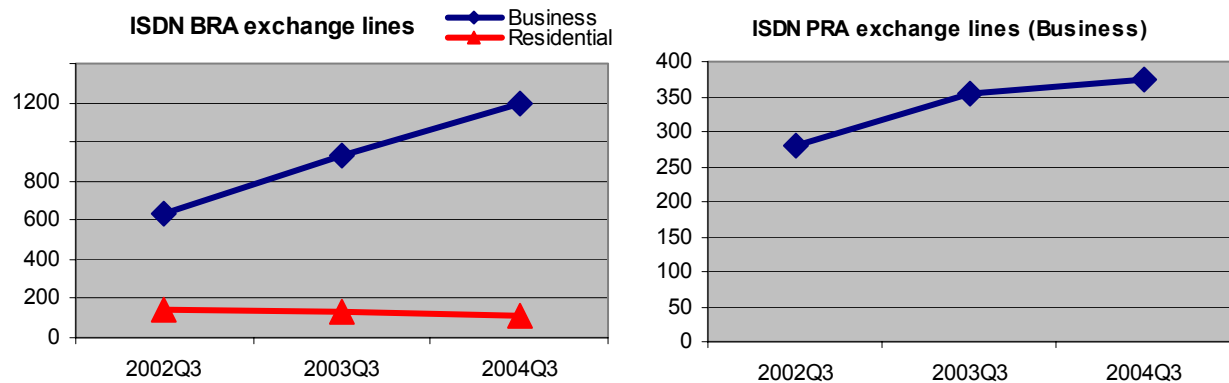
Although, high market shares are not in themselves decisive as to whether an undertaking enjoys SMP in a market, the MCA is of the opinion that market shares higher than 50 per cent would necessitate the designation of SMP. Paragraph 75 of the Commission Guidelines states that, “*according to established case-law, very large market shares – in excess of 50% - are in themselves, save in exceptional circumstances, evidence of the existence of dominant position.*”

Maltacom is the main fixed line operator in Malta offering access line services to residential and non-residential customers. Maltacom provides all analogue and ISDN exchange lines in Malta, whilst Melita Cable provides all the cable access lines. The following illustrations provide information on the number of exchange lines that Maltacom currently provides.



The total number of analogue exchange lines over the past three years has remained very stable around 204,500. As stated earlier, the cable operator launched its cable access services only three months ago in July 2005 and has to date approximately 2000 subscribers. Since the Melita Cable has no interconnection agreements with other operators all cable subscribers still have the analogue exchange line provided by Maltacom. This is currently required to make calls to other Maltacom subscribers and mobile operators. However, when Melita Cable interconnects with Maltacom and mobile operators, cable subscribers can easily choose to maintain only one access line. Due to this development in the market the MCA expects that a number of subscribers would permanently switch to cable access from their current analogue exchange line. Nonetheless, the MCA does not expect that during the timeframe of this review Maltacom would lose a significant amount of subscribers such that it will lose its SMP position in the provision of access lines. From figures available to the Authority, Maltacom currently has 99 per cent market share in the

residential and non-residential analogue and cable access lines market, whereas Melita Cable has the remaining one per cent.



The illustrations above clearly show that the penetration of ISDN exchange lines in Malta is very limited. Over the past three years the total number of ISDN BRA exchange lines has increased by 40 per cent, however in absolute terms the total number of lines has increased by only 526 lines. The number of ISDN BRA lines acquired by business customers has nearly doubled whilst that for residential customers has marginally decreased.

The level of penetration of ISDN PRA exchange lines is significantly low in Malta with an average of 335 lines during the past three years. Given the functionality and prices of this product all ISDN PRA connections are acquired by business customers.

Since Maltacom is the only provider of ISDN exchange lines, it has a 100 per cent market share when calculating the revenues associated with these services.

The data presented above clearly indicates that Maltacom has significant market power in all the abovementioned access markets. The finding of dominance is further supported by the fact that Maltacom has an enduring high market share in these markets. Moreover, given the observed trends in these markets, the MCA is of the opinion that Maltacom will likely continue to enjoy significant market power during the timeframe of this review.

3.2.2 Barriers to entry

Barriers to entry can take many forms such as significant sunk costs or economies of scale and scope resulting from the presence of a large undertaking in the market. The presence of entry barriers may create the necessary market conditions for an operator to exercise market power.

Economies of scale

For a significant number of years, Maltacom was the only operator providing fixed access and national call services to residential and non-residential customers in Malta. Maltacom. Given the ubiquity and the high density of this network Maltacom enjoys economies of scale in providing fixed access services. Given that Maltacom is currently providing the majority of access lines in the market, the per line cost incurred by this undertaking for providing access services are likely to be much lower than those of a new entrant. A new entrant would need to take a large share of the market if it is to effectively compete with the incumbent. In order

to gain a large market share the new entrant will have to price below the incumbent's prices, which would make it very difficult for this operator to cover its costs.

Moreover, the prices that Maltacom charges for fixed access services are currently regulated to cost oriented levels by the MCA. This may make it very difficult for any other operator to provide access services below the price charged by Maltacom unless it is more efficient in its operations or uses more cost-effective technologies. Nonetheless, in the absence of regulation the MCA believes that Maltacom would still be able to meet low access prices from potential competitors given its economies of scale resulting from its very high market share in the market.

Another important area where economies of scale are likely to be achieved is in the supply of associated support services. Since Maltacom provides the majority of access lines in the market, its per line cost for providing associated services, like billing and customer care would be much lower than the cost of a new entrant.

Economies of scope

Economies of scope exist where average costs for one product are lower as a result of it being produced jointly with another product by the same firm. Cost savings may be made where common processes are used in the provision of a group of services. When an operator is present in a large number of markets it can share common costs over a greater range of services.

Maltacom is the fixed telephony incumbent and is therefore present in a large number of electronic communications markets providing a full range of services over its ubiquitous network, such as leased lines, international gateway, calls etc.. The ability to benefit from economies of scope may act as a barrier to entry for new competitors. For a new entrant to enjoy such economies of scope it would need to enter a large number of markets simultaneously, which would firstly increase the entry costs and secondly would make it more difficult to recoup such cost on exit.

The ability of Maltacom to benefit from such economies of scope are an indication that significant barriers to entry exist in the access markets, and suggest that Maltacom is likely to enjoy a lasting position of SMP in these markets.

Sunk costs

Sunk costs are those costs that a new entrant must incur to enter the market but which are not recovered on exit. A potential entrant will only seek to incur these costs if its expected return from such an investment would be sufficient to cover these costs. The incumbent on the other hand has already made its investment and would therefore be in a much better position to compete with the new entrant since it would already have covered its sunk costs. This asymmetry would make it very difficult for a new entrant to effectively compete with the incumbent.

Entering the access markets requires a large upfront investment resulting in significant sunk costs, which would be very difficult for any entrant to recoup if it decides to leave the market. The presence of such significant costs would indicate that there is little possibility for any new entrant to replicate the network of the incumbent and the cable operator during the timeframe of this review. Consequently, Maltacom would likely continue to benefit from SMP in these markets.

Vertical Integration

Vertical integration involves an undertaking operating in a given market, while also being present in a market that is at a higher or lower level in the chain of provision. Since vertically integrated operators are able to influence both upstream and downstream markets it would be more difficult for a new provider entering in one of these markets to compete effectively with the integrated operator.

Maltacom is an integrated provider and operates at a wholesale and retail level in all the electronic communications market where it is present. The ability to lever market power from upstream to downstream markets may deter potential entry in these markets. An integrated provider can make it difficult for new entrants at a retail level to obtain the necessary inputs at a competitive price (i.e. cost based) and therefore create an entry barrier at retail level. Where Maltacom enjoys SMP at a wholesale level it can take the opportunity to lever its power in the downstream market in absence of regulation or effective competition.

3.2.3 Potential Competition

Potential competition refers to the prospect of new undertakings entering the market within a short period of time and therefore constrain incumbent firms. The potential entry may prevent firms from raising prices above competitive levels, leading thereby to situation in which no market power can be profitably exercised.

A realistic potential competitive constraint on Maltacom can come from the recent entry in the access market of the cable operator. As stated earlier in July 2005 the cable operator started offering cable access for the provision of VoBB telephony services which enables its customers to make on-net calls and international calls. The MCA is of the opinion that when the cable operator starts to interconnect with other local operators, its cable access service will compete with the traditional analogue exchange line service offered by Maltacom. However, until the cable operator interconnects with other local operators, customers using the cable access service would not be in a position to have only one telephone line connection (i.e. cable or analogue) since customers wanting to call a PSTN or mobile number would still need access to the Maltacom network. The MCA is therefore of the opinion that until the cable operator interconnects with other local operators, the cable access service would not be in a position to compete at par with the incumbent's analogue exchange line service and therefore customers would not have a fully substitutable service. The MCA considers that this limitation will not allow the cable operator to successfully exert a significant competitive constraint on Maltacom in the provision access lines services for the time being.

Another potential development in the market will be the introduction of access services over BWA networks. On the 12th October 2005 the MCA allocated frequency spectrum to three undertakings for the deployment of a national BWA network. BWA network operators could potentially start providing access services over their wireless networks. However, the MCA considers that such a development would not have a material impact during the timeframe of this review since the rollout of a nation wide BWA network would be a lengthy and extensive process.

The MCA positively expects that the introduction access services over different fixed electronic communications networks is likely to increase the level of competition in the access markets in the near future. However, the MCA considers that during the timeframe of this review such a development would not be sufficiently widespread so as to erode the significant market power held by Maltacom. Nonetheless, the MCA is going to monitor closely the development of competition in the fixed access markets and will consider revising its conclusions if the market structure changes considerably.

3.2.4 Countervailing buyer power

The existence of customers with a strong negotiating position, which could be exercised to produce a significant impact on competition, will tend to restrict the ability of providers to act independently of their customers. When buyers of a certain product or service are large and powerful, they can effectively stop an attempt to increase prices by service providers.

The extent of countervailing buyer power depends on the ability of large customers to switch to alternative providers or not to purchase the service or product from that particular provider within a short period of time.

Currently, residential customers have no alternative provider to Maltacom for acquiring access services that allow them to have ubiquitous connectivity to all networks. Small businesses, which account for a very large portion of total businesses in Malta⁸, do not have sufficient bargaining power with Maltacom. On the other hand, only a handful of large companies (such as banks and large corporations), which purchase a full range of services from this undertaking, might exert to a very limited extent some countervailing buyer power. However this is not considered to be sufficient to constrain Maltacom to a significant degree.

Notwithstanding, the MCA is of the opinion that in absence of alternative providers offering ubiquitous services it is not possible for a particular customer or group of customers to exert sufficient countervailing buyer power on Maltacom to pose a serious price constrain on its operations in absence of regulation.

03.3 Preliminary conclusions and SMP designations

The evidence presented above clearly suggests that Maltacom enjoys significant market power in all of the access markets identified earlier on.

This preliminary conclusion is supported by the fact that Maltacom has a 100 per cent market share in the provision of ISDN exchange lines and 99 per cent market share in the analogue and cable access market. The company is also a vertically integrated provider supplying a full range of electronic communications services at wholesale and retail level. This puts Maltacom in a favourable position to leverage market power (where it holds such power) from upstream to downstream markets. The presence of high barriers to entry in the access markets makes it very difficult for new entrants to introduce an element of competition in these markets in the absence of regulation.

Consequently, the MCA concludes that Maltacom should be designated as having significant market power in the following relevant markets:

1. Residential analogue and cable access lines provided over fixed public electronic communications networks.
2. Residential ISDN BRA access provided over fixed public electronic communications networks.

⁸ According to estimates from the National Statistics Office out of 31,657 business units, 29,883 units are classified as micro units (0-9 employees) and 975 units are small units (10-49 employees). Therefore 97 per cent of all businesses in Malta are micro or small enterprises employing less than 49 employees.

3. Non-residential analogue and cable access lines provided over fixed public electronic communications networks.
4. Non-residential ISDN BRA access provided over fixed public electronic communications networks.
5. Non-residential ISDN PRA access provided over fixed public electronic communications networks.

Q3. Do you agree with the above preliminary conclusions regarding market analysis?

Chapter 04 – Regulatory Implications

As evidenced above, this market review has defined five relevant markets in Malta with respect to access to public telephone networks at a fixed location. Pursuant to an analysis of the market characteristics of all the said markets, the MCA has concluded that Maltacom has SMP in all the said markets.

In accordance with Regulation 10(4) of the ECNSR, where an operator is designated as having significant market power on a relevant market in accordance with Regulation 8 of the same ECNSR the MCA is obliged to impose on such operator such appropriate specific regulatory obligations referred to in subregulation (2) of regulation 10 of the ECNSR or to maintain or amend such obligations where they already exist.

Moreover, in accordance with Article 17 of the Universal Service Directive, Regulation 37 of the ECNSR requires the MCA, after having designated an operator as having significant market power on a relevant retail market, to impose on such operator such obligations as it considers appropriate to achieve those objectives set out in Article 4 of the Electronic Communications Regulation Act, where the MCA determines, as a result of a market analysis carried out in accordance with regulation 10 of the said regulations, that the given retail market, as identified in accordance with regulation 9 of the same regulations, is not effectively competitive and concludes that obligations imposed under Part III or regulation 39 of the said regulations would not result in the achievement of the objectives set out in Article 4 of the Electronic Communications Regulation Act.

This section thus aims at discussing the actual and potential competition problems that exist in the defined markets, and proposing adequate remedies to address these problems.

04.1 Competition Problems

The MCA has identified three broad categories of existing and potential competition problems that arise due to the SMP enjoyed in the identified fixed access market.

4.1.1 Vertical Leveraging

Vertical leveraging is any dominant firm's practice that denies proper access to an essential input it produces to some users of this input, with the intent of extending monopoly power from one segment of the market (the bottleneck segment) to the other (the potentially competitive segment).

Maltacom, as a vertically integrated operator dominant in an upstream market may engage in pricing that gives rise to a margin squeeze. Furthermore, since it is able to access economies of scale and scope that are not so readily available to potential operators competing at the downstream level, may bring extra pressure to bear on the margins available for competing downstream operators. Maltacom may also resort to other price leveraging strategies such as price discrimination, predatory pricing and cross-subsidisation. Currently the charges which Maltacom may apply are regulated at a retail level and this has mitigated to a certain extent the aforementioned competition problems.

The MCA believes that non-price leveraging strategies may have also contributed to the lack of competition in the market. Discriminatory use or withholding of information, delaying tactics, quality discrimination and the imposition of undue requirements on and with respect

to potential alternative downstream undertakings may have contributed to the lack of competition that currently exists on the markets concerned.

4.1.2 Horizontal Leveraging

Horizontal leveraging involves the dominant undertaking using its position in one market to exert undue influence on other markets.

The MCA identifies two major potential competition problems in this respect. Firstly, Maltacom could use its dominance attempt to drive its competitors out of the market by setting a price below costs in potentially competitive markets, while the losses are covered by profits from another market. Secondly, with particular reference to the *easyline* telephone service from Maltacom, a potential horizontal leveraging problem could occur with the bundling or tying of access services with calls. Because this bundle cannot generally be replicated by most alternative operators, competitive concerns arise.⁹

4.1.3 Entry deterrence, exploitative behaviour and productive inefficiencies

Besides the leveraging issues discussed above, the MCA believes that the single market dominance enjoyed by Maltacom in the relevant markets concerned gives rise to a number of competition problems relating to entry deterrence, possible exploitative behaviour and productive inefficiencies.

The MCA notes that currently Maltacom's market share in retail access markets is of one hundred percent. Given the ubiquity and the high density of its network, Maltacom enjoys economies of scale in the provision of access services. Because Maltacom currently provides all access lines in the market, the cost of providing a line is likely to be much lower than those of a potential new entrant. These economies may act as a barrier to entry.

Exploitative behaviour could take the form of measures taken to increase switching costs, exclusive dealing and predatory, excessive or discriminatory pricing. As stated above, the MCA has intervened on a number of occasions to curtail as much as possible these competition problems. At present Maltacom's access charges have to be cost-oriented, transparent and non-discriminatory.

04.2 Available Remedies

As mentioned above, MCA is obliged by the ECRA to impose an obligation on undertakings with significant market power. The MCA also has the obligation under Article 9(3) of the ECRA and regulation 10(4) of the ECNSR to act in pursuit of its statutory obligations to ensure adequate access, interconnection and interoperability of services without prejudice to any measures which may be imposed on undertakings designated as SMP operators and subject to obligations listed in regulations 18 to 22 of the ECNSR (Wholesale obligations) and regulations 37 to 39 of the ECNSR (Retail obligations) as detailed below.

⁹ ERG, Common position on the approach to appropriate remedies in the new regulatory framework ERG (03) 30rev1 pg,36

- Obligation of Transparency
- Obligation of Non-discrimination
- Obligation of Accounting Separation
- Obligation of access to, and use of, specific network facilities
- Price control and Cost Accounting obligations
- Leased lines and Carrier Selection and Pre-Selection

04.3 Selecting Remedies – Principles Applied

In accordance with regulation 37(2) of the ECNSR, the MCA is obliged to ensure that any obligations imposed under subregulation (1) of the same regulation 37 shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in Article 4 of the Electronic Communications Regulation Act.

In view of the identified actual and potential competition problems arising from SMP in the market relating to retail access to the public telephone network at a fixed location, the MCA is obliged to impose obligations on undertakings identified by it as having significant power on that market. As mentioned earlier, the MCA believes it unlikely that within the period of this review there will be any development of effective competition in the identified markets relating to retail access to the public telephone network at a fixed location. Accordingly, the MCA proposes to impose on the SMP operator those appropriate obligations that it believes will encourage efficient investment and innovation and further promote competition in the markets relating to the relevant markets under review.

In selecting the remedies to impose on designated SMP operator, the MCA has considered the nature of the problem identified and, in accordance with the principle of proportionality, where possible, will impose a range of remedies which are considered to be the least burdensome effective remedies. The MCA has also taken account of potential effects on any related markets

Finally, the MCA has done its utmost to ensure that the remedies chosen will be incentive compatible. This means that the MCA has selected and designed the remedies to be imposed in a manner that ensures that compliance with the remedy by the undertaking identified as having SMP outweighs the benefits of evasion.

It is unlikely that any single remedy can achieve this, so the remedies proposed below should be seen as a complementary suite which support and reinforce each other.

04.4 Proposed Remedies

The MCA is of the opinion that the obligations it is proposing to impose are based on the nature of the competition problems it has identified in the relevant markets, and are proportionate and justified in light of the objectives set out in Article 4 of the Electronic Communications (Regulation) Act.

The MCA will however continue to monitor market developments and where appropriate shall issue directions to further fine-tune the proposed remedies to the needs of the market and, where the desired levels of competition in the market are deemed to have been reached, the

MCA shall consider lessening the burden of the obligations and even withdrawing them altogether.

Access to Wholesale Inputs

The main impediment to competition within the access to the fixed telephone network is that it is particularly difficult to replicate due to the large sunk costs associated with deploying such a network. According to the Commission Recommendation on relevant markets, such structural barriers *'exist when the state of the technology, and its associated cost structure, as well as the level of the demand, are such that they create asymmetric conditions between incumbents and new entrants impeding or preventing market entry of the latter'*. In such cases effective competition is unlikely to emerge without regulatory intervention.

Such structural barriers to entry have been analysed in the previous sections with the conclusion that the replication of the access networks owned by Maltacom and Melita Cable are not likely to occur during the timeframe of this review. Therefore, in order to bring the benefits of competition to the end-user, and to reduce market failures associated with foreclosure of the retail market, it is essential that competing operators can gain access to Maltacom access infrastructure due to its SMP status in the abovementioned markets. This implies that remedies should be imposed in order to provide alternative operators with sufficient access to wholesale inputs, so that access and calls services may be offered over the existing infrastructure.

4.4.1 Carrier Selection and Pre-Selection

Regulation 39 of the Electronic Communications Networks and Services (General) Regulations requires that where as a result of a market analysis, a relevant market consisting of the provision of connection to and use of the public telephone network at a fixed location is not effectively competitive, the Authority is obliged to impose Carrier Selection by means of a Carrier Selection code and Carrier Pre-Selection. The provision of these facilities shall carry cost oriented pricing for access and interconnection. In addition, their direct charges to subscribers should not act as a disincentive to the use of such facilities.

In the market review on 'Retail National Telephone Services provided at a Fixed Location'¹⁰ the MCA is proposing that Maltacom should be obliged to continue to provide such facilities given the finding that Maltacom has significant market power in the relevant market consisting of the provision of connection to and use of the public telephone network at a fixed location.

4.4.2 Wholesale Line Rental

As discussed earlier, a significant impediment to the emergence of sustainable competition and the objectives set out in Article 4 of the Electronic Communications (Regulation) Act is the considerable sunk costs associated with market entry.

In order to facilitate the emergence of sustainable competition in the access markets and encourage alternative operators to enter the market, the MCA is of the view that Maltacom should be directed to provide a Wholesale Line Rental offering by virtue of Regulation 21(2)(d) of the ECNS. This would enable new entrants to gain access to products that allow them not only to offer voice services (through Carrier Selection or Carrier Pre-Selection) but also to acquire access lines from Maltacom on a wholesale basis. Such a combined product would enable them to offer a single product to their customers for the electronic communications services they provide. This means that customers will have no relationship

¹⁰ Link to website www.mca.org.mt

with Maltacom, and all of the interfaces (ordering, billing, fault repair) are taken care by the competing operator.

The imposition of Wholesale Line Rental has therefore two objectives. The first objective is to address directly Maltacom's significant market power in the access markets by enabling competing providers to compete in retail access markets without building direct access networks. The second objective is to enhance the effectiveness of the proposed Carrier Selection and Carrier Pre-Selection remedies in the provision of telephone services.

Supporting remedies covering access, transparency, non-discrimination, and price control and cost accounting would need to be applied to address the relationship between Maltacom and the alternative operators.

In order to facilitate entry in the access markets and foster competition, the MCA considers it appropriate to impose the following obligations in accordance with Regulation 21 of the Electronic Communications Networks and Services (General) Regulations.

- 21(2)(a), Maltacom shall give third party access to specific network elements, or facilities, particularly with respect to the provision of a Wholesale Line Rental offering;
- 21(2)(b), Maltacom shall have the obligation to negotiate in good faith with undertakings requesting access;
- 21(2)(c), Maltacom shall not withdraw access to facilities already granted, save without prior MCA approval;
- 21(2)(e), Maltacom shall grant open access to relevant information, technical interfaces, protocols, or other key technologies indispensable for the provision of the service;
- 21(2)(g), Maltacom shall provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services;
- 21(2)(h), Maltacom shall provide access to operational support systems or similar software necessary to ensure fair competition in the provision of services;

Furthermore, in accordance with Regulation 21(3) of the Regulations, the MCA shall determine conditions covering fairness, reasonableness and timeliness associated with the Wholesale Line Rental offering.

4.4.3 Non-discrimination

Where an SMP operator, like Maltacom, is also a vertically integrated provider, there may be an incentive to provide wholesale services on terms and conditions that discriminate in favour of their own retail activities in such a way as to have a material effect on competition. In particular, there are incentives to charge more competing providers for wholesale services than the amount charged to their own retail activities, thereby increasing the costs of competing providers and giving themselves an unfair competitive advantage. Besides tackling price-related competition problems, non-discrimination can directly target non-price parameters such as withholding of information, delaying tactics, undue requirements, low or discriminatory quality, strategic design of products, and discriminatory use of information - conditions which would disadvantage competing providers and in turn consumers.

As a result of the Wholesale Line Rental obligation, access lines currently provided by Maltacom will start to be used by alternative operators to provide a service to the customer which is equivalent to the access provided directly by Maltacom. The MCA believes that an obligation of non-discrimination, as a remedy under Regulation 19, provides the same ability to alternative operators to purchase wholesale access to retail lines as would apply to Maltacom's own retail access arm. Moreover, the information and services related to the wholesale line rental product to be provided to alternative operators should be similar to those provided to its downstream retail service provider. In particular, it is important that information gained by Maltacom as a result of its provision of services to another operator is not used by its downstream activities in any manner to obtain any unfair advantage.

In order to ensure compliance with and monitor the non-discrimination obligation set on Maltacom, the MCA considers it is necessary to apply supplementary obligations of transparency and accounting separation.

4.4.4 Transparency

The MCA believes that it would be proportionate and justified to impose a transparency obligation on Maltacom to demonstrate that the incumbent delivers services of equivalent quality to other operators and its own retail activities. The imposition of such remedy ensures that alternative operators have sufficient information and clear processes to which they would not otherwise have access. This would assist their entry into the market and directly targets the nature of such problems.

Regulation 18 of the Electronic Communications Networks and Services (General) Regulations authorised the Authority to impose transparency obligations on undertakings holding significant market power in relation to interconnection and, or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.

Moreover, in particular where an operator has obligations of non-discrimination, the Authority may, require that operator which has significant market power to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the services requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices. In such instances, the Authority is able to impose changes to reference offers to give effect to the obligations imposed under the Act. The Authority may also specify the precise information to be made available, the level of detail required and the manner of publication.

Currently Maltacom publishes, as part of its Reference Interconnection Offer, pricing in relation to Carrier Selection and Pre-Selection but not Wholesale Line Rental. Under the obligation of transparency that the MCA is proposing, Maltacom will be obliged to publish a reference offer related to Wholesale Line Rental. Such an offer is to be sufficiently unbundled, include pricing, terms and conditions and service level agreements, in any case as directed by the MCA. The level of detail and the manner of publication will continue to be tackled further through consultative process. The implementation of this obligation may also require the publication of other information from time to time.

The MCA expects that any new offerings developed pursuant to Regulations 19, 21 and 39 should also be detailed in a reference offer.

4.4.5 Price control and cost accounting

Regulation 22 of the Electronic Communications Networks and Services (General) Regulations authorises the imposition of obligations relating to cost recovery and price

controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and, or access.

Such intervention in pricing can be used to move the market from a situation of monopoly to one this is effectively competitive and at the same time to support the obligations of non-discrimination and transparency.

In competitive markets, the price of services is driven down to competitive levels by the commercial judgement of the undertakings forming the market. However, where competition does not provide pricing constraints, it is necessary to prevent excessive pricing by means of regulation. Without some intervention in pricing, dominant providers are likely to charge excessive prices, in order to maximise both their profits and the costs of competing providers. Higher wholesale charges are likely to mean higher retail prices and alternative operators being less able to compete in the retail market at the detriment of end-users.

Pricing Methodologies

As a result of the high structural barriers to entry, the MCA has concluded that Maltacom's dominance in the retail access market is unlikely to be eliminated over the timeframe of this review. It has therefore proposed that Maltacom should be directed to provide a Wholesale Line Rental Offer. As discussed above, a vertically integrated operator with market power in the wholesale markets, absent regulation of wholesale products, could be able to exert its market power by charging an excessive price for wholesale inputs and could be able to foreclose the retail market by means of a margin squeeze. Consequently and as a result of the obligations of non-discrimination and transparency, the MCA is proposing that the prices related to the Wholesale Line Rental Offer should be governed by virtue the provisions set in Regulation 22. The specifics of such obligation will be dealt with through a public consultative process.

Cost accounting systems

The MCA has proposed that the prices related to the Wholesale Line Rental Offer should be governed by virtue the provisions set in Regulation 22. The Authority believes that a cost accounting system will be necessary to support such an obligation and is therefore proposing to impose this as a further obligation on Maltacom.

The MCA is of the view that if it does not impose such an obligation, Maltacom could maintain some or all of its prices at an excessively high level, or impose a margin squeeze so as to have adverse consequences on competing operators and end-users. If the MCA were to relax this obligation, it would not have the necessary means of ensuring price controls in the market and prevent potential market failures.

The MCA does not consider this obligation will constitute an unreasonable burden on Maltacom given that the company is already under the obligation to support such a system by virtue of a previous MCA decision¹¹ and that this has already been in place for some time.

The MCA therefore proposes the maintenance of the existing level of cost accounting system obligation on Maltacom until such time that any further consultation on the issue are deemed necessary.

¹¹ Implementation of Cost Based Accounting Systems for the Telecommunications Sector - Report on Consultation and Decision - July 2002

4.4.6 Accounting separation

Part of the effectiveness of the non-discrimination obligation is reliant on the introduction of the obligation of accounting separation to facilitate the verification of compliance that Maltacom is providing services to other operators under the same pricing conditions as provided for its downstream arms.

Separated accounts help disclose possible market failures and provide evidence in relevant markets of the presence or absence of discrimination and margin squeeze. Such obligations support the imposition of transparency as it makes visible the wholesale prices and internal transfer prices of an operator's products and services. It also allows the MCA to check compliance with obligations of non-discrimination and to address the price competition problems. The MCA considers that the effectiveness of the transparency and non-discrimination obligations is reliant on the introduction of the obligation of accounting separation to facilitate the verification of compliance.

The MCA proposes that the existing level of accounting separation on Maltacom as identified under its decision on Accounting Separation¹² is to be maintained until such time as any further consultation is needed.

The MCA believes that if it were to withdraw this obligation, it would not have any means of monitoring non-discrimination or of having any information on margins in the retail business.

Retail Remedies

Until an operator is identified as having SMP in a particular relevant market following a market analysis procedure, Article 40 of the Electronic Communications (Regulation) Act requires undertakings to continue to comply with former obligations. Regulation 30 of the Telecommunications Services (General) Regulations of 2000 required a dominant operator providing fixed telephony services:

- to use cost oriented-tariffs;
- not to bundle services into a single tariff without also offering each of the constituent services under separate tariffs;
- to publish its tariff charges.

The Authority is also entitled to define and impose a price control cap formula, geographical averaging or other price regulation schemes for services that are provided in markets which lack effective competition. Moreover, tariffs shall be transparent and non-discriminatory.

At present the main retail control in place that prevents excessive pricing in the retail market in Malta is the obligation of cost-orientation. In comparison with a price cap mechanism (which addresses the upper limit of pricing for a basket of services), cost-orientation is a more general obligation that can prevent an operator in a dominant position from charging excessive prices for specific services. Cost-orientation also helps to ensure that such an operator does not attempt to restrict market entry by charging unreasonably low prices.

Under the new electronic communications framework, where a market analysis leads to a determination of an operator as having SMP status in a particular retail market and the Authority concludes that obligations imposed under Part III or Regulation 39 would not result

¹² Accounting Separation and Publication of Financial Information for Telecommunications Operators - Report on Consultation and Decision of October 2002.

in the achievement of the objectives set out in Article 4 of the Act, the Authority shall impose obligations to ensure that the undertaking concerned does not:

- charge excessive pricing,
- inhibit market entry or restrict competition by setting predatory prices,
- show undue preference to specific end-users, or
- unreasonably bundle services.

In order to counter these problems and protect end-user interests whilst promoting effective competition, Regulation 37(3) lets the Authority impose:

- appropriate retail price cap measures
- measures to control individual tariffs, or
- measures to orient tariffs toward costs or prices on comparable markets

On the basis of what has been stated earlier on in this document, the MCA deems that the imposition of the above-mentioned wholesale remedies is necessary in order to achieve the desired level of effective competition in the retail access markets. This notwithstanding, the MCA feels that the proposed wholesale remedies will not, by themselves, suffice to bring about the objectives set out in Article 4 of the ECRA mainly due to the uncertainty of the impact that the wholesale remedies will have in rendering the market effectively competitive. The MCA feels that, unless the said wholesale remedies are further supplemented by the retail measures being proposed below the objectives set out in Article 4 of the ECRA will not be attained.

The MCA considers that the market requires the imposition of the retail remedies, mentioned in Regulation 37 of the ECNSR as explained below. Having said this, the MCA will however continue to constantly monitor market developments. Where it deems appropriate, the MCA shall issue directions to further fine-tune the proposed remedies to the needs of the market and, where the desired levels of competition in the market are deemed to have been reached, the MCA shall consider lessening the burden of the obligations and even withdrawing them altogether.

4.4.8 Measures to counter the charging of excessive pricing

Price- Cap

The MCA believes that Maltacom will likely continue to enjoy a strong position and a persistent high market share in the retail markets within the timeframe of this review. As it is expected that there will be no significant challenge to Maltacom's dominance within the timeframe of this review there is an overriding case for action to ensure that Maltacom does not exploit its market position unfairly in the retail access markets to the disadvantage of consumers.

From the analysis carried out by the MCA, it is clear that competition in retail access markets has not developed yet. In light of this, the MCA is of the view that the wholesale obligation proposed, that is, Wholesale Line Rental would not impose sufficient downward pressure on retail prices.

The view of the MCA is that some form of upper limit price control should be applied to retail access prices. Consequently, there is the necessity for regulation at the retail level in the

markets for access, and that this regulation should include price control in the form of a price cap mechanism. This is necessary in order to achieve and guarantee the objectives mentioned in Article 4 of the ECRA.

The MCA therefore intends to require Maltacom to comply with such a price control mechanism. Such an obligation should be maintained until markets are next reviewed for SMP designation and remedies by the MCA.

It is expected that the imposition of a price cap will be an adequate measure preventing excessive pricing until the desired level of competition occurs. The said obligation is expected to prevent overall consumer prices from rising above a specific amount, while allowing some necessary rebalancing of rental and call charges and also allowing further competition to develop. This should allow reasonable time for competition to develop sufficiently whilst maintaining incentives on Maltacom to improve efficiency.

In any event, the MCA will closely monitor developments in this market.

4.4.9 Countering measures that inhibit market entry or restrict competition

Cost Orientation for Retail Prices

As mentioned above, in addition to the price cap obligation, there is currently also a general obligation of cost-orientation for retail fixed voice telephony services, with respect to the operator holding a dominant position. This obligation ensures that the said operator does not charge excessive prices for specific services, nor does it attempt to restrict market entry by charging unreasonably low prices or unfairly squeezing the margins of competitors or potential competitors to the detriment of competition. Moreover, the application to services that may fall outside the price cap would ascertain a wider coverage than a price cap mechanism. The MCA therefore proposes that cost-orientation for retail prices should be maintained.

Cost Accounting

Regulation 37 of the ECNSR provides that an undertaking that is subject to retail tariff regulation or other relevant retail control, shall operate and maintain a cost accounting system, the format and accounting methodology of which may be specified by the MCA, including related regulatory accounts, that are based on generally accepted accounting practices, suitable for ensuring compliance with retail obligations, and capable of verification by the MCA.¹³

Furthermore, compliance by an undertaking with a cost accounting system, including related regulatory accounts, referred to above shall be verified by a qualified independent body approved by the MCA. For this purpose, the MCA may carry out an audit itself, or it may require an audit to be carried out by a qualified body, independent of the undertaking concerned.¹⁴ The said undertaking is also obliged to publish in its annual accounts a statement concerning compliance by it with a cost accounting system that is in line with the abovementioned requirements.¹⁵

¹³ Regulation 37(5) and (6)

¹⁴ *ibid.* subregulation 7

¹⁵ *ibid.* subregulation 8

The MCA deems that accounting separation is also necessary in order for the SMP operator to fulfil its obligation of cost accounting and to allow the MCA to monitor the SMP operator's actions against market squeeze or other forms of exercise of its market power to influence other markets by, for example, leveraging into related markets. In this light, the MCA considers that the imposition of an obligation of accounting separation upon Maltacom is justifiable, proportionate and based on the nature of the problem identified.

4.4.10 Measures to counter undue preference to specific end-users

Non-discrimination

It is widely recognised that, as a result of their market power, SMP operators may act discriminately with the consequence of causing considerable harm to effective competition in the market. Such discrimination may take various forms, including price offers, information, or conditions of supply.

Under the legal framework currently in force, pending the outcome of the analysis of the markets and the identification of SMP operators, operators in a dominant position are obliged to charge transparent and non-discriminatory tariffs, which shall be appropriately published. Moreover, they are obliged to guarantee equality of treatment except for objectively justifiable restrictions compatible with national or international regulation.

The MCA is of the opinion that the continued imposition of this remedy on Maltacom is necessary given that it is still too early to expect high levels of competition in the retail market and that the measures that the Authority is proposing to be taken at the wholesale level may not prevent undue discrimination at the retail level.

Transparency

Closely linked with the requirement of non-discrimination is that of transparency. The two remedies may in fact be said to complement each other in ensuring that the SMP operator does not act incoherently when providing a retail service.

Under Regulation 41 of the ECNSR the MCA shall ensure that transparent and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services is available to end-users and consumers. Information relating to the identity and contact details of the operator, the description of the service and what is covered by the charge being levied, standard tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes, the compensation and, or refund policy, the types of maintenance service offered, standard contract conditions, dispute settlement mechanisms and end user rights as regards universal service ought to be published by the operator.¹⁶

Moreover, the MCA shall encourage the provision of information to enable end-users, as far as appropriate, and consumers to make an independent evaluation of the cost of alternative usage patterns by means of, for instance, interactive guides.¹⁷

In accordance with Regulation 40 of the ECNSR an undertaking providing connection and, or access to the public telephone network is obliged to provide its subscribers with a written

¹⁶ Regulation 41(1) and Ninth Schedule of the ECNSR

¹⁷ Regulation 41(2) of the ECNSR.

contract containing a number of minimum specifications¹⁸. Any proposed changes to the conditions of the contract must be notified to the subscriber not less than thirty days prior to their taking of effect, together with the notification that the said subscriber may withdraw without penalty from such contract.¹⁹

The MCA is of the view that the principle of transparency, Maltacom should continue to have the obligation to inform the MCA and publish any modifications to terms and conditions in particular tariffs, prior to their coming into effect. The required time spans are to be stipulated following a consultative process.

4.4.11 Measures to counter the unreasonable bundling of services

One of the major concerns of the MCA as guarantor of effective competition in the retail access markets is the ability of Maltacom as an SMP operator to bundle its retail products by leveraging into related markets and distorting pricing. On the other hand, the MCA recognises that such bundling of retail products may lead to economies of scale or scope for the operator and this in turn can lead to savings to the consumer.

In considering the above, the MCA deems that there is a need to counter the risk of anti-competitive behaviour through bundling by means of an obligation to be imposed on Maltacom over and above those mentioned earlier on with respect to transparency. The main aim of such obligation would be that of preventing foreclosure of the retail access markets.

One must note that under the regulatory regime currently in force, and which will remain in force until the finalisation of the market analysis and identification of SMP in the market, operators providing telephony services having a dominant market position are already obliged not to bundle a number of services into a single tariff without also offering each of the constituent services under separate tariffs unless they would have obtained the MCA's prior approval.²⁰

In line with this approach, the MCA feels that it will benefit the competitiveness of the retail access markets if this obligation continues to be imposed on Maltacom to the effect that the said operator shall not unreasonably bundle services.

Such remedy would be imposed without prejudice to the rest of the proposed remedies that are to apply across the board irrespective of whether products and services are bundled or otherwise. Moreover, such obligation should apply irrespective of the nature of the services that are being bundled with the services falling within the retail access markets.

Q11. Do you agree with the proposed obligations to be imposed on the identified SMP
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¹⁸ These relate to the identity and address of the supplier, services provided, the service quality levels offered, as well as the time for the initial connection, the types of maintenance service offered, particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, the duration of the contract, the conditions for its renewal and termination of services and of the contract, any compensation and the refund arrangements which apply if contracted service quality levels are not met, and the method of initiating procedures for settlement of disputes.

¹⁹ Article 22(4) of the ECRA.

²⁰ Regulation 30(1)(ii) of LN 151 of 2000.

operator?

04.5 Monitoring Market Developments

The MCA considers that it would be sensible to keep a reasonably close watch on market developments following this review. This would ensure that current and proposed obligations on the SMP operator identified earlier on, would be justified throughout the duration of this market review. If the MCA deems necessary or appropriate a new market review would be undertaken at any time in response to changing market conditions.

Chapter 05 – Submitting Comments

All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document. The consultation period will run from Friday 14th October to Friday 25th November 2005, during which the MCA welcomes written comments on any of the issues raised in this paper.

The MCA appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response.

Having analysed and considered the comments received, the MCA will review this analysis and publish a report on the consultation which will inter alia summarise the responses to the consultation.

In order to promote further openness and transparency the MCA will publish the names of all respondents. Moreover, in the interests of transparency, all representations will be published, except where respondents indicate that a response, or part of it, is confidential.²¹ Respondents are therefore asked to separate out any confidential material into a confidential annex which is clearly identified as containing confidential material. The MCA will take steps to protect the confidentiality of all such material from the moment that it is received at MCA's offices. In the interests of transparency, respondents should avoid applying confidential markings wherever possible.

All responses must arrive at the MCA no later than 17.00pm of the 25th November 2005. Submission received after this time will not be taken into account.

All comments should be made in writing and where possible sent by email to info@mca.org.mt. However, copies may also be posted or faxed to the address below. If any parties are unable to respond in one of these ways, they should discuss alternatives with:

Chief Policy and Planning
Malta Communications Authority
"Il-Piazzetta" Suite 43/44, Tower Road,
Sliema SLM 16
Malta
Europe
tel: +356 21 336840
fax: +356 21 336846

²¹ In accordance with the MCA's confidentiality guidelines and procedures - <http://www.mca.org.mt/library/show.asp?id=544&lc=1>

Appendix A

The table below illustrates the current monthly access charge and the cost of calls for different time bands for residential and business customers charged by the fixed incumbent.

Fixed Access Charges *		
	Residential Rates	Business Rates
Connection Charge	Lm23.60	Lm47.20
Monthly Rental Charge	Lm2.57	Lm6.69
Free Pulses ¹	20 monthly <i>Free pulses can be consumed only by local calls terminated on fixed lines made during the Night band (6.00pm-6.00am) and not for Internet/VoIP access.</i>	None

Fixed Call Charges *		
Monday to Friday (including Public Holidays)		
OFF PEAK (6.00am -8.00am)	5.39 cents every 10 minutes or part thereof	5.90 cents every 10 minutes or part thereof
PEAK (8.00am - 6.00pm)	5.39 cents every 5 minutes or part thereof	5.90 cents every 5 minutes or part thereof
NIGHT (6.00pm - 6.00am)	5.39 cents every 30 minutes or part thereof	5.90 cents every 30 minutes or part thereof
Saturday and Sunday		
OFF PEAK (6.00am -6.00pm)	5.39 cents every 10 minutes or part thereof	5.90 cents every 10 minutes or part thereof
NIGHT (6.00pm - 6.00am)	5.39 cents every 30 minutes or part thereof	5.90 cents every 30 minutes or part thereof

Source: Maltacom plc website

* All charges are in Maltese currency²² and inclusive of VAT

1. A pulse is equivalent to 5 minutes.

²² Exchange Rate 1€ = Lm0.43

The following table compares the charges in Maltese lira of making a fixed or mobile call for residential and non-residential customers.

	1 min peak ¹ call (weekdays)		3 min peak call (weekdays)	
	Fixed - Fixed	Fixed - Mobile	Fixed - Fixed	Fixed - Mobile
Maltacom				
Residential	5c39	12c5	5c39	37c5
Non-residential ²	5c90	12c5	5c90	37c5
	Mobile - Fixed	Mobile- Mobile	Mobile - Fixed	Mobile- Mobile
Vodafone				
Pre-paid Scheme				
eone	30c	20c	90c	60c
etwo	22c	22c	66c	66c
ethree	18c	18c	54c	54c
Family & Friends ³	12c	12c	36c	36c
Post-paid Scheme				
Lite (calls in bundle)	22c85	22c85	68c55	68c55
Lite (outside bundle)	14c	14c	42c	42c
active (calls in bundle)	12c14	12c14	36c42	36c42
active(outside bundle)	12c	12c	36c	36c
extra (calls in bundle)	10c54	10c54	31c62	31c62
extra (outside bundle)	10c	10c	30c	30c
Go Mobile				
Pre-paid Scheme				
Ready to go	20c	20c	44c	44c
Ready to go Club ⁴	12c	12c	36c	36c
Post-paid Scheme				
On the go (calls in bundle)	26c67	26c67	80c01	80c01
On the go (outside bundle)	11c5	11c5	34c5	34c5
Go together (calls in bundle)	20c	20c	60c	60c
Go together (outside bundle)	10c	10c	30c	30c
Business go (calls in bundle)	12c14	12c14	36c42	36c42
Business go (outside bundle)	10c	10c	30c	30c

Sources: Maltacom, Go Mobile, Vodafone websites

All charges are inclusive of the applicable VAT rates.

'Calls in bundle' for post-paid schemes has been estimated as the monthly rate divided by the free minutes in bundle.

1. Peak hours for mobile operators are from 8.00am – 8.00pm whilst for fixed operator are from 8.00am – 6.00pm.
2. Non-residential customers can claim back the 18% VAT from government.
3. Family & Friends scheme includes only 3 numbers (fixed and/or mobile), which the customer can choose to call at reduced
4. Ready to go scheme includes only 3 numbers (fixed and/or mobile), which the customer can choose to call at reduced.