

Statement of Proposed Decision regarding Single Billing for Carrier Pre Selection

13th November 2006

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1. Background

On the 26th September 2006, the Malta Communications Authority (hereafter “MCA”) published a Response to Consultation and Decision Notice entitled ‘Determination of Market Power and Setting of Remedies of Access to the public telephone network at a fixed location’ (hereafter the “Fixed Access Market Analysis”). The Decision imposed on Maltacom plc (hereafter “Maltacom”), as an operator with significant market power in the said market, an obligation to provide a solution whereby carrier pre-select operators shall be able to provide a single bill to their customers for access and calls, irrespective of the fact that such access may be provided to the customers by Maltacom.¹ Maltacom was thus required to submit within thirty days from the Decision a reference offer which would contain details of a wholesale line rental or similar single billing solution for the MCA’s approval.²

Originally, in the consultation on the Fixed Access Market Analysis, the MCA had proposed to impose an obligation on Maltacom to provide a full wholesale line rental solution. However, following specific representations made in this respect, the MCA recognised that there could be complexities and costs involved in the practical implementation of a full wholesale line rental solution. Set against these complexities however were the manifest benefits to the consumer as a result of a single billing solution, particularly of ease of payment, simplicity and clarity of operation. The MCA noted that the experience in other jurisdictions had confirmed that, with regard to carrier pre-selection, the availability or otherwise of a single billing solution could determine which provide an end-user would ultimately select. A single billing solution would therefore allow for a level playing field for new entrants, in that they too are given the option of offering their customers a single bill for access and calls. On this basis, the MCA decided that Maltacom was to provide a single billing solution (not necessarily in the form of a full wholesale line rental solution) within the timeframe referred to above.

The Decision concluded that the MCA would continue to monitor developments in the market. In particular, the MCA reserved the right, in circumstances where Maltacom failed to provide an effective single billing solution, to require Maltacom to commence provision of a wholesale line rental or other single billing solution according to any specification that may be required by the MCA.³

Following the Decision, Maltacom proposed an interim single billing solution on the 17th October 2006, wherein Maltacom proposed that it would make available access lines for rent to carrier pre-select operators (hereafter “CPSO”) at a yearly cost of

¹ MCA Response to Consultation and Decision, ‘Access to the public telephone network at a fixed location - Identification and Analysis of Markets’, 20th September 2006, p.41; see also MCA Response to Consultation and Decision, ‘Introducing Carrier Selection & Carrier Pre-selection in Malta’ May 2004, Decision 5 where the MCA directs that Carrier Selection and CPSOs should by default bill their subscribers directly for calls.

² *Ibid.*, p.35, pt.4.4.5

³ *Ibid.*, p.41

Lm45,66 excluding VAT and other one-off charges to cover the cost of administrative and other technical work that Maltacom would be required to make.

The MCA, on the 24th October 2006, refused the proposed solution on the basis that it clearly did not satisfy the criterion of non-discrimination since Maltacom's residential retail arm evidently does not cover this cost and allow a reasonable margin to be earned. The proposed charge would have in effect increased the bill of subscribers for access merely because they would have selected to make use of carrier pre-selection. Furthermore, Maltacom's solution lacked the necessary detailed specifications as to how the proposed interim solution would work.

Following this submission the MCA has not formally received any other further proposals from Maltacom as to any alternative possibilities for single billing solutions. The MCA is aware that discussions between Maltacom and the new entrant CPSO have continued within this time period. However it now appears that agreement on such negotiations has not been reached and will not likely be reached in the near future. In view of the fact that the period originally set for the development of the single billing solution has lapsed and that the launch of the services of the CPSO threatens to be delayed due to the lack of a single billing solution, the MCA is hereby proposing to define specifications for a single billing solution that is to be implemented by Maltacom forthwith. This is without prejudice to the right of MCA to analyse further whether, eventually, a full wholesale line rental solution would be beneficial to the market and to issue further decisions or specifications on such a full wholesale line rental solution.

2. Implementation of a Single Billing Solution

The experience in foreign jurisdictions in the implementation of carrier pre-selection services has demonstrated a widespread support for the concept of single billing, indicating that the disincentive of multiple billing is a major factor in influencing a significant proportion of residential customers to revert back to the incumbent. As stated in its Decision on the Fixed Access Market Analysis of the 26th September 2006, the MCA strongly believes that the new entrants aspiring to offer carrier pre-selection services would benefit from a single bill in that it would provide the consumer with an enhanced ease of payment, simplicity and clarity of operation. Furthermore, it would place the new entrant on the same footing as the incumbent which traditionally has always enjoyed the advantage of single billing. In this sense the new entrant can provide a full service to its customer similar to that provided by the incumbent.

The MCA is giving this issue priority particularly because a CPSO is currently attempting to enter into the market. This new entrant and potentially other new entrants interested in providing carrier pre-selection services require immediate regulatory intervention, not only in the interest of regulatory certainty, but because the pricing models that they may be planning to adopt, as well as ultimately their business case, are dependent on the availability of a single billing solution.

Whilst recognising the urgency of ensuring the availability of a single billing solution, the MCA recognises the complexities of practical implementation of a full wholesale line rental service by Maltacom and understands that, even if justified, this process will necessarily have to extend over a period of time. In the aforementioned Fixed Access Market Analysis the MCA opted to give Maltacom the opportunity to come up with a single billing solution that would not involve the complexities of full wholesale line rental. Since, as stated above, Maltacom has not provided the MCA with an acceptable alternative to full wholesale line rental and in view of the urgency of regulatory intervention in this respect, the MCA is hereby proposing to decide to implement forthwith a transitory single and inexpensive first stage single billing solution. This will allow new entrants to issue a single bill to its customers for both access and calls whilst at the same time, it will give the MCA the opportunity to study further the benefits or otherwise of implementing a second stage full wholesale line rental and to specify, if necessary, processes and specifications for such implementation.

3. Principles of a First Stage Single Billing Solution

At the outset, it is useful to reiterate the principles of any single billing solution that were delineated by the MCA in its Fixed Access Market Analysis. These are listed below together with additional principles that the MCA proposes to decide should govern the implementation of a first stage single billing solution.

The Solution should be Non-Discriminatory

Since Maltacom, is a vertically integrated provider, there may be an incentive to provide wholesale services on terms and conditions that discriminate in favour of its own retail activities. In particular, there are incentives to charge more to competing providers for wholesale services than the amount charged to their own retail activities, thereby increasing the costs of competing providers and giving themselves an unfair competitive advantage.

In order to counteract this incentive the Fixed Access Market Analysis concluded that it was necessary to require Maltacom not to discriminate in the provision of a single billing solution. This would enable new CPSOs to benefit from a single billing solution in a similar manner to the that in which Maltacom's retail arm benefits from such single billing. The non-discrimination obligation means that Maltacom may not charge new CPSOs charges or expenses which it would generally not impose on its retail arm for the provision of similar services. Moreover, the obligation also requires Maltacom to provide to any new CPSO all the information that would normally be available to Maltacom's retail arm in relation to single billing. In fact, besides tackling price-related competition problems, non-discrimination can directly target non-price parameters such as withholding of information, delaying tactics, undue requirements, low or discriminatory quality, strategic design of products, and discriminatory use of information - conditions which would disadvantage competing providers and in turn consumers.

The Solution should be Transparent and Subject to Accounting Separation.

The aforementioned Fixed Access Market Analysis also imposed obligations of transparency and accounting separation in the implementation of a single billing solution in order to ensure compliance with and to enable monitoring of the non-discrimination obligation.

The transparency obligation is aimed at demonstrating that the incumbent delivers services of equivalent quality to other operators and its own retail activities. The imposition of such remedy ensures that alternative operators have sufficient information and clear processes to which they would not otherwise have access assisting their entry into the market. In this light, the MCA required Maltacom to provide a single billing solution which is sufficiently unbundled, including pricing, terms and conditions and service level agreements. The MCA also required Maltacom to include these terms and conditions in its Reference Interconnect Offer.

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

For this reason, the MCA required Maltacom to include the wholesale line rental or single billing solution as part of the existing accounting separation model. This would help disclose possible market failures and provide evidence in relevant markets of the presence or absence of discrimination and margin squeeze.

The Solution should be Subject to Price Control

The Fixed Access Market Analysis required that any single billing solution should be subject to price control. This regulatory intervention was deemed necessary in order to promote competition in the market and simultaneously to support the obligations of non-discrimination and transparency. In competitive markets, the price of services is driven down to competitive levels by the commercial judgement of the undertakings forming the market. However, where competition does not provide pricing constraints, it is necessary to prevent excessive pricing by means of regulation. Without some intervention in pricing, dominant providers are likely to charge excessive prices, in order to maximise both their profits and the costs of competing providers.

Consequently and as a result of the obligations of non-discrimination and transparency, the MCA decided that the prices related to the single billing solution are to be subject to price control in order to prohibit excessive pricing. The Decision did not however specify the nature of this price control and specified that this would be dealt with through a public consultative process.

The Solution should be Inexpensive and Uncomplicated

As stated above, the MCA recognises the representations made by Maltacom during the consultation on the Fixed Access Market Analysis that the implementation of a full wholesale line rental solution could be complex, may be possible only over an extended period of time and may ultimately require significant investment by Maltacom.

On this basis, the MCA is proposing to decide not to require, at this stage, the implementation of a full wholesale line rental solution, but instead require solely that Maltacom provide a first stage single billing solution. The MCA will then proceed to analyse whether the introduction of a second stage solution in the form of full wholesale line rental is justifiable, and if so then specify the manner in which that solution would be implemented.

Logically, therefore, any first stage single billing solution, should be aimed at avoiding the expenses and complications that would normally be associated with the implantation of a full wholesale line rental solution.

The Solution should allow CPSOs to provide a Single Bill for Access and Calls

Finally, any solution should necessarily allow the CPSO to provide a single bill for access and calls, even where such access is in fact being provided by Maltacom. The new entrant CPSO will have the option, subject to any regulatory limitations that may be specified by the MCA, to have complete flexibility to come up with pricing models in relation to its customers, provided that it ensures that Maltacom is ultimately paid for access.

The customer of the CPSO in this respect and, where possible in relation to all aspects of the carrier pre-selection service, should interact solely with the CPSO. The CPSO should then deal with Maltacom to solve any problems or faults that may arise in relation to the CPSO's customer.

4. First Stage Single Billing Solution – Product Description

On the basis of the principles above, the MCA proposes to decide that the first stage billing solution should take the form of an agency rebilling agreement between the CPSO and Maltacom. Single billing through agency rebilling means that the CPSO acts as an agent for Maltacom in collecting the standard retail line rental and the prices for other services, as further detailed below.

This variant of carrier-pre selection single billing will provide a stepping stone between the existing carrier pre-selection service and the second stage full wholesale line rental solution, if this is eventually deemed necessary by the MCA.

Description of First Stage Billing Solution

The objective of the first stage single billing solution is to enable CPSOs to provide their new and existing CPS 'all calls' customers with a single bill covering all aspects of voice services. The CPSO can charge for its services at its own rates but becomes responsible, instead of the subscriber, for the timely payment of all bills due by its customer to Maltacom for voice services provided by Maltacom.

Proposed Decision 1:

The MCA proposes to direct Maltacom to immediately implement a first stage single billing solution which enable CPSOs to provide their new and existing CPS 'all calls' customers with a single bill.

Scope of Single Billing Solution

The first stage single billing solution product should cover all voice services provided by Maltacom to its customers. This requirement would mean that a CPSO may achieve a single billing relationship when taking over a Maltacom account. The term voice services shall be taken to include the bills for access for all publicly available telephony services (including both access and calls whether analogue or ISDN) as well as services traditionally associated with voice services (such as star services).

The MCA has considered whether calls which are made through Maltacom or through any other carrier select operator by the use of an override carrier selection code (such as, for example, the use of "Ten21") should be included within the single bill. The MCA is aware that obliging the CPSO to provide a single bill even in respect to these calls risks imposing an additional burden on the CPSO. Nonetheless, the CPSO may be willing to suffer these costs, in order to continue benefiting from a single billing relationship with the customer.

For this reason, the MCA is proposing that each CPSO shall be able to decide whether the bills for services provided by Maltacom or any other carrier select operator by the use of an override carrier selection code, should be included or not within the single bill.

Proposed Decision 2:

The MCA proposes to direct that the single bill should include all publicly available telephony services (including both access and calls whether analogue or ISDN) as well as services traditionally associated with or ancillary to voice services.

The CPSO shall have the discretion to decide whether or not calls made through an alternative provider by the use of an override carrier selection code shall be included within the single bill.

Order Handling and Provision

The MCA proposes that when a customer applies for single billing by the CPSO, Maltacom will change the billing address of the customer to that of the CPSO. As a result the CPSO shall receive the bill instead of the customer and will be responsible for the payment of the said bill. This will give the CPSO the flexibility to set its own prices with its customers whilst ensuring that Maltacom's bill is paid.

In order to ensure compliance with relevant Data Protection legislation the MCA proposes that all subscribers should consent to the processing of data as specified above both by Maltacom and the CPSO. The most efficient and uncomplicated manner of requiring such consent is by adding a field in the original form used by the CPSO when a customer is originally applying for carrier pre-selection. This will avoid an added encumbrance for the customer in having to fill an additional form in order that they avail of single billing.

Proposed Decision 3:

The MCA proposes to direct that upon application, Maltacom will change the billing address of the customer applying to that of the CPSO, thus enabling the CPSO to receive an itemised bill instead of the customer. The MCA proposes that the original form used by the CPSO when a customer is applying for carrier pre-selection should include the option whether that customer would also require and consents to single billing. The MCA proposes to direct Maltacom to implement single billing for all those customers who have consented to the single billing or the said change of address even before the publication of the final decision on this consultation.

Bill Transparency

In furtherance of the principle of transparency and in order to ensure that the customer is aware which operator has billed him for particular services, the MCA is proposing that when a customer has selected a CPSO and has consented to the single billing solution by change of address, Maltacom will bill the customer for all those voice services it has provided until the date upon which the carrier pre-selection 'all-calls' option comes into effect. From that date onwards, Maltacom shall not issue any more bills to that customer and the CPSO will bill in its stead.

Proposed Decision 4:

The MCA proposes to direct that, where the single billing option is selected by the CPSO customer, Maltacom shall send a final bill to customer for all those voice services it has provided until the date on which the carrier pre-selection comes into effect.

Bill Collection

This first stage single billing solution is based on the premises that the CPSO will assume responsibility vis-à-vis Maltacom for the payment of all bills for voice services that would, irrespectively of the carrier pre-selection, have otherwise been payable by the customer of CPSO. The CPSO therefore assumes full responsibility for the payment of the said bills to Maltacom and is responsible for all bad debts in relation to its customers during the period within which they avail themselves of the carrier pre-selection 'all-calls' option and provided that the customers have selected to avail of the single billing solution.

Thereafter the CPSO will be able to collect the amounts paid to Maltacom by in turn billing its customers as per the subscriber contract that the CPSO shall have with each customer. This will allow the CPSO flexibility in the formulation of pricing strategies and structures.

Proposed Decision 5:

The MCA proposes to direct that upon selection of the single billing solution by the customer, the CPSO shall be solely responsible for the payment of all bills sent by Maltacom to the CPSO during the period within which the customer is availing himself of the carrier pre-selection 'all-calls' option. During this period, the CPSO will be able to collect the amounts paid to Maltacom by billing its customers as per the relevant customer contracts.

Bill Amounts

In accordance with the non-discrimination and transparency principles detailed above, the MCA is of the opinion that all the discounts (such as discounts for timely payment of bills) and benefits (such as itemised billing) that would have otherwise been available to the customer had he not availed of the single billing solution should be likewise applicable to the CPSO when the CPSO is billed in lieu of the customer.

Proposed Decision 6:

The MCA proposes to direct that all discounts and benefits that would have otherwise been available to the customer had he not availed of the single billing solution should be likewise applicable to the CPSO when the CPSO is billed in lieu of the customer in accordance with this proposed Decision.

Charges for the Single Billing Solution

Because the first stage single billing solution that is being proposed is uncomplicated and inexpensive, the MCA is of the strong opinion that no charges should be levied for the implementation of this solution by Maltacom or for making the solution available to CPSOs. In fact, the only 'implementation' that is required by Maltacom is that hereafter following an application for carrier pre-selection 'all-calls' option where single billing is selected, Maltacom shall have to change the address of the customer in question to that of the CPSO. The MCA is of the view that this does not justify the imposition of a charge on the CPSO in this respect.

On the contrary this minimal opportunity cost is significantly outweighed by the fact that the CPSO will be facilitating collection of dues for Maltacom by taking responsibility for the payment of bills by carrier pre-selection customers. Furthermore, this single billing solution allows also for the possibility that Maltacom may save significant costs in the issuing of bills because Maltacom and the CPSO may in the future agree that billing is to be made electronically or in bulk.

Proposed Decision 7:

The MCA proposes to direct that no charges shall be levied by Maltacom on the CPSO for the implementation or the making available of a single billing solution.

Customer Contact

The MCA is of the view that in order that the single bill will be fully effective, the CPSO should handle all customer contact for services that are included in the single bill. In this respect, Maltacom should not have any contact with the customers with the exception where the CPSO has consented to or requested intervention by Maltacom.

If a customer contacts Maltacom with queries or complaints applicable to services that are included in the single bill provided by the CPSO, then Maltacom shall tell that customer to contact the CPSO

All end customer faults will also be reported to the CPSO. If the CPSO determines the fault resides in Maltacom's network, it will raise the matter with Maltacom's fault management centre. Maltacom should deal with the fault as it would have dealt with the fault had it been reported by one or more of its customers.

This is without prejudice to any future decision of the MCA relating to Win Back.⁴

⁴ In particular see MCA 'Proposed Statement of Decision on Win Back During and After the Porting Process', 11 Aug 2006.

Proposed Decision 8:

The MCA proposes to direct that Maltacom shall not have any contact with the customers of the CPSO in relation to services included within the single bill except where the CPSO has consented to or requested such contact. If a customer contacts Maltacom in relation to such services, Maltacom shall refer such customer to the CPSO. In the case of faults reported to Maltacom by a CPSO, Maltacom shall deal with such faults as if the fault had been reported by one or more of its customers.

Transparency of Terms and Conditions

The MCA opines that in accordance with its Fixed Access Market Analysis, Maltacom shall amend its RIO to include the above terms and conditions and in order that, in the interests of transparency, a new entrant will immediately be aware of the terms and conditions for the application of the first stage single billing solution.

Proposed Decision 9:

The MCA proposes to direct that Maltacom shall immediately include the above terms and conditions in a separate Service Annex to its RIO and such submit the Service Annex for approval to the MCA.

5. Consultation Framework

The MCA invites comments from interested parties regarding this Statement of Decision.

As stated in this proposed decision, the MCA considers that a potential failure by Maltacom to provide a single billing solution in the immediate is having a detrimental effect on competition in the market. In fact, carrier select operators currently interested in providing carrier selection services to the market have not commenced operations due to the failure of Maltacom to date to provide a single billing solution in accordance with the MCA Fixed Access Market Analysis. Furthermore, the MCA is of the strong opinion that the introduction of a single billing solution will benefit the consumer by promoting competition and by providing more choice and better prices. This will ensure protection of the interests of users in accordance with Maltese and Community law.

For these reasons, the MCA considers that a reduced timeframe is appropriate for comments to the Decision. The consultation period will run until 12.00pm on Wednesday 22 November 2006. Comments should be sent to:

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