Wholesale voice call termination on individual mobile networks in Malta

Definition, assessment of SMP & regulation of relevant markets

Consultation document

Document reference	**MCA-POL/kc/13-1620**
Date of publication	**5th July 2013**

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Executive Summary

The Malta Communications Authority (MCA) is hereby publishing a consultation document concerning the regulatory treatment of the relevant product and service markets for the provision of wholesale termination on individual mobile networks in Malta.

This is in accordance with Article 9 of the Electronic Communications (Regulation) Act, which obliges the MCA to carry out regular reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions.

Preliminary conclusions

i. Market definition

The products and services under consideration in this review consist of wholesale voice call termination services provided on individual mobile networks. The provision of these wholesale services enable retail customers to receive calls on their mobile number.

The MCA identifies three relevant wholesale markets in accordance with competition law principles, as follows:

- wholesale voice call termination provided by Vodafone Malta Ltd.;
- wholesale voice call termination provided by Mobisle Communications Ltd.; and
- wholesale voice call termination provided by Melita Mobile Ltd.

The geographical scope of each relevant market corresponds to the nationwide physical coverage of the respective MNO.

Full details of the market definition exercise are contained in Chapter 2 of this document.

ii. Assessment of significant market power

The MCA considers that Mobisle Communications Ltd. (Go Mobile), Melita Mobile Ltd. and Vodafone (Malta) Ltd. enjoy significant market power (SMP) in the provision of wholesale voice call termination on their own individual mobile network.

The proposed SMP designations are based on the following considerations:

- a 100% market share for own voice call termination;
- the setting of own termination charges not constrained by potential market entry;
- no deterrence on charging behaviour from countervailing buyer power (CBP); and
- an incentive to increase mobile termination charges, which reduces the scope for price competition.

Full details of the MCA's assessment of SMP are contained in Chapter 3 of this document.

iii. Regulatory approach

It has been determined that the undertakings identified with SMP are able to set their mobile termination charges independently of competitors and consumers.

Regulatory intervention is therefore required to ensure that the identified wholesale markets function properly and to ensure stronger competition at the retail level.

To this effect, the MCA proposes to maintain the following remedies on each SMP operator:

- Access to/and use of specific facilities;
- Non-discrimination;
- Transparency;
- Accounting separation; and
- Price control and cost accounting.

The MCA believes that the proposed regulatory obligations are based on the nature of the competition problems that are identified in each relevant market. Each obligation is considered proportionate and justified in light of the objectives set out in Article 4 of the Electronic Communications (Regulation) Act.

Full details of the MCA's regulatory measures are contained in Chapter 4 to this document.

Consultation

Submissions to this consultation document may be forwarded to the MCA within the period ending on the 23rd August 2013. Arrangements for submitting comments are explained in Chapter 5.

As required by Regulation 7 of the Electronic Communications Networks and Services (General) Regulations, 2011 (Article 7 of the Framework Directive), the MCA's proposals will be notified to the European Commission (the 'EC' or the 'Commission') and to other National Regulatory Authorities (NRAs) after the end of this national consultation.

1 Introduction

The introductory chapter to this consultation document highlights the regulatory and methodological aspects underpinning the MCA's approach in identifying and analysing the relevant wholesale mobile voice call termination market(s) in Malta.

It also sheds light upon previous decisions on the said markets, dating from 2005 to 2010.

The chapter is structured as follows:

Section 1.1 provides a brief general insight into the regulation of electronic communications markets, outlining in the process the developments concerning the EU Commission Recommendation on relevant markets susceptible to ex ante regulation;

Section 1.2 outlines the methodology used by the MCA in defining and analyzing the market(s) for the service in question, taking utmost account of the product and service markets listed in the Recommendation.

Section 1.3 gives an overview of the main conclusions in the MCA's previous decisions concerning wholesale mobile voice call termination.

Section 1.4 provides a general overview of key market trends and developments for the mobile sector in Malta, in terms of the competitive structure, retail demand and take-up, and developments in mobile retail tariffs and wholesale termination charges.

1.1 Regulatory insight

The European Union (EU) regulatory framework for electronic communications networks and services aims to create a harmonized regulatory environment across Europe and to foster effective competition for the benefit of industry and consumers.

1.1.1 The regulatory framework for electronic communications

The Framework Directive provides the overall structure for the regulatory regime governing the provision of electronic communications products and services. It essentially sets out the fundamental rules, policy objectives and regulatory principles that NRAs must follow in regulating relevant markets.

In particular, Article 8 of the Framework Directive stipulates that the key policy objectives of the NRAs shall be the promotion of competition, the development of the internal market and the promotion of the interests of citizens of the European Union.

There are five directives underpinning the regulatory framework of electronic communications[1]:

[1] Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services and Directive of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

- 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 ePrivacy Directive').

The EU Directives were transposed into Maltese law on 12th July 2011. The relevant national legislation are the Malta Communications Authority Act (Cap 418), the Electronic Communications (Regulation) Act (Cap. 399) (hereinafter referred to as 'the ECRA'); and the Electronic Communications Networks and Services (General) Regulations of 2011 (hereinafter referred to as 'the ECNSR').

1.1.2 The EU Commission Recommendation on relevant markets

The EU Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation (hereinafter referred to as 'the Recommendation') promotes harmonisation across the single market and guarantees legal certainty across the EU.

The Explanatory Memorandum to the Recommendation[2] states that the Recommendation '*seeks to ensure that the same product and service markets will be subject to a market analysis in all Member States and that market players will be aware in advance of the markets to be analysed'*.

The Memorandum also explains that the Recommendation allows NRAs to regulate markets that differ from those identified in the Recommendation, as long as this is justified by national circumstances. Accordingly, NRAs are allowed to define relevant markets appropriate to national circumstances, provided that the utmost account is taken of the product markets listed in the Recommendation.

Both the Annex to the initial Recommendation 2003/311/EC of 11 February 2003 and the Annex to the revised Recommendation 2007/879/EC of 17 December 2007 include the wholesale market for the provision of '*voice call termination on individual mobile networks*', referred to as Market 16 and Market 7 respectively.

When referring to wholesale voice call termination on mobile networks, the Explanatory Memorandum to the revised Recommendation considers that a mobile termination service '*is the least replicable input for retail mobile services'.*

The Memorandum underlines that '*since the termination charge is set by the called network, which is chosen by the called subscriber, the calling party in general does not have the ability to affect or influence termination charges*'. It adds that the '*Calling Party*

[2] Link to "Explanatory Note":
http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/eu_consultation_procedures/sec_2007_1483_2.pdf

Pays (CPP) convention allows the terminating operator to raise its prices without a constraint from either party to the call' and that there is no potential for demand-side substitution both at the retail and wholesale level.

From a supply-side point of view, the Memorandum argues that '*if the supplier of call termination raises its price, it is not easy for alternative suppliers to switch to supply that market because they would need the SIM card details of that user to do so*'. It adds that '*a constraint would exist if, when a network operator tried to raise termination rates (or resisted lowering them), the overall impact were unprofitable*' although it recognizes that '*such supply-side substitution is not currently possible*'.

The Memorandum concludes that '*there is limited evidence of widespread constraints on the pricing of wholesale call termination*' and that therefore '*call termination by third parties on individual networks is the appropriate relevant marke*t', which in turn would imply that '*currently each mobile network operator is a single supplier on each market*'.

1.2 The market review process

The MCA carries out its market reviews in line with the prevailing legal and economic standards established under EU Community competition law and accepted antitrust economic principles.

The market review process follows three main stages:

- the definition of the relevant market or markets;
- an assessment of the state of competition in each market, in particular whether any undertaking is deemed to have SMP in the market in question; and
- an assessment of the appropriate regulatory obligations which should be maintained, amended, or withdrawn, given the findings of SMP, to ensure that regulation remains appropriate in the light of changing market conditions (NRAs are obliged to impose some form of regulation where SMP is identified).

The MCA takes utmost account of the Recommendation when defining product and service markets within the electronic communications sector, that are appropriate to national circumstances and that may be the subject of ex ante regulation.

The market review process is further informed by the Commission's 'Guidelines for market analysis and the assessment of significant market power' (the 'SMP Guidelines')[3], referred to in Article 15(2) of the Framework Directive, and the MCA's 'Market Review Methodology'[4], which assume particular relevance in the assessment of competition and the identification of SMP operators in the relevant market(s).

The Commission Recommendation 2009/396/EC of 7 May 2009 on the regulatory treatment of fixed and mobile termination rates in the EU (hereafter, referred to as the 'Recommendation on termination rates') also bears significant relevance in the current review. This Recommendation sets out the principles for national regulators to follow when setting a fair price for terminating calls on fixed and mobile networks. The recommended methodology is a Long Run Incremental Costing model (LRIC), which aims to ensure that termination rates will be based on the cost of an efficient operator.

[3] The Guidelines are referred to in Article 15(2) of the Framework Directive.

[4] Link to MCA market review methodology: http://www.mca.org.mt/sites/default/files/articles/marketreviewmethod.04.pdf

More detailed requirements and guidance on the conduct of market reviews are provided in the Directives, the ECRA, and the ECNSR and in additional documents issued by the Commission and the MCA.

1.2.1 The identification of relevant markets

The market definition exercise aims to identify, in a methodical way, the competitive constraints faced by undertakings in the provision of mobile voice call termination services, thereby also facilitating the subsequent market analysis procedure.

The assessment is forward looking in nature, taking into account '*expected or foreseeable technological or economic developments over a reasonable horizon*'[5]. The timeframe of the analysis is notionally set at two years.

There are two dimensions to the market definition exercise: the product market dimension and the geographic market dimension.

Central to the various dimensions of the market definition exercise are the demand-side and supply-side substitutability conditions amongst the different products and services that could potentially form part of the market(s) under investigation.

As per the Commission's guidelines on market analysis and the assessment of SMP, demand-side substitutability is used to measure the extent to which consumers are prepared to substitute other services or products for the service or product under investigation.

Supply-side substitutability, on the other hand, indicates whether in the immediate to short term, suppliers other than those offering the product or service in question would switch their line of production to offer the relevant products or services without incurring considerable additional costs.

The Hypothetical Monopolist Test (the 'HMT Test'), otherwise commonly referred to as the SSNIP test (meaning 'small but significant non-transitory increase in price') is a key element in the substitutability assessment.

The HMT test considers the interchangeability of products in the case of a hypothetical small increase in price, usually understood as being an increase in the range of 5 to 10 percent, in any of the products/services under investigation.

Overall, the HMT test would determine whether a hypothetical monopolist would be in a position to sustain a 5 to 10 percent increase in price because of significant demand-side and supply-side substitution effects.

To this effect, the relevant product market shall comprise all those products and services that are substitutable, not only in terms of the price and the intended use of the product under investigation, but also in terms of the overall conditions of supply and demand.

With respect to the geographic market definition, the Recommendation states that '*a relevant geographic market comprises an area in which the undertakings concerned are involved in the supply and demand of the relevant products or services, in which area the conditions of competition are similar or sufficiently homogenous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different*'.

[5] See Section 2.1 of the Explanatory Memorandum to the Recommendation.

The MCA defines relevant geographic markets on the basis of an interchangeability assessment between products and services following a SSNIP. It applies two main criteria in its assessment of the geographic dimension of the market definition exercise:

- the area covered by the network; and
- the scope of application of legal and other regulatory instruments.

Finally, it is pointed out that the market definition exercise takes appropriate account of the 'technology neutrality' principle. In this regard, the current review takes utmost account of all network platforms in Malta, irrespective of the underlying technology.

1.2.2 An assessment of the state of competition

According to Regulation 6(2) of the ECNSR '*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*'.

Regulation 6(4) also 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 view of the above, the current review would only designate an undertaking with SMP, where it is found that such undertaking enjoys a position of dominance in the provision of the product or service under investigation.

It follows that the existing designations of SMP on Melita Mobile Ltd., Mobisle Communications Ltd. and Vodafone (Malta) Ltd., with respect to the provision of mobile voice call termination services, would therefore have to be re-assessed.

To this end, an assessment is carried out, taking into account the general competition conditions in the identified markets.

The SMP assessment may take into consideration the following criteria:

- market shares;
- control of infrastructure not easily duplicated;
- entry deterrence;
- vertical and horizontal integration;
- economies of scale and scope;
- countervailing buyer power ('CBP');
- potential competition; and
- evolving pricing structures in the mobile sector[6].

1.2.3 Regulatory approach

In accordance with Regulation (6) of the ECNSR, the MCA is obliged to impose regulatory obligations if an operator is designated as having SMP on a relevant market, either individually or jointly with others, as referred to in sub regulation (2) of regulation 5 of the ECNSR. If such obligations already exist, as is the case for the provision of mobile

[6] The analysis concerned shall also be supported by market data, which is collected from various internal and external sources, including users and providers of electronic communications networks and services and from regular consumer surveys.

voice call termination services in Malta, and a finding of dominance is ascertained, the MCA would have to maintain or amend the regulatory conditions accordingly.

If, on the other hand, a finding of SMP cannot be ascertained in an already regulated environment, the MCA would have to withdraw such regulation, in accordance with Regulation (5) of the ECNSR, subject to an appropriate period of notice given to all parties affected by such withdrawal.

1.3 Background to previous decisions

In accordance with its powers at law, the MCA has already carried out two market reviews with respect to the provision of wholesale mobile voice call termination services.

The main finding under both reviews is that all mobile network operators (MNOs) have SMP in the provision of wholesale mobile voice call termination within their own mobile network.

1.3.1 The first market review decision (2005)

The first review of this market was conducted in 2005 (see case MT/2005/0214[7]) and a Decision published on the 21st of December of that same year[8]. At that time, the MCA designated Vodafone Malta Ltd. ('Vodafone') and Mobisle Communications Ltd. ('GO Mobile') as SMP operators in the provision of voice call termination on their own individual mobile network.

The main factors supporting the finding of SMP include the evolution of market shares; the presence of barriers to entry; lack of potential competition; weak CBP due to the CPP principle; and the pricing structures for the mobile sector.

Given the SMP position held by all providers of wholesale mobile voice call termination on their respective networks, the MCA applied the following regulatory obligations to every termination market:

- Access;
- Non-discrimination against alternative fixed or mobile operators;
- Transparency (provision of information to the MCA regarding prices, technical specifications and accounting, and publication of a reference offer);
- Accounting separation;
- Price control and cost accounting.

As regards price control, the MCA used a top-down model to establish symmetric mobile termination charges within a three-year glide path period ending in 2008. This mechanism brought down the termination price charged by GO Mobile and Vodafone by more than 20% to €0.0962.

1.3.2 The second market review decision (2008 / 2009 / 2010)

The MCA carried out a second review of this market (see case MT/2008/0790)[9] and published a Decision on 6th October 2008[10], whereby it confirmed the designation of SMP

[7] Link to MCA notification Case MT/2005/0214.

[8] Link to MCA Decision: http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/wholesale-voice-term-indiv-mob-networks.pdf

[9] Link to MCA notification Case MT/2008/0790.

[10] Link to MCA Decision: http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/wholesale-voice-call-term.pdf

on Mobisle Communications Ltd. and Vodafone (Malta) Ltd. in the provision of voice call termination on their respective mobile networks.

The MCA notified the Commission with an extension of the second market review in 2009 (see case MT/2009/0926)[11], taking into account the new market entrant, Melita (Mobile) Ltd. This MNO was also found to have SMP in the provision of mobile voice call termination over its own network. Hence, the MCA extended the regulatory obligations already imposed on Go Mobile and Vodafone (Malta) to this MNO.

The conclusion that all MNOs had SMP in the provision of voice call termination over their own individual network was based on the following evidence:

i. 100% market share of minutes terminated on own network

Each MNO exerted a 'bottleneck' control over all traffic terminating on its own network as all calls to a particular MNO had to ultimately be terminated on that particular mobile network. For this reason, each MNO had a monopoly position in terms of traffic terminating on its own network.

ii. Lack of potential market constraints

Termination services of individual MNOs were not substitutable for each other. Hence, MNOs posed no constraint on each other in the provision of voice call termination services.

iii. Lack of effective CBP

In the absence of a potential supply-side alternative to the provision of voice call termination over a particular mobile network and the enforcement of billing arrangements based on the CPP principle, MNOs could act independently of competitors and retail customers in the setting of mobile termination charges.

The MCA therefore imposed a number of regulatory obligations on Mobisle Communications, Vodafone (Malta) and Melita Mobile. All regulatory obligations imposed in 2005 were maintained, except for a change in the price control mechanism.

Here, the MCA opted for a benchmarking/pegging mechanism whereby mobile termination charges in Malta were to adjust in line with the average EU27 mobile termination rate (MTR). Any modification to local termination rates was capped at 10% per annum. This was done to ensure that, in the event of a sharp drop of the average EU27 MTR within one particular year, MNOs would be in a position to gradually absorb the shock over a period of time. The benchmarking methodology applied between the 1st of June 2009 until the 1st of June 2011.

An amendment to the extension of the second market review decision was notified to the EU Commission in June 2010, with the respective MCA Decision published in August of the same year[12]. In its Decision, the MCA confirmed that the competitive conditions in the relevant termination markets did not change materially and therefore maintained the designation of SMP on Melita Mobile Ltd., Mobisle Communications Ltd., and Vodafone (Malta) Ltd.

With respect to the regulatory treatment of the identified market failures, the MCA maintained the whole suite of regulatory obligations that were in force from the previous decision, but with a further amendment to the price control remedy.

[11] Link to MCA notification Case MT/2009/0926.

[12] Link to MCA Decision: http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/mtr-review-decision-august-2010.pdf

The benchmarking mechanism in the setting of local mobile termination charges was to remain in place, with the only difference that the highest 25% of MTRs in the EU27 were to be excluded from the calculation of mobile termination charges in Malta. The MCA also set a mobile termination charge in Malta of €0.0617, that was to come into effect on the 1st of September 2010.

This rate went down to €0.0418 in August 2011, following an MCA Decision published in the same month. This rate was based on an average of the lowest 75th percentile of the MTRs prevailing in the European Union Member States.

The MCA Decision of August 2011 also specified that the benchmarking methodology was to be used for an interim period only and that it might change such methodology in the eventuality that 25% of Member States do not report rates based on 'pure' LRIC in subsequent BEREC Snapshot Reports.

Pursuant to the above, in March 2012 the MCA surveyed the most recent BEREC Snapshot Report (July 2011) available at the time, which resulted in a shortfall in the minimum representation threshold of 25% of countries setting a 'pure' LRIC rate.

The MCA eventually published a decision in June 2012 whereby it directed that all operators having been designated with an SMP status in the provision of the mobile termination services market shall apply €2.07 cents as their mobile termination charge with effect from 1st July 2012. The Decision specifies that this rate was to remain in force until it is replaced by the termination rate emanating from the MCA's BU-LRIC model.

1.4 The mobile sector in Malta

The focus of this section is to provide some background on the mobile sector in Malta, specifically on the distribution of market shares in terms of subscriptions and traffic volumes and on developments in local mobile termination charges and retail voice call tariffs.

1.4.1 Market presence and distribution of market shares

Three MNOs are currently active in the local mobile sector, each owning a nationwide 3G mobile network infrastructure. These are Vodafone Malta, Go Mobile, and Melita Mobile.

Vodafone started its operations way back in 1990, while Go Mobile launched their services in December 2000. The launch of mobile telephony services by Melita Mobile became a reality on the 1st of February 2009.

Malta has also seen the launch of four mobile virtual network operators (MVNOs) in 2008 and 2009, namely Bay Mobile, Ping, RedTouch Fone and VFC Mobile. Ping used Go Mobile's infrastructure in its operations, whist the rest used Vodafone's infrastructure. To date, only Redtouch Fone and VFC Mobile are active on the market, as Bay Mobile and and Ping have both ceased operations.

Latest data on the spread of market shares between the three MNOs in terms of subscriptions and originating voice traffic volumes shows that:

- Vodafone accounted for 50.4% of total mobile subscriptions at the end of last year, whilst capturing 51% of outgoing mobile voice call minutes recorded in 2012.
- Meanwhile, Go Mobile accounted for 34.8% of subscriptions and 25.5% of mobile voice traffic volumes.

- Melita Mobile accounted for a market share of approximately 13% in terms subscriptions and 23% in terms of outgoing voice traffic volumes.

MVNOs showed a market share of just 2.1% in terms of subscriptions and 0.6% in terms of traffic volumes.

	Absolute figures				Market shares			
	2009	2010	2011	2012	2009	2010	2011	2012
Subscriptions	422,083	455,579	521,748	539,452				
Vodafone (Malta)	209,157	217,262	259,713	271,769	49.55%	47.69%	49.78%	50.38%
Go Mobile	182,174	191,876	195,333	187,875	43.16%	42.12%	37.44%	34.83%
Melita Mobile	23,702	36,326	55,665	68,367	5.62%	7.97%	10.67%	12.67%
Other	7,050	10,115	11,037	11,441	1.67%	2.22%	2.12%	2.12%
Originating voice traffic volumes (minutes)	308,433,355	381,829,153	492,602,139	581,209,624				
Vodafone (Malta)	163,954,521	192,110,866	230,971,818	296,514,881	53.16%	50.31%	46.89%	51.02%
Go Mobile	117,675,566	137,317,069	154,393,237	148,436,440	38.15%	35.96%	31.34%	25.54%
Melita Mobile	24,759,169	49,738,437	102,839,279	132,852,136	8.03%	13.03%	20.88%	22.86%
Other	2,044,098	2,662,782	4,397,805	3,406,167	0.66%	0.70%	0.89%	0.59%

Table 1: Market shares by operator, in terms of subscriptions and originating voice traffic volumes

1.4.2 Developments in local mobile termination charges

Local mobile termination charges were on a downward trend over the last few years as a result of regulatory intervention.

The average mobile termination charge in Malta fell by approximately 30% from 2005 to 2009, i.e from €0.1246 per minute to €0.0866 per minute, as a result of the glide path mechanism implemented by the MCA.

Mobile termination charges in Malta fell by a further 76% in the following years, from €0.0866 per minute in 2009 to €0.0207 per minute in 2012.

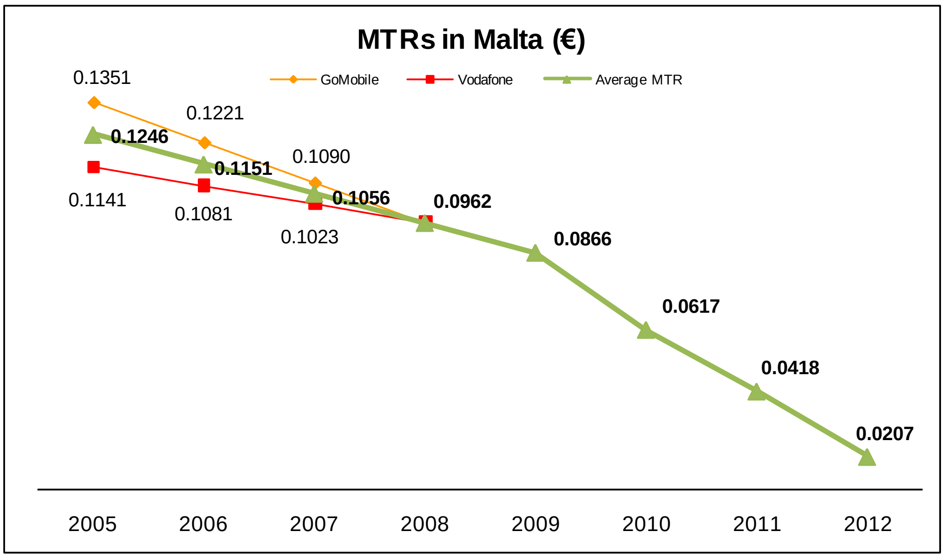

Chart 1: Development of mobile termination charges in Malta

Compared to developments at an EU level, mobile termination charges in Malta were above the EU27 average prior to 2009. The scenario changed in the following years as the Malta benchmarked consistently below the EU27 average.

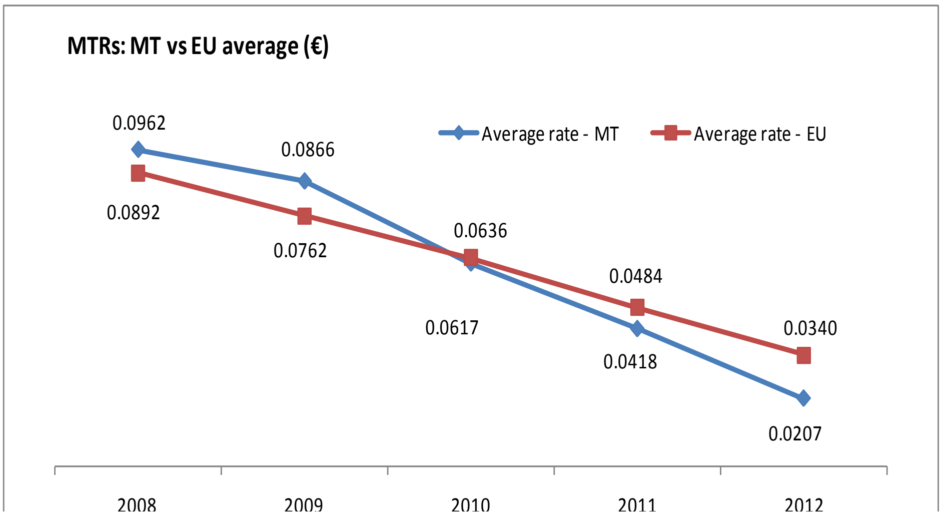

Chart 2: Mobile termination charges in Malta and the EU27

Chart 2 also shows that the rate of decline for mobile termination charges in Malta was higher than that of the EU27 average, as evidenced by the widening gap between the two respective rates.

i. Impact on retail price developments

The most evident impact of declining mobile termination charges relates to retail price developments for the mobile sector. As expected, lower mobile termination charges contributed towards lower retail mobile voice call tariffs.

MCA workings show that, on the basis of calculations for the average rate per minute of mobile communications (ARPM), domestically and internationally bound mobile voice call tariffs went down significantly since 2009.

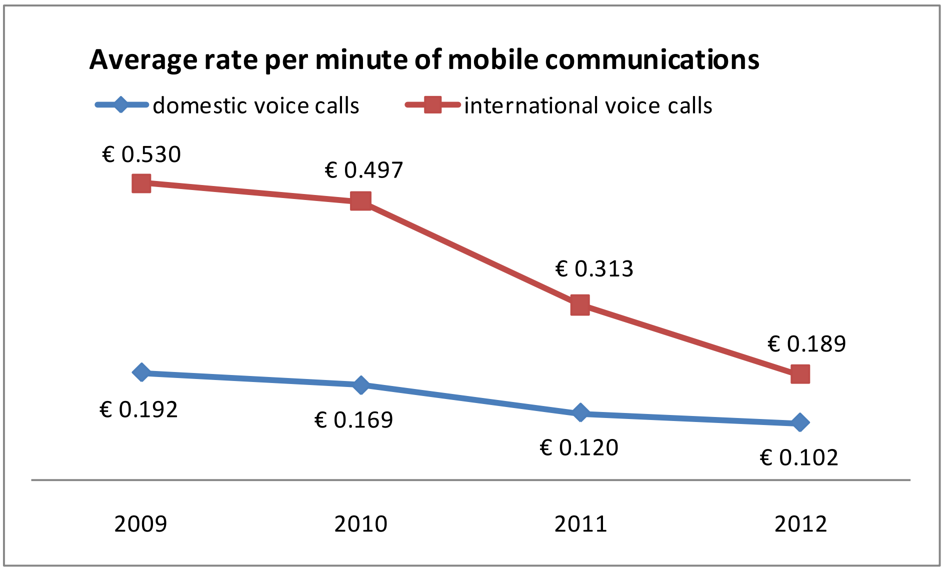

Chart 3: Average rates per minute of mobile communications

In this regard, the ARPM for mobile calls to local network operators in 2012 - including mobile-to-mobile (MTM) calls and mobile-to-fixed (MTF) calls - was down by 47% compared to the rate prevailing four years earlier, from €0.192 to €0.102.

The ARPM for mobile calls to network operators located abroad declined by 64%, from €0.530 in 2009 to €0.189 in 2012.

These declines mainly reflect a growing number of call plans which include some free MTM calls and MTF calls.

The observed decline in the ARPM of mobile communications also contradicts the so called 'waterbed effect' argument cited by an empirical study of Genakos and Valletti in 2008, whereby it is claimed that a 10% drop in mobile termination charges would lead to a 10% rise in mobile retail prices. This is evidently not the case for Malta, where it is clear from the above that lower mobile termination charges contributed towards a decline in retail mobile prices.

Lower mobile voice call tariffs have in turn contributed towards a higher usage of mobile telephony services. Chart 4 shows that, on a per user basis, the number of mobile voice calls went up from 618 in 2009 to 692 in 2012 whilst the number of voice call minutes jumped from 764 to 1,095. This upward trend is mainly explained by the surge in on-net traffic volumes observed during the period under consideration.

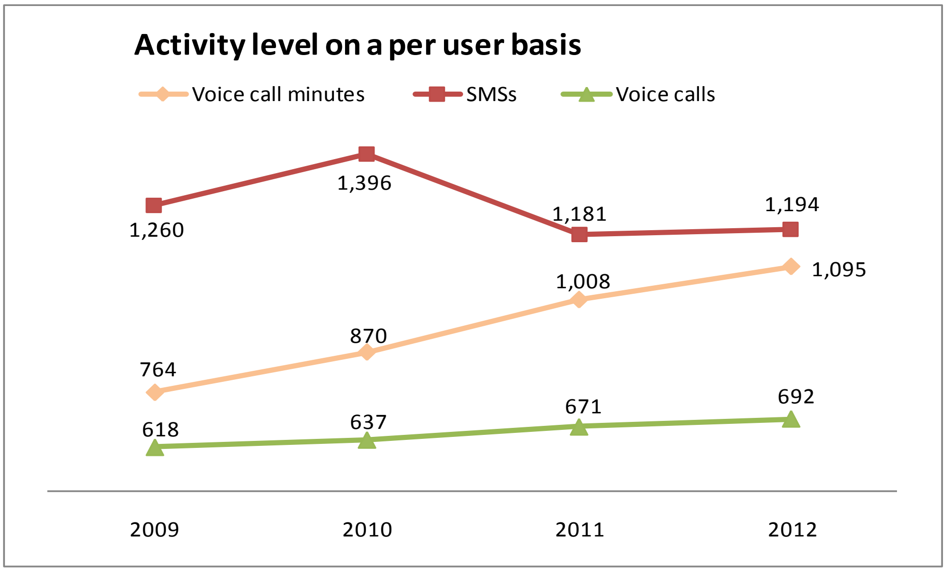

Chart 4: The local usage profile for mobile telephony

Meanwhile, fixed line traffic volumes declined. In fact, whilst in 2009 nearly 53% of all voice calls originated via a mobile subscription, the respective rate went up to nearly 66% in 2012.

It is also of relevance to underline at this stage that the price differential between mobile and fixed line call tariffs narrowed significantly over the last few years.

Chart 5 clearly depicts this trend for domestically bound calls, with the ARPM for mobile originating calls declining at a much faster rate than the ARPM for fixed line originating calls.

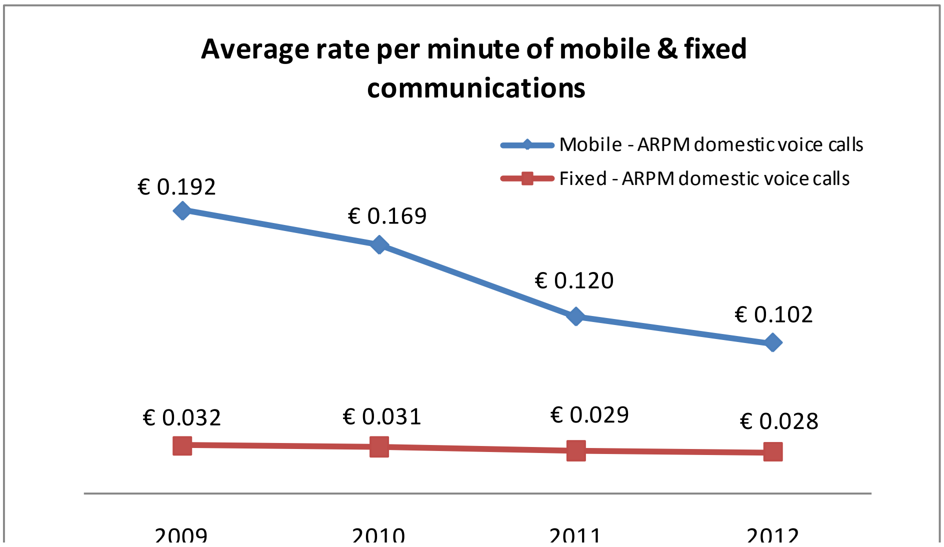

Chart 5: Average rates per minute of mobile and fixed communications

i. Impact on revenues for the sector

The decline in the ARPM for mobile communications in itself implies that the mobile sector is witnessing structural changes as to the sources of retail revenues. Evidently, the ratio of retail revenues from voice services (excl. access related revenues) is slowly decreasing, from around 41% of the total for the sector in 2009 to around 30% last year.

On the other hand, revenues from data and other value-added services are increasing. Data revenues accounted for around 3% of the sector's turnover in 2012, up from around 1.7% in 2009. Meanwhile, revenues related to value-added services increased from around 3% of the total in 2009 to 6% last year.

Overall, the total revenues for the mobile sector increased from €106.4 million in 2009 to €110.3 million last year.

ii. A comparison of mobile and fixed line termination charges

In 2012, the mobile termination charge in Malta was almost three times the fixed line termination charge[13].

	Absolute figures			
	2009	2010	2011	2012
Voice traffic volumes (calls)				
MTF	22,961,962	24,706,815	33,905,691	37,907,701
FTM	42,320,780	40,381,120	39,706,470	41,739,230
Voice traffic volumes (call minutes)				
MTF	26,826,901	35,836,441	58,812,739	69,237,490
FTM	60,305,995	58,456,867	58,598,807	63,772,529

Table 2: Traffic originating from FNO/MNOs and terminating on MNOs/FNOs

[13] The average FTR in Malta is also on a downward trend as a result of regulatory intervention, although its rate of decrease is much lower than for its mobile counterpart. The average FTR in Malta fell by approximately 40% from 2005 to 2012, i.e. from 1.195 eurocents/minute to 0.7163 eurocents/minute.

In this context, Table 2 would therefore suggest that, with the current gap between fixed line and mobile termination charges, fixed network operators (FNOs) may end up net payers of termination in their transactions with MNOs.

1.5 Public consultation

The MCA is hereby publishing this document to provide market players and interested parties with the opportunity to comment on the findings prior to adopting final proposals.

As specified by Regulation 4 of the ECNSR, the MCA is also carrying out this market review in accordance, where appropriate, with an agreement with the National Competition Authority ('the NCA') under Article 4 of the MCA Act.

In line with the cooperation agreement signed on 20th May 2005 between the MCA and the Office of Fair Competition, succeeded by the Office for Competition forming part of the Malta Competition and Consumer Affairs Authority ('the MCCAA'), the MCA shall initiate a two-week consultation exercise with the MCCAA. The MCA will be publishing any comments forwarded by the MCCAA at a later stage in the response to this consultation document.

As required by Regulation 7 of the ECNSR, the MCA shall also notify the results of this market review and the proposed draft measures to the Commission and to other NRAs in Europe following the closure of the national consultation exercise.

2 Market definition

The Commission Recommendation considers call termination on individual mobile networks as relevant for the purposes of ex ante regulation. In particular, the Recommendation states that the market for mobile voice call termination is defined at the individual network level, which effectively means that each MNO constitutes a separate call termination market given that it is the sole supplier of termination services on its own network.

The MCA's second round market review decision concurs with the Recommendation in that it defines three separate markets for call termination that are as wide as each local MNO. The current review considers whether such a conclusion remains appropriate.

2.1 Structure of the chapter

The rest of this chapter is structured as follows:

Section 2.2 explains the relevance of mobile voice call termination in the provision of retail mobile telephony services and highlights upon the principles governing the payment mechanisms for the service in question.

Sections 2.3, 2.4 and 2.5 assess the extent to which the provision of voice call termination and the setting of mobile termination charges by a local MNO might be constrained via demand-side and supply-side substitution possibilities at the retail and wholesale levels.

Section 2.6 identifies the wholesale markets concerning the provision of mobile voice call termination services in Malta and the relevant geographic scope of these markets.

2.2 Voice call termination on mobile networks

Mobile voice call termination is a wholesale input, which in addition to wholesale call access and call origination, enables the provision of various types of mobile voice call services.

Technically, these wholesale inputs allow for a call to be carried over two distinct networks, namely the network to which the customer making the call is subscribed (i.e. the network of the calling party) and the network to which the customer receiving the call belongs to (i.e. the network of the called party).

Therefore, mobile voice call termination services enable customers to receive calls initiated by customers on other FNOs and MNOs.

2.2.1 Transactions based on the CPP arrangement

Under current commercial agreements, local network operators abide by the principles of the so-called 'calling party pays' (CPP) model for transactions related to termination services. Under the CPP arrangement, the originating MNO or FNO pays a charge to the MNO that is terminating the call. This charge is typically referred to as the mobile termination charge.

The originating operator would subsequently recover the mobile termination charge, together with the costs it incurs for originating a call, through the retail price it charges to its customer when the latter makes a call (i.e. the calling party).

It is considered that the CPP arrangement contributes to end users being relatively insensitive to the pricing of voice call termination on mobile networks. Hence, due consideration is given to this factor at a later stage in the forthcoming analysis.

2.2.2 A uniform mobile termination charge

Due to regulatory intervention, local MNOs apply the same charge when terminating a call from other network operators. The logic behind the application of a uniform mobile termination charge rests on the reasoning that a call terminated on a mobile network uses the same network elements, and therefore incurs the same cost, regardless of the origination network being either fixed or mobile.

It is also of note that since MVNOs in Malta are only service providers, and are therefore hosted on one of the local MNOs, these are dependent on the host's network for termination services and apply the same termination charge.

2.3 The substitutability assessment

The assessesment focuses on whether voice termination on individual mobile networks does have a direct substitute, such that an end-user and/or a network operator poses a competitive constraint on the provision of the service and the setting of mobile termination charges.

Two important considerations are however worth highlighting, prior to pursuing with the analysis.

First, the market definition exercise takes into account the degree of interrelationship between the wholesale and retail levels of competition. This is particularly relevant in the context of mobile voice call termination, as this service is a wholesale input to the provision of mobile retail voice call services. Of particular relevance in this regard is the price sensitivity of customers to mobile termination charges.

Second, the assessment abides by the principle of 'technology neutrality'. Here, it is relevant to highlight upon the interoperability of local MNOs, MVNOs and FNOs, as all operators are interconnected.

Furthermore, this review stands by the conclusion that, from a technological and functional point of view, the dynamics of voice call termination on 2G mobile networks are the same as those for 3G mobile networks. There are also no technical obstacles for a customer to make a call to and/or receive calls from a customer on a 3G handset or vice-versa.

Voice call termination on a 3G network is no different to voice call termination on a 2G network.

2.4 Demand-side substitutability

The demand-side substitutability analysis considers whether there are by-pass options for voice call termination on a given mobile network, both at the retail and wholesale level.

2.4.1 Demand-side substitutability at the wholesale level

A network operator wishing to allow its customers to call users of any particular mobile network has no alternative but to purchase voice call termination from the MNO to which the called party is subscribed.

This means that there is no potential for demand-side substitution at the wholesale level.

2.4.2 Demand-side substitutability at the retail level

Wholesale voice call termination is an input to the provision of mobile retail services. Hence, the notion that there might be by-pass options for mobile voice call termination at the retail level to constrain the behaviour of MNOs in the provision of voice call termination services and the setting of their mobile termination charges.

Effectively, a demand-side constraint would arise if a 5 to 10% increase in the mobile termination charge becomes unprofitable as a result of the customer purchasing voice call termination from alternative sources instead of the MNO implementing the said increase in price.

It should however be mentioned that the CPP arrangement bears major influence on consumers in that it makes them relatively insensitive to the pricing of mobile voice call termination. This is because it is the calling party that pays for the termination costs of a call and not the called party. The CPP arrangement therefore leaves no space for a direct relationship between the termination charges that are applied and demand for the service in question by the called party. To put it in another way, the called party has no incentive to act to reduce the charges paid by the calling party, which in turns suggests that the onus for demand-side substitutability at the retail level mainly rests on the behaviour of the calling party.

Demand-side constraints at the retail level may therefore arise from the ability of the calling party to react to changes in mobile termination charges, which are reflected in the retail mobile voice call tariffs charged by MNOs.

To this effect, the forthcoming analysis shall consider whether the calling party might opt for:

- calling a fixed number instead of a mobile number;
- calling from a mobile number instead of a fixed number;
- making an on-net mobile-to-mobile (MTM) call instead of an off-net MTM call;
- using call back and call forwarding solutions;
- resorting to SMS messaging; and
- taking-up a mobile subscription in a bundle and/or closed-user group.

It is however of note here that even the calling party may be price insensitive to mobile termination charges. Qualitative research carried out by the MCA has consistently shown that the majority of mobile users lack awareness of the final retail price they pay for mobile calls, let alone awareness of the underlying cost components of the final price.

This is partly due to the fact that MNOs provide various tariff plans targeting different customer groups whilst call rates vary according to the network of the called party, time of the call and usage profiles. The calling party would also lack awareness of the terminating network as a mobile number may be ported by the called party without the knowledge of the calling party. These two factors could therefore be seen as hindering the calling party’s ability to make effective use of the by-pass options mentioned above.

2.4.3 Calling a fixed number instead of a mobile number

This type of substitution refers to a situation where consumers consider making a call to a fixed number rather than the mobile number to which the called party is subscribed.

However, a fundamental consideration here is that mobile numbers are intrinsically by nature 'mobile' and not set at fixed locations as a fixed line number. This means that the calling party does not really have a choice in trying to reach a third party on the move by calling a fixed line number.

Market trends do in fact suggest that there is a strong level of consumer acceptance of the above, as calls to fixed line numbers are falling whilst those to mobile numbers are on the increase.

Calls to a fixed line number do not therefore pose a sufficiently strong constraint on the setting of mobile termination charges.

2.4.4 Calling from a mobile number instead of a fixed number

This type of substitution refers to a situation where consumers consider calling from a mobile number instead of fixed line number when trying to reach another mobile number.

The most important aspect here is that a calling party incurs the same termination charge when reaching a third party on a mobile number, irrespective of the originating network. This is because a call terminated on a mobile network will use the same network elements for the provision of the service and at the same cost.

Given that the current mobile termination charge does not discriminate between originating operators, the calling party would be indifferent to making a call via a fixed line or a mobile number.

The MCA therefore considers that this type of substitution is not sufficiently strong as to constrain mobile termination charges.

2.4.5 Making an on-net MTM call instead of an off-net mobile calls

On-net MTM calls are generally cheaper than off-net MTM calls and MTF calls. Many times local MNOs do offer incentives to attract new customers by offering free on-net minutes in their plans or else by offering cheaper rates for on-net calls. Another effect of on-net call offers is to preserve customer loyalty.

The substitution of on-net calls and off-net calls entails having the calling party and the called party on the same network or else it requires the calling party and the called party to have multiple SIM cards.

The latter solution is however unlikely to pose a significant impact on market dynamics given that only around 8% of local mobile customers have multiple subscriptions. Furthermore, this solution is somewhat inconvenient as it entails a constant change in the SIM card being used. Mechanisms for automatic substitution are not universally available and, where they are, constant updates would be necessary to keep up with the large number of new subscriptions and portings on the market. The MCA does not consider that the take-up of multiple subscriptions would increase significantly over the timescale of this review.

In the circumstances, therefore, substitution between on-net MTM calls and off-net mobile calls would only constrain an increase in mobile termination charges in the event of strong shifts in the choice of network or plans and high churn levels in response to the change.

Nevertheless, the MCA has already argued that such decisions are not determined by costs for termination, especially as consumers are generally not aware of such costs. Therefore, while it is possible for substitution between on-net MTM calls and off-net mobile calls to happen, it is not considered sufficiently widespread as to pose a constraint on the pricing of wholesale call termination.

2.4.6 Using call-back and call-forwarding solutions

Call-back and call-forwarding solutions are automatically established to re-route calls for intensive users, such as businesses and Closed User Groups (CUGs). In general, however, these solutions are neither commercially available on a large scale nor widely in demand.

Take-up of these solutions is limited at this time and the situation is unlikely to change within the timeframe of this review. This means that the usage of call-back and call-forwarding solutions is unlikely to impact on the setting of local mobile termination charges.

2.4.7 Resorting to SMS messaging

An SMS is likely to be considered a good substitute for a mobile voice call when such a call is of a short duration and does not require real time delivery.

The latest mobile perception survey carried out by the MCA[14] however indicates that, despite the price differential in favour of SMSs when compared to mobile voice calls, only 14% of respondents always consider SMS to be a good substitute for mobile voice calls. Another 26% of respondents very often consider SMS to be a good substitute. These percentages are lower compared to those recorded in previous years, which makes sense given the gradual increase recorded over the years in the average length of a mobile voice call.

The above would suggest that the instances when SMS is a good substitute for a mobile voice call are few in reality. A look at the growth rate of SMS and mobile voice call traffic volumes further confirms this notion, as consumption for mobile voice call telephony increased by a faster rate than that for SMS messaging.

Traffic volumes	Year-on-year change			
	2009	2010	2011	2012
SMS messaging	1.02%	20.41%	-5.83%	9.83%
Mobile voice call minutes	23.60%	23.80%	29.01%	17.99%

Table 3: Rate of increase in traffic volumes: SMS messaging vs voice call minutes

In view of the above, SMSs and voice calls qualify as complementary services rather than substitutes, which means that SMS usage is not an adequate instrument to constrain the setting of mobile termination charges in the absence of regulation.

[14] Link to MCA survey results: http://www.mca.org.mt/consumer/surveys/consumer-perception-survey-mobile-services

2.4.8 Taking up a mobile subscription in a bundle and/or closed-user group

Other strategies that could have an impact on the setting of mobile termination charges relate to the take-up of mobile subscriptions in a bundle offer and/or a CUG. This may be done by those retail customers that are concerned about the costs of their network of family and friends when receiving a call.

The more widespread the number of such subscriptions, the more likely it is for such behaviour to put downward pressure on call termination charges.

Nevertheless, the MCA considers that, even in this case, customers are more likely to consider the costs of making a (on-net) call rather than the costs incurred when receiving a call when opting for a mobile subscription in a bundle or CUG. Furthermore, the number of mobile subscriptions in a bundle and CUGs remains rather low. For example, only 10% of local mobile subscriptions are included in a bundle.

It is therefore considered that the mobile subscriptions in question do not pose a sufficient constraint on the setting of mobile voice call termination charges[15].

2.4.9 Conclusion on demand-side substitutability

The MCA maintains its original position that:

- customers of retail mobile services are not in a position to pose a sufficient constraint on the provision of mobile voice call termination and the setting of the relevant termination charges; and that

- there is no possibility for a network operator to terminate a call other than on the MNO to which the called party is subscribed.

2.5 Supply-side substitutability

In this case, the analysis focuses upon whether existing or potential suppliers would be able to switch production into the supply of mobile voice call termination services, in response to a small but significant increase in price.

This must happen fast enough in order to prevent the price rise of the product from being profitable for the firm that implemented it.

However, no service provider or network operator could readily substitute the supply of call termination on a mobile network to which the called party is subscribed.

Calls can only be terminated on the network chosen by the called party. This means that, in the current circumstances, supply-side substitution for mobile termination services is not possible.

2.6 A distinct termination market

As stated earlier, mobile operators provide access, call origination and call termination as a cluster of services over the same network.

Nothwithstanding this, the services in question differ in terms of their characteristics, pricing or intended use.

[15] Here it is also relevant to underline that although bundle oriented and CUG-based mobile subscriptions might benefit the price sensitive customer through lower on-net pricing, MNOs might still price-discriminate against less price-sensitive customers when setting their mobile termination charges.

Wholesale mobile call origination, for example, guarantees the ability of retail customers to make voice calls and use other mobile related services such as SMS. Meanwhile, wholesale mobile termination enables retail customers to receive calls.

With respect to pricing, an increase in price for wholesale access and call origination services can be competed away in the market, as the services in question are not network dependent. This would be the case if a hypothetical monopolist were to increase the price of, say prepaid services. This may entice existing mobile operators to try matching the said increase in price. Moreover, new operators may consider offering the service at the new price, thus rendering the monopolist's actions a non-profitable strategy.

On the contrary, wholesale termination services offered by a particular network operator cannot be provided elsewhere. This means that network operators offering termination services have an incentive to increase termination charges to boost revenue and subsequently increase the costs of retail customers subscribed to competing operators.

It is therefore considered that the provision of wholesale termination services does not share the same pricing and competitive conditions as the provision of wholesale access and origination services and that the overall conditions of supply and demand for the two services differ significantly.

Hence, the conclusion that the provision of mobile voice call termination services forms a distinct wholesale market, which is geographically constrained to each network operator providing the service in question.

2.7 Conclusion on market definition

In respect of the analysis presented above, and in accordance with competition law principles, the MCA identifies the provision of wholesale voice call termination on individual mobile networks in Malta as relevant for the purposes of ex ante regulation.

2.7.1 Proposed wholesale markets

On this basis, the MCA identifies three distinct mobile termination markets in Malta:

1. wholesale voice call termination provided by Vodafone Malta Ltd.;
2. wholesale voice call termination provided by Mobisle Communications Ltd.; and
3. wholesale voice call termination provided by Melita Mobile Ltd.

The three markets include wholesale voice call termination services provided over both 2G and/or 3G network equipment.

2.7.2 Proposed geographic markets

A relevant geographical market comprises the area in which the undertakings concerned are involved in the demand and supply of a product / service in relation to which the conditions of competition are sufficiently similar or sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different to those areas.

The current conditions of competition are deemed to be geographically homogenous in the identified wholesale markets. The markets in question are indeed subject to a national pricing constraint, as all authorised or licensed MNOs offer mobile termination services on a nationwide basis. MNOs also charge geographically uniform mobile termination charges, without differentiating by reference to geographic location.

The geographical scope of each relevant market therefore corresponds to the nationwide physical coverage of the respective MNO comprising it.

Q1. Do you agree with the proposed definition of wholesale markets concerning the provision of mobile voice call termination services in Malta?

3 Market analysis

Having identified the relevant markets that comprise mobile wholesale voice call termination in Malta, the next step is to analyse whether any undertaking holds a position of significant market power (SMP) in the relevant market, as defined in and required by Regulation 5 of the ECNSR (Article 16 of the Framework Directive).

3.1 Criteria used in determining SMP

For the purposes of this assessment, a number of criteria are investigated to determine whether the identified wholesale markets are subject to potential market shortcomings.

The criteria taken into consideration are the following:

- distribution of market shares;
- the potential of market entry;
- the extent of countervailing buyer power (CBP); and
- the scope for price competition.

The analysis takes full account of the Commission's guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communication networks and services, as well as the MCA's market review methodology.

3.1.1 Distribution of market shares

The area covered by each MNO constitutes a separate wholesale termination market given that there is no substitute for termination on a particular MNO.

This implies that each MNO has a 100% market share in terms of voice call traffic volumes terminating on its own network. This market share is the result of the way termination services are provided exclusively on each individual MNO, with no alternatives available for those purchasing the service. By definition, therefore, each MNO is a monopolist when terminating calls on its own network.

Conclusion

If left unregulated, each MNO would be a monopolist in the setting of its own termination charge. Since the payment of mobile termination charges abides by the CPP arrangement and the network operator purchasing the termination service is a price-taker, MNOs have an incentive to set their termination charge above the competitive level.

3.1.2 Potential market entry

As described earlier on, the provision of mobile voice termination services is governed by the CPP arrangement, which eliminates any opportunity for supply-side substitutability. There is indeed no possibility for network operators to terminate a call other than on the mobile network to which the called party is subscribed.

There have also been no technological breakthroughs, nor are these being envisaged within the timeframe of this review, that would allow for an alteration in the dynamics of mobile voice call termination services.

In the context of mobile voice call termination, established MNOs are expected to continue terminating outgoing calls on the network to which the called number belongs. Any new market entrant would still have to buy termination from established MNOs, for the purposes of completing off-net calls. Furthermore, established MNOs would have to buy termination from the new market entrant, so as to guarantee end-to-end connectivity for their subscribers.

This means that both established and new MNOs would have a 100% market share for the termination of calls on their own network.

Conclusion

Given the pace of technological developments and the forward looking nature of this review, new market entry would not constrain MNOs from setting high termination charges.

3.1.3 Countervailing buyer power

The presence of effective CBP would tend to restrict the ability of MNOs to exercise market power in the provision of voice call termination services and the setting of mobile termination charges.

There are two economic agents that have an interest in keeping mobile termination charges as low as possible. These are end-users (retail customers) and network operators (wholesale customers) that are purchasing mobile termination services.

Their ability to constrain mobile termination charges depends on the extent to which they could exercise CBP in the market for mobile call termination on each MNO.

The bargaining position of the retail customer

The relative bargaining position of the retail customer to influence the setting of mobile termination charges rests on its ability either to discontinue purchasing the service in question from a particular MNO or to consider any alternative seller of termination services.

However, retail customers are likely to be indifferent to the charges applied by their network operator in providing voice call termination. The market definition exercise has in fact already shown that retail customers are typically insensitive and unaware of mobile termination charges and that they give more consideration to the price of outgoing calls rather than the cost that other users would have to incur when completing a call on their mobile number.

This goes to suggest that retail customers do not have sufficient CBP to influence the setting of mobile termination charges by local MNOs.

The bargaining position of the wholesale customer

The next step is to evaluate the possibility for network operators to exert pressure on MNOs selling them termination services.

It is relevant to underline here that wholesale customers of mobile voice call termination are small in number but typically large in size. These include fixed network operators, namely the incumbent Go plc and Melita plc., and mobile network operators themselves, namely Go Mobile, Melita Mobile and Vodafone (Malta).

There are other smaller operators, including Ozone (Malta) and SIS in the fixed line sector and Redtouchfone and VFC Mobile in the mobile sector. The latter two operators classify as MVNOs, which generally buy minutes of use from the licensed MNO and then resell minutes of usage to their customers and are constrained to use the same mobile termination charges being charged by their host MNO.

For the purposes of assessing the extent of CBP exerted by network operators on the setting of mobile termination charges, three scenarios are taken into account.

i. The fixed-to-mobile (FTM) scenario

Here, the analysis assumes a hypothetical situation where there is no regulation on any MNO, which means that an MNO can freely set its termination charge, whilst fixed termination charges are still regulated. Hence, the main consideration as to whether FNOs, such as GO and Melita, are in a sufficiently strong bargaining position as to influence the setting of mobile termination charges.

As it is vital for MNOs to be connected to established fixed networks, one way for FNOs to constrain the price-setting behaviour for mobile termination sevices would be to threaten interconnection.

For example, the incumbent FNO may hypothetically refuse/deny interconnection with a MNO implementing what are deemed by the said FNO as excessive mobile termination charges, unless these are brought down to a reasonable level.

However, due to regulatory intervention and the imposition of the interconnection obligation on the incumbent FNO, this course of action is not possible.

Minutes terminating on MNOs	2009	2010	2011	2012
FTM traffic share	17.54%	14.54%	11.71%	11.28%
On-net MTM traffic share	52.97%	58.06%	60.74%	65.02%
Off-net MTM traffic share	26.55%	25.98%	23.40%	22.44%
International-to-mobile traffic share	2.94%	1.42%	4.15%	1.26%

Table 4: Minutes terminating on MNOs – market share by type of traffic

It is also relevant to underline that, last year, FNOs catered for just 11.3% of all voice call minutes terminating on local MNOs, down from 17.5% in 2009. This suggests that the the relative bargaining position of the fixed line sector as a purchaser of mobile termination services is in fact weakening over time. Table 4 also shows that FTM traffic also accounts for a very small share of minutes terminating on mobile networks, which means that the FNOs cannot effectively exert strong CBP on the setting of mobile termination charges.

For this reason, absent regulation, MNOs would freely increase their FTM termination charges above the competitive level, thereby leading to high costs for FNOs at the wholesale level and thus to high prices for FTM calls at the retail level.

The MCA therefore considers that FNOs do not have sufficient CBP to ensure competitive mobile termination charges.

ii. The mobile-to-mobile (MTM) scenario

Mobile operators themselves purchase termination services from each other. Hence, the main consideration here is whether, absent regulation, MNOs are in a sufficiently strong bargaining position as to influence an increase in mobile termination charges by their competitors.

So far it has already emerged that MNOs have a monopoly position in the provision of mobile termination services over their own network. For this reason, and without regulatory restraint, MNOs have an incentive to increase their mobile termination charges above the competitive level.

MNOs are aware that, due to the CPP principle, setting a high termination charge will not impact their own subscribers, but subscribers of other MNOs. This is because other MNOs purchasing termination would have to face increased costs for off-net MTM calls and thus end-up charging higher rates for such calls at the retail level.

Meanwhile, an opportunity would arise for the MNO charging high rates for mobile termination on its own network to pass-through (partially or in full) the excess revenues from incoming calls on the retail market by charging, for example, cheaper on-net MTM call rates[16]. Given the realisation that a cost would still have to be incurred when terminating a voice call over its own network, the MNO would also tend to discriminate in favour of its own internal termination charge and thereby implement higher off-net termination charges[17].

A price differential between on-net MTM calls and off-net MTM calls is quite likely to emerge in this instance. The higher the termination charge for off-net calls, the higher is likely to be the resulting price differential. Such a price differential would in turn contribute to higher turnover levels and wider profit margins for the MNO implementing discriminatory termination charges. Meanwhile, rival network operators would end up less price competitive, with negative implications on their ability to appeal to customers at the retail level.

It is therefore relevant to consider at this point whether MNOs purchasing termination from other MNOs are in a position to exercise CBP, such as to constrain the setting of mobile termination charges at the competitive level.

It should first be noted here that, if a MNO implements excessively high termination charges or discriminates in its favour or some other MNO when setting these charges, no mobile network operator could effectively exercise CBP by refusing / delaying / blocking interconnection in order to bring down the costs of termination on other mobile networks. This is because all MNOs are required to have interconnection agreements in place with existing operators and to negotiate similar interconnection agreements in good faith with new entrants.

However, a MNO may raise its own termination charge in response to some other MNO charging excessively high charges for termination on its own network. This is because all MNOs effectively have an incentive to increase their termination charges, knowing beforehand that this increase would not affect their own retail customers but would instead translate into higher off-net call rates for retail customers of rival operators. MNOs also have an incentive to keep high mobile termination charges so as to generate more termination revenues from off-net calls that would then cross-subsidise lower on-net call rates.

Therefore, it is considered that, absent regulation, MNOs have the incentive to raise mobile termination charges but cannot pose CBP in the setting of mobile termination charges by rival operators.

[16] Literature suggests that the transfer or pass-through of excess termination profits is unlikely to be complete in the form of lower outgoing call prices.

[17] It may be argued here that, with the emergence of lower on-net call tariffs and increasing on-net traffic volumes, MNOs could have an incentive to push down MTRs, absent regulation, so as to lower the cost of on-net calls even further. Nevertheless, it is considered that MNOs would rather keep high mobile termination charges for other MNOs in order to compensate lower on-net revenue streams with higher off-net revenues.

iii. The international-to-mobile scenario

MNOs also terminate calls originating from another jurisdiction on their own network.

The share of such traffic terminating on local MNOs remains small, standing at just 1.3% in 2012.

It is therefore considered that, absent regulation, international-to-mobile traffic does not pose CBP on the behavior of local MNOs when these are setting their mobile termination charges.

It is also relevant to point out that there is no international wholesale operator or group of operators that could effectively constrain local mobile termination charges to a level commensurate with a competitive outcome.

Conclusion

In the absence of regulation, neither fixed nor mobile network operators can exert CBP to constrain the setting of high termination charges by a particular MNO. This is a result of the intrinsic problem that termination services on a particular network are subject to monopoly pricing.

It is considered that local MNOs face the same identical 'monopolist conditions' for the setting of their own mobile termination charges and cannot be constrained in setting such charges at the competitive level.

3.1.4 The scope for price competition

A MNO faces no competition in the provision of voice call termination over its own network. This is because network operators have no option other than to buy termination from the MNO to which the number of the called party belongs to. It is also clear that, due to the CPP principle, the retail customer does not sufficiently care about the termination costs that other parties have to pay when completing a call to its mobile number. In addition, no CBP can be exercised on the setting of mobile termination charges.

The overall implication of these conditions is that, absent regulation, MNOs are likely to charge an excessive price for termination over their own network, which would ultimately impact negatively on retail mobile prices.

It is of significance to underline at this stage that the reductions in the mobile termination charges observed over the last few years have been exclusively the result of regulatory intervention by the MCA.

Local mobile termination charges went down by 76%, from 0.0866 eurocents/minute in 2009 to 0.0207 eurocents/minute in 2012 (See Chart 7).

Meanwhile, the average rate per minute of mobile communications for domestic mobile calls (used here as a proxy for the actual retail price movements) fell by 47%, from €0.192 to €0.102 (see Chart 8).

Higher usage levels were also reported during the same period, with the number of mobile minutes per subscription increasing from 764 in 2009 to 1,095 in 2012, despite an increasingly higher mobile penetration rate.

Local developments in mobile termination charges and retail mobile prices support the conclusion that reductions in mobile termination charges do in fact contribute positively towards enhancing competition, the intensity of usage, and the retail price levels. Such an outcome would not have been possible for Malta, had mobile termination charges been left unregulated.

Conclusion

Absent regulation, the scope of MNOs to compete on the basis of price is significantly reduced.

3.2 Conclusion on the SMP assessment

The wholesale markets under consideration are not competitive and will not retract from this position during the timeframe of this review.

This conclusion is supported by a number of findings, namely that:

- Each MNO holds a 100% share in terms of voice call traffic terminating on its own network and therefore a monopolist on its own network.

- No CBP can be exercised on the setting of MTRs. Due to the CPP principle, the retail customer does not sufficiently care about the costs that other parties incur when calling them. In addition, network operators have no alternative for terminating a mobile call other than the MNO to which the called number belongs.

- Absent regulation, MNOs have a strong incentive to price discriminate when charging for termination and thus to foreclose markets.

- Mobile termination charges are likely to increase in the absence of regulatory intervention and may result in price distortions and allocative inefficiencies.

- In a scenario where MNOs can freely set high termination charges, the scope for price competition is reduced to the detriment of retail customers.

The MCA therefore considers that the following MNOs hold significant market power in their respective wholesale termination market:

i. Vodafone (Malta) Ltd.

ii. Mobisle Communications Ltd.

iii. Melita Mobile Ltd.

Q2. Do you agree with the above preliminary conclusions regarding the assessment of the state of competition in wholesale markets concerning mobile voice call termination on individual mobile networks?

4 Regulatory approach

Following the market analysis, the MCA concluded that Go Mobile, Vodafone (Malta) and Melita Mobile enjoy SMP in the provision of termination services on their own individual network.

Regulatory intervention is therefore required to address the potential competition problems that have been identified in the preceding analysis. This regulatory intervention would ensure that SMP operators are prevented from exploiting their position of dominance and would thus guarantee that the markets in question work effectively to deliver enhanced consumer benefits.

This chapter is structured as follows:

Section 4.1 underlines the legal provisions guiding the MCA's regulatory approach.

Section 4.2 recalls the potential risks to competition arising from the SMP position of MNOs with respect to the provision of wholesale voice call termination on their individual mobile networks.

Section 4.3 lists the regulatory obligations that are currently enforced on Go Mobile, Vodafone (Malta) and Melita Mobile in the markets under investigation.

Section 4.4 highlights upon the obligations that are to be imposed on the MNOs identified with SMP in the current review.

4.1 Background to regulatory approach

In accordance with regulation 11(1) of the ECNSR, where an operator is found to have SMP on a relevant market, the MCA is obliged to impose on such an operator appropriate regulatory obligations or to revise such obligations where they already exist.

The MCA is to ensure that the selected remedies are in accordance with regulation 11(4) of the ECNSR and article 8.4 of the Access Directive, in that these are:

- based on the nature of the competition problems that have been identified;
- proportionate and justified, in light of the objectives laid down in Article 4 of the ECRA; and
- only be imposed following consultation, in accordance with regulation 7 and article 4A of the MCA Act.

4.2 Potential competition problems

The MCA identified that, as a result of the SMP position held by MNOs in their relevant wholesale market, Vodafone, Go Mobile, and Melita Mobile may engage in the following practices if left unregulated:

i. Excessive pricing

Each MNO has an incentive to charge excessive charges for voice call termination on its own network. This is more likely to happen with the MNO charging high termination charges for FTM calls and off-net MTM calls in order to increase the inflow of termination revenues and subsequently cross-subsidise its on-net MTM call tariffs.

ii. Price discrimination

A MNO could charge 'itself' or its subsidiary a lower termination than it charges to other network operators. Through these price discriminatory practices a MNO could ultimately foreclose the retail market from its competitors.

It has already been argued that, for example, a MNO could set high off-net termination charges in order to cross-subsidise cheaper on-net MTM call rates. In this sense, other network operators would find it more difficult to compete in the retail market given that these are faced by much higher costs for completing off-net calls to the MNO charging excessively high off-net termination charges.

4.3 Current regulatory obligations

In its second market review decision concerning wholesale voice call termination on individual mobile networks in Malta, which was published in 2009, the MCA established that Vodafone (Malta), Go Mobile and Melita Mobile had to comply with the following set of obligations:

- an obligation to meet reasonable requests for access to/and use of their specific network facilities;
- an obligation not to show undue preference or undue discrimination in the provision of interconnection services;
- an obligation to ensure transparency in accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices;
- an obligation to implement accounting separation; and
- an obligation to implement price control and cost accounting.

The latter obligation ensured that MNOs reduced their mobile termination charges to a cost-oriented level. Mobile termination charges for 2009 and 2010 were eventually set according to a mechanism linked to the average yearly percentage change in mobile termination charges of the EU27 countries (backdated by one year), as determined on the basis of official data published by the EU Commission.

An update to the price control obligation was notified to the EU Commission in May 2012 (see Case MT/2012/1330)[18]. This notification highlighted upon the introduction of amendments in the price control remedy, with the benchmarking approach having been adjusted to use the average of the lowest 75% of mobile termination rates in the EU Member States as its baseline. In the same notification, the MCA expressed its intention to shift to a benchmarking approach using data from NRAs that already use a pure LRIC methodology.

4.4 Proposed regulatory approach

Following the evidence and conclusions provided at market analysis stage, the MCA will maintain regulatory intervention in the wholesale markets under investigation.

The following sections will discuss the regulatory obligations to be imposed on Go Mobile, Melita Mobile, and Vodafone (Malta), following the publication of the MCA's final decision

[18] Link to MCA notification Case MT/2012/1330.

concerning the provision of wholesale voice call termination on individual mobile networks in Malta.

4.4.1 Access

An access obligation would provide greater certainty in the market as it would supplement the general obligation at law on network operators to provide access to all reasonable requests for interconnection in accordance with the objectives specified under the ECRA (article 13 and article 14) and the MCA Act.

As stipulated by regulation 15 of the ECNSR, Go Mobile, Vodafone (Malta), and Melita Mobile are to ensure end-to-end connectivity through the appropriate granting of access to, or interconnection with, other networks.

To this effect, the aforementioned MNOs shall amongst others be obliged to:

- give third parties access to their infrastructure for the purpose of voice call termination on their own network and interoperability of network services, whether under the form of interconnection, or access to associated facilities, or services for the purposes of interconnection;

- meet reasonable requests for access to and the use of their infrastructure for the purposes of providing voice call termination (interconnection) services in a fair, reasonable and timely manner;

- publish a reference interconnection offer (RIO), which is also subject to the transparency and non-discriminatory obligations;

- negotiate in good faith with undertakings making new requests for access and interconnection services, whereby all such requests are to be met upon the conditions covering fairness, reasonableness and timeliness; and

- not to withdraw access to facilities already granted.

The decision to provide access and interconnection services shall remain subject to scrutiny by the MCA in accordance with its powers at law and reserves the right to amend the obligation following consultation with stakeholders.

4.4.2 Non-discrimination

The obligation of non-discrimination would ensure that no SMP operator exercises any discriminatory behaviour in relation to the provision of wholesale termination services within the timeframe of this review.

Consequently, Go Mobile, Melita Mobile and Vodafone Malta would not be in a position to discriminate in their favour or in favour of a particular undertaking (such as own subsidiaries and partners), when providing other undertakings with wholesale termination services on their own network.

The imposition of a non-discrimination obligation is therefore intended to avoid a situation whereby an SMP operator would have the ability to exploit its market power in order to discriminate when providing termination services to other operators.

To this effect and in accordance with regulation (13) of the ECNSR, Melita Mobile, Go Mobile and Vodafone (Malta) shall:

- apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services; and

- provide services and information to others under the same conditions and of the same quality as they provide for their own services, or those of their subsdiaries or partners.

4.4.3 Transparency

The relevance of the transparency obligation has to be seen in the context of various purposes, including that of supporting other regulatory remedies such as the obligations of access and non-discrimination.

This obligation will enable the MCA to monitor any anti-competitive behaviour with respect to the terms and conditions of services being offered by MNOs in relation to access and, or interconnection.

Meanwhile, it would also ensure that network operators have sufficient information and clear processes to which they would not otherwise have access. For example, the transparency obligation would assist market entry by helping MNOs comply with elements of the obligation of non-discrimination and in so doing speed up negotiation.

In accordance with regulation 12 of the ECNSR, Melita Mobile, Go Mobile and Vodafone (Malta) shall be subject to transparency obligations and are obliged to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, including any conditions limiting access to and, or use of services and applications, and prices where applicable.

To this effect, the said MNOs shall be requested to:

- make public information concerning call termination rates, network and technical specifications, terms and conditions for supply and use, and accounting information, as required by the MCA;

- deliver services of equivalent quality to all operators;

- provide sufficient information on relevant matters, including the processes that alternative operators would not otherwise have access to, in order to assist with their entry into the market; and to

- publish a RIO, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities that 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[19].

In accordance with regulation 12(4) of the ECNSR, changes may be imposed by the MCA to RIOs, in order to give effect to the obligations imposed under the ECNSR. The MCA may also specify the precise information to be made available, the level of detail required, and the manner of publication.

4.4.4 Accounting separation

The obligation of accounting separation would ensure that operators with SMP keep separate accounts to reflect, as closely as possible, the performance of separate business

[19] In accordance with Regulation 12(4), changes may be imposed by the MCA to RIOs, in order to give effect to the obligations imposed under the ECNSR.

The MCA may also specify the precise information to be made available, the level of detail required, and the manner of publication.

activities that they operate. The imposition of this obligation would also enable the MCA to make certain that the costs allocated by an operator to an individual mobile service are the actual costs being incurred to provide the respective service.

The MCA is aware that MNOs with SMP are able to cross-subsidise between services through an internal transfer pricing mechanism which is distorted in favour of their own retail operations to the detriment of existing or potential competitors, and to the disadvantage of end users purchasing other services. This is more so since all MNOs, which were identified as having SMP, offer more than one type of service in a bundle. In this scenario, accounting separation would preclude cross-subsidisation and would thereby avoid any inefficient pricing strategies that favour discriminatory behaviour. Accounting separation would therefore provide improved transparency in the accounting arrangements of operators and would also encourage non-discrimination.

It is therefore considered that an obligation of accounting separation in conjunction with a price control measure would ultimately ensure that:

- wholesale prices are set in an efficient, transparent and non-discriminatory manner; and that
- the accounting arrangements of operators are transparent to such an extent that facilitates the verification of compliance in respect of services that the MNOs provide to other operators.

The MCA therefore feels that the imposition of an accounting separation obligation is appropriate.

In accordance with regulation 14 of the ECNSR, Vodafone (Malta), Melita Mobile and Go Mobile shall be obliged to:

- make transparent wholesale retail prices and internal transfer prices to the MCA, whenever such information is requested by the said Authority, without prejudice to the generality of regulation 14(2); and to
- make available accounting records to the MCA, including data on revenues received from third parties, whenever such information is requested by the said Authority, without prejudice to the provision of articles 4(10) to (14) of the Malta Communications Authority Act.

Unless otherwise directed by the MCA, Vodafone (Malta), Go Mobile and Melita Mobile shall keep the existent methodology[20] and level of accounting separation.

4.4.5 Price control

Due to a lack of competition and CBP resulting from the CPP principle, MNOs do not have any incentive to reduce termination charges to cost oriented levels through self-initiative.

The MCA therefore considers the imposition of the price control obligation as an essential tool to ensure that symmetric mobile termination charges are set at levels corresponding to the costs of an efficient operator.

[20] The methodology on how to implement the accounting separation obligation has already been outlined in other MCA decisions, published in 2002 and 2009 (see Footnote 27). This notwithstanding, the MCA reserves the right to establish or alter the details of the obligation of separated accounts, following appropriate consultation with all stakeholders.

Cost oriented mobile termination charges are in turn essential to maintain low and affordable retail call rates for retail customers.

In accordance with regulation 16(2) of the ECNSR, the price control mechanism would therefore serve to promote efficiency and sustainable competition and to maximize consumer benefits.

It is of note that the competitive conditions in the markets under investigation have not changed materially since the last notification of 2012.

In accordance with regulation 16 of the ECNSR, the price control remedy is therefore to be maintained on Go Mobile, Vodafone (Malta) and Melita Mobile, as imposed by the decisions of the MCA in force at the time of publication of the decision concerning this market review.

Go Mobile, Vodafone (Malta) and Melita Mobile are currently obliged to apply an iterim termination charge of €2.07 cents[21], which is intended to be finally replaced by the rate emanating from the MCA's BU-LRIC model. In this respect the MCA has already commenced technical consultations with MNOs on the Authority's newly developed Bottom-up cost model.

The MCA reserves the right to amend the level of control in accordance with its powers at law, following consultation with stakeholders. In this regard, the MCA reiterates its commitment to introduce its own pure LRIC model for the calculation of mobile termination charges in Malta.

This is necessary to ensure efficient cost-oriented mobile termination charges in compliance with the Commission's Recommendation on the regulatory treatment of fixed and mobile termination rates.

4.4.6 Cost accounting

The cost accounting obligation would enable the MCA to monitor the costs incurred by MNOs in relation to the provision of termination services on an ongoing basis.

This obligation would therefore provide the MCA with the necessary oversight to ensure that MNOs apply fair, objective and transparent methodologies in allocating costs to the identified regulated products.

It would also ensure price controls in the market and prevent potential market failure.

In accordance with regulation 16 of the ECNSR, Vodafone (Malta), Go Mobile and Melita Mobile shall be required to supply detailed information to the MCA regarding the allocation of costs onto different services.

The methodology to be employed by the above-mentioned MNOs for the cost accounting obligation is already set by virtue of an MCA decision concerning the requirements imposed on operators designated with SMP status and having accounting separation obligations[22].

[21] This rate has been applicable since July 2012, following an MCA Decision published in June of the same year. Link to Decision: http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/interim-review-of-wholesale-mobile-termination-rate-response-to-consultation-decision-june-2012.pdf

[22] Link to MCA Decision: http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/09-07-accounting-separation-july-09.pdf

The MCA may amend the methodology in accordance with its powers at law and in line with EU obligations and recommendations, following appropriate consultation with all interested parties.

4.5 Monitoring of future market developments

The MCA considers that it is sensible to keep a close watch on the progress of the wholesale mobile termination markets in Malta.

To this end, the MCA intends to analyse market trends and developments on an ongoing basis, and remains committed to issue a new market analysis at any point in time in response to a significant change in market conditions.

The MCA, in accordance with its powers at law, is also reserving the right to change any of the above mentioned regulatory obligations following changes in the market structure.

4.6 Conclusion on proposed regulatory appraoch

After having identified the major competition problems with respect to the wholesale markets under investigation, the MCA considers that ex ante regulatory intervention is required.

To this effect, the MCA is considering the imposition of the following regulatory obligations on MNOs designated with SMP in this market review:

- Access;
- Transparency;
- Non-discrimination;
- Price control and cost accounting; and
- Accounting separation.

These set of remedies are based on the nature of the competition problems that have been identified and are considered proportionate and justified.

Nevertheless, the MCA will continuously monitor the market and consider revising its position if required.

Q3. Do you agree with the above preliminary conclusions regarding the proposed regulatory approach to address potential competition problems in the wholesale markets in question?

5 Submission of comments

The MCA welcomes written comments and representations to this report during the national consultation period, which shall run from the 5th of July 2013 to the 23rd of August 2013.

The MCA appreciates that respondents may provide confidential information in their comments. This information is to be included in a separate annex to their response and should be clearly marked as being confidential. After due consideration of the comments and representations received, the MCA will review this analysis and publish a report summarising the responses to the consultation.

For the sake of openness and transparency the MCA will publish the names of all respondents to this consultation. To this end, all representations may be published, except where respondents indicate that a response, or part of it, is confidential. The MCA will take steps to protect the confidentiality of all such material from the moment that it is received at the offices of the MCA. Respondents should however avoid applying confidential markings wherever possible.

All responses must be submitted to the MCA by no later than close of business of the 23rd of August 2013.

Extensions to the consultation deadline will only be permitted upon written request to the Authority. The MCA reserves the right to grant or refuse any such request at its discretion. Requests for extensions are to be made in writing within the first ten (10) working days of the consultation period.

All submissions should be made in writing and sent by email to patrick.b.vella@mca.org.mt.

If required, hard copies may also be posted or faxed to the address below.

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