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**Wholesale Broadcasting Transmission Services**

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

**Consultation and Notification Document**

**29<sup>th</sup> December 2006**

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## Executive Summary

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

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

This review sets out the Malta Communications Authority's (MCA's) proposal for identifying a market and making a market power determination. The national consultation is being carried out in conjunction with the notification to the European Commission. Submissions to this consultation document may be forwarded to the MCA within the period ending on the 2<sup>nd</sup> February 2007. Arrangements for submitting comments are explained in **Chapter 05**.

As required by Article 4 of the Electronic Communications (Regulations) (Article 7 of the Framework Directive), the MCA's proposals are being notified to the European Commission and to other NRAs.

## Summary of Proposals

### Identification of Markets

The group of products and services under consideration in this document consists of wholesale services for the transmission and delivery of broadcast content to end-users. Wholesale services are those sold and purchased by electronic communications providers rather than end-users.

In relation to these services, the MCA has concluded that the following markets for wholesale broadcasting transmission service exist in Malta:

- Analogue terrestrial television broadcasting;
- Digital terrestrial television broadcasting;
- Cable analogue television broadcasting;
- Cable digital television and radio broadcasting;
- Satellite television and radio broadcasting;
- National AM and FM analogue terrestrial radio broadcasting; and
- Local (community) analogue terrestrial radio broadcasting.

The MCA then assessed which of these markets fulfil the three criteria test, and are therefore susceptible for ex ante regulation. Based on the analysis carried out, only the following three service markets will be subject to analysis for the purpose of ex ante regulation:

- Wholesale television broadcasting transmission services provided over digital terrestrial networks;
- Wholesale television broadcasting transmission services provided over analogue cable networks;
- Wholesale television and radio broadcasting transmission services provided over digital cable networks.

Full details of the MCA's market definition and three criteria analysis are contained in **Chapter 02** of this document.

### **Assessment of Market Power**

Based on the evidence presently available to the MCA and after having analysed the operation of these markets, and taken due account of the Commission's 'Guidelines on market analysis and the assessment of SMP' (SMP Guidelines), the MCA proposes that:

**Multiplus Ltd.** – has SMP in the wholesale television broadcasting transmission services provided over digital terrestrial networks;

**Melita Cable plc.** – has SMP in the wholesale television broadcasting transmission services provided over analogue cable networks; and

**Melita Cable plc.** – has SMP in the wholesale television and radio broadcasting transmission services provided over digital cable networks.

These preliminary conclusions are supported by a number of factors including:

- Market share analysis;
- Economies of scale and scope;
- Sunk cost and infrastructure not easily replicable;
- Vertical and horizontal integration;
- Barriers to switching; and
- Countervailing buyer power.

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

## Regulatory Implications

Since Multiplus Ltd. and Melita Cable plc. have been found SMP operators in their respective markets, the MCA proposes to impose a number of wholesale obligations on the two network operators.

Given the position of dominance held by Multiplus in the market for wholesale television broadcasting transmission services provided over digital terrestrial networks, the MCA proposes to impose on Multiplus Ltd. the following wholesale obligations:

- Access – provision of wholesale transmission services subject to reasonable request for access;
- Non-discrimination;
- Transparency; and
- Price control and cost accounting.

Given the position of dominance held by Melita Cable in the markets for wholesale television broadcasting transmission services provided over analogue cable networks, and the wholesale television and radio broadcasting transmission services provided over digital cable networks, the MCA proposes to impose on Melita Cable plc. the following wholesale obligations:

- Access – provision of wholesale transmission services subject to reasonable request for access;
- Non-discrimination;
- Transparency;
- Price control and cost accounting; and
- Accounting Separation.

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

## Chapter 1 Introduction

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A new regulatory framework for electronic communications networks and services entered into force on the 14<sup>th</sup> September 2004. The framework is designed to create harmonised regulation across Europe and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. The basis for the new regulatory framework is five new EU Communications Directives:

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

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

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

The Maltese legislation transposing these Directives came into effect on the 14<sup>th</sup> September 2004. The relevant pieces of legislation are the Electronic Communications (Regulation) Act, 2004 (hereinafter referred to as “ECRA”) and the Electronic Communications Networks and Services (General) Regulations, 2004 (hereinafter referred to “ECNSR”).

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

Each market review is divided in three main parts:

- definition of the relevant market or markets;
- assessment of competition in each market, in particular whether any companies have Significant Market Power (SMP) in a given market; and

- assessment of what are the appropriate regulatory obligations which should be imposed given the findings on SMP (NRAs are obliged to impose some form of regulation where there is SMP).

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

## 01.1 Market review methodology

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

The European Commission has also issued Guidelines on market analysis and the assessment of SMP ("SMP Guidelines"). The MCA has also published a document outlining the guidelines on the methodology to be used for assessing effective competition in the Maltese electronic communications sector<sup>1</sup>. The MCA is required to take these guidelines into utmost account when analysing a product or service market in order to assess whether the market under investigation is effectively competitive or otherwise (refer to Regulation 8 of the ECNS).

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

The MCA has collected market data from a variety of internal and external sources, including providers of electronic communications networks and services, in order to carry out thoroughly its respective market definition and market analysis procedures based on established economic and legal principles, and taking the utmost account of the Relevant Markets Recommendation and the Guidelines.

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



## 01.2 Consultation

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

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

The consultation period will run from the 29<sup>th</sup> December 2006 till the 2<sup>nd</sup> February 2007, during which the MCA welcomes written comments on any of the issues raised in this paper. Further details on the public consultation are provided in **Chapter 05**.

## 01.3 Liaison with Competition Authority

There is a requirement on the MCA under Regulation 10 of the ECNSR to carry out an analysis of a relevant market within the Electronic Communications sector. This analysis must be carried out in accordance, where appropriate, with an agreement with the National Competition Authorities (NCA) under Regulation 10 of the ECRA.

In line with the co-operation agreement signed on the 20<sup>th</sup> May 2005 between the MCA and the Office of Fair Competition (OFC), the MCA has initiated a two-week consultation process with the OFC. The official position of the OFC in writing is expected in the coming days, which will then be made available to the general public.

## 01.4 Structure of the Document

The rest of the document is structured as follows:

**Chapter 02** presents the MCA's preliminary conclusions on the definition of the market for wholesale broadcasting transmission services market in Malta. This section consists of a review of the market definition procedure and its scope, as well as demand-side and supply-side assessments at the retail and wholesale level;

**Chapter 03** presents the MCA's market analysis for this market and outlines a preliminary view on whether this market is effectively competitive or identifies those undertakings having SMP; and

**Chapter 04** provides a discussion of the general principles associated with remedies, identifies potential competition problems and outlines the proposed remedies on SMP operators, under the new regulatory framework.

**Chapter 05** outlines details for providing comments to this consultation document.

## 01.5 Scope of this Review

This review considers the market for wholesale broadcasting transmission services, which includes the provision of wholesale services for the transmission and delivery of broadcast content to end-users.

## Chapter 2 Market Definition

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

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

In its Recommendation the Commission identified a market for wholesale broadcasting transmission services for the purpose of delivering broadcast content to end users. The MCA has conducted an assessment of this market in order to validate its appropriateness in the Maltese context, and as preparatory work for the assessment of SMP in this market.

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

### 02.1 Background to broadcasting services in Malta

According to statistics published by the National Statistics Office (NSO)<sup>2</sup> the total population of Malta stands at approximately 403,600 and there are approximately 128,000 residential units and 31,000 non-residential units.

A survey carried out by the NSO during mid-2005, concluded that more than 98% of all residential and non-residential units have access to at least one TV set. Melita Cable plc.<sup>3</sup>, which is the cable operator, owns a nationwide cable network and has been providing analogue cable television since 1991. Melita Cable deployed its network and provided cable television services under a legal monopoly status, which was ended on 1<sup>st</sup> January 2003 following the liberalisation of the electronic communications market. In 2005 Melita Cable also launched its digital cable television and radio services.

During July 2005 the first Digital Terrestrial Television (DTTV) operator Multiplus Ltd.<sup>4</sup> launched its services. Multiplus has a wide coverage however nationwide coverage is yet to be achieved in 2007. A second licensed DTTV operator – Maltacom plc. – is expected to start the deployment of its DTTV network soon.

There are currently 4 analogue free-to air terrestrial broadcasting stations in Malta. Each broadcaster owns the transmission equipment and transmits nationwide. Given the proximity of the Maltese Islands to Sicily and southern Italy, Maltese television viewers are also able to receive Italian television analogue and digital channels with their VHF/UHF antenna.

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<sup>2</sup> <http://www.nso.gov.mt/>

<sup>3</sup> Hereinafter referred to as Melita Cable

<sup>4</sup> Hereinafter referred to as Multiplus

However reception of these channels depends on the topology of the receiving site as well propagation conditions. As a result Maltese television viewers are accustomed to having a good choice of free-to-air television channels, which include major Italian television channels such as the national broadcaster RAI and commercial stations such as Mediaset.

There is 1 AM and 13 FM national radio stations in Malta. A number of Italian radio stations can also be received. Furthermore, a large number of local (community) very low signal radio stations are currently in operation.

There is currently one licensed Terrestrial digital audio broadcasting (T-DAB) operator in Malta, however to date it has not yet started the deployment of its network.

There are no registered Satellite television operators in Malta, however a number of households have purchased a satellite receiver with which they can view free-to-air satellite channels and also pay-per-view channels by purchasing conditional access cards.

In early January 2006, the incumbent's mobile arm – Go mobile – launched mobile TV services using EDGE technology. Since then the mobile operator has increased its channel line-up to including local and foreign television stations.

## **02.2 Radio broadcasting services**

### **2.2.1 Analogue terrestrial radio broadcasting**

There are a large number of analogue terrestrial radio stations in Malta. Whilst no demand for medium wave AM radio stations has been registered for a long time, national and local FM radio stations have increased exponentially over the past decade.

To date only one licence has been issued for an AM radio and there have been no further expressions of interest to provide such a service during the last decade. This AM radio station is operated by the public broadcasting operator (PBS) and has a nationwide coverage. The operator owns the transmitter and antenna.

Over the past years 13 national FM radio licences have been issued and are in operation. There are approximately 19 expressions of interest for an FM licences awaiting processing before the Broadcasting Authority. All of these FM stations have national coverage. Malta has 16 frequencies available and 3 have not yet been assigned.

FM radio operators are obliged under the Broadcasting Act 1991, to use a common master antenna for transmission. The Broadcasting Authority<sup>5</sup> owns the master antenna, combiner and the site where all this transmission equipment is located.

The present combiner for this antenna has only one port available and therefore additional capital expenditure is required to enable further transmitters to operate from this master antenna. All FM station operators own their own transmitters.

Apart for national FM stations a large number of local (community) radio stations are in operation. These stations use very low power designed to service a small geographical area. At present, 28 permanent and 18 temporary licences have been issued for the operation of local radios. All these operators own their own transmitter, antenna and mast. Applications

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<sup>5</sup> <http://www.ba-malta.org/>

for an operating licence are only limited by the amount of available frequencies which to date have been satisfied even within the same geographical area.

Following the large number of operators requesting a frequency/licence to operate a community radio station, a task force has been established to review the existing licensing regime. This task force is made up of members from the Broadcasting Authority and the MCA.

The processing of pending applications has been temporarily suspended pending the outcome of the report of a Task force. The report has been completed in Dec 2006. The way forward with the licensing process is to be published in 2007.

Apart from the national analogue terrestrial radio stations, end-users are also able to receive a number of Italian free-to-air radio stations.

## **2.2.2 Digital terrestrial, cable and satellite radio**

In August 2005, the Maltese Government in conjunction with the MCA issued a policy and implementation strategy for the allocation of Terrestrial Digital Audio Broadcasting (T-DAB) frequencies<sup>6</sup>. Later in the year the MCA auctioned the available T-DAB licences for the establishment of a T-DAB network. Subsequently in July 2006 a network licence was issued to Digi B Networks Ltd. to operate the T-DAB network.

At the time of auction, Malta had 3 VHF blocks and one L band block under the Maastricht agreement. To date the operator has not started operations or network rollout, which is covered by an 18-month deadline.

Melita Cable plc. owns and operates a nationwide cable network which is currently offering end-users different analogue and digital television and radio packages. With the digital television packages Melita Cable bundles 50 digital radio stations including national Maltese FM stations.

Although no satellite operators are registered in Malta end-users having a satellite system can receive to free-to-air satellite radio stations.

## **02.3 Television broadcasting services**

### **2.3.1 Analogue and digital terrestrial television broadcasting**

There are four national free-to-air television broadcasters licensed in Malta all of which are in operation. One of the analogue stations is operated by the public broadcasting (PBS), whilst the other three stations are privately owned. These stations have been in operation for a number of years now and have a nationwide coverage.

All analogue terrestrial television operators own their transmitters and antennas. Two of the stations use the master antenna tower for transmission, whilst the other two stations use their own towers.

The government has established a turnoff date for analogue terrestrial television by 2010. Analogue terrestrial television has been superseded by digital television and it is therefore a slowly dying market. Given this scenario the government has also imposed a moratorium on

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<sup>6</sup> <http://www.mca.org.mt/infocentre/openarticle.asp?id=689&pref=12>

the issuance of new analogue terrestrial television licences. This practically limits the possibility of new analogue terrestrial television broadcasters.

Existing analogue terrestrial broadcasters have each been assigned one frequency which is entirely used for self-supply broadcasting services. The licensed operators are responsible for the content transmitted over their own channel.

Apart from the four national analogue terrestrial channels, end-users are also capable to view a number of Italian free-to-air analogue terrestrial channels.

During 2005 the MCA has licensed two operators for the deployment of national digital terrestrial television networks. Each operator has been assigned eight multiplexes.

Currently only one operator – Multiplus Ltd. – has started deployment of its digital terrestrial television network, however today it has not yet achieved nationwide coverage. National coverage is expected to be achieved during 2007, pending the issuing of planning permits for the erection of transmitting antenna towers. Multiplus started offering commercial digital terrestrial television services in mid 2005. The other licensed operator Maltacom plc., has not yet started the rollout of its network.

The digital terrestrial television service is operated as a subscription-based service. All digital terrestrial television packages offered by Multiplus require an antenna and a set top box, which is supplied by the operator itself.

### **2.3.2 Analogue and digital cable television**

The cable network has been established by Melita Cable plc. since 1991 under a legal monopoly and has nationwide coverage. From 1991 till 2005 Melita Cable offered analogue television services however in early 2005 Melita Cable started also offering digital cable television services.

The cable network is a 660 MHz system having a 5-40 / 55-650 frequency split. The former frequencies are used for the upstream path and the latter for the downstream path. At present the system is capable of supporting a total of 73 downstream channels. Four of these channels fall in the frequency range of the aircraft band and are not utilised, whereas another two channels are currently unused.

The system also supports the carriage of FM radio over a portion of the FM band from 88–103 MHz. At present out of the 73 channels, 54 are used for analogue television channels and 12 are used for digital television channels.

Cable television is a subscription-based service for both the analogue and digital services. A proprietary set top box (STB) is required for both the analogue and digital service which are supplied by the operator. The basic analogue service package (reception tier) is unscrambled and therefore does not require an STB, however a monthly fee is charged to end-users.

Although the cable operator is offering digital services, no analogue turn off date has been mandated on the cable operator. It is therefore up to the cable operator to discontinue this service.

Under the Broadcasting Act, the cable operator has ‘must carry’ obligations with respect to national broadcasters. To date the ‘must carry’ obligations extend to the existing four analogue terrestrial broadcasters and the cable operator includes these four channels in all of its analogue and digital program list.

### 2.3.3 Satellite and Mobile television broadcasting

As stated earlier, there are no registered satellite television operators in Malta. Nevertheless, a number of households have purchased a satellite receiver with which they can view free-to-air satellite channels and also pay-per-view channels by purchasing conditional access cards. Given that these operators are not registered in Malta, these operators are not regulated in any way. Furthermore, the MCA is not aware that any local broadcaster is using a satellite operator for transmitting broadcast content.

In early January 2006, Go mobile launched mobile television services using EDGE technology. Since its launch the mobile operator has increased its channel line-up to six channels including three out of the four national analogue terrestrial channels and another three foreign stations. In order to access this service the user needs to have an EDGE-compatible mobile phone.

## 02.4 Delineation of broadcasting markets

The purpose of the market definition process is to identify the competitive constraints that electronic communications service providers face. There are two dimensions to the definition of a relevant market: the relevant products to be included in the same market and the geographic extent of the market.

Recital (7) of the Recommendation clearly states that the starting point for market definition is a characterisation of the retail market over a given time-horizon, taking into account the possibilities for demand and supply-side substitution. The wholesale market is then identified subsequently to this exercise being carried out in relation to the retail market. The MCA's approach to the market definition follows this approach.

This section provides an analysis of the degree of substitutability between available products and services in Malta, taking also a forward-looking approach with respect to possible developments in the market under review.

In the Recommendation on relevant markets, the Commission has defined the wholesale market 18 as including the 'Broadcasting transmission services and distribution networks in so far as they provide the means to deliver broadcast content to end users'.

In the next sections the MCA carries out an analysis based on demand and supply side substitution, in order to determine the market boundaries.

### 2.4.1 Are all types of radio broadcasting services in the same relevant market?

#### Demand-side substitutability

End-users are capable to receive terrestrial analogue radio stations free of charge with a radio set from their homes and outdoors. All national terrestrial analogue stations have practically nationwide coverage and therefore end-users can receive these stations anywhere in Malta. From an end-user perspective, AM and national FM stations are substitutable in the sense that they can choose freely to listen to any of the radio stations since most radios can receive both AM and FM transmissions.

Community radios are not available nationwide and therefore the end-user needs to be in the area of coverage of the community radio. This will vary depending on the locality from which the radio station is broadcasting. Nevertheless, the end-user is free to tune in to the community radio channel if the radio set can receive the signal. As a result end-users would

find community radio a substitute to national AM and FM radio stations only within the coverage area of the community station.

One of the main distinctions between radio stations being broadcast over analogue terrestrial networks and cable networks is the element of mobility. End-users are able to receive terrestrial analogue radio stations anywhere in the country. On the contrary cable and satellite radio can only be accessed from the particular place where the cable decoder or the satellite receiver are installed. As a result end-users would not find it substitutable to listen to cable radio for example in their car as opposed to terrestrial radio stations.

In order to receive radio stations over the cable network the end-user would have to purchase a television connection given that the cable network bundles radio stations with the digital television packages. As a result, the end-user would not find it substitutable to purchase a digital cable television package to receive radio stations when these can be received for free over terrestrial networks. As a result cable radio is not a feasible substitute to terrestrial analogue radio stations.

Similarly, an end user would not find satellite radios stations an appropriate substitute to terrestrial analogue radio stations. Although there are free-to-air satellite radio stations, an end-user would need to purchase a satellite receiver system to capture the radio signals. Such an expense would not be feasible to sustain given that analogue terrestrial radio stations can be captured with any radio set.

Given that the T-DAB operator has not started operations yet, it is not possible for the MCA to analyse the level of substitutability of this service with all the other radio broadcasting services discussed above.

At a wholesale level a national AM or FM radio broadcaster would not find it substitutable to acquire a licence to operate a community radio given the limitation on the geographic area in which it can be received, and vice versa. Similarly a wholesale national AM, FM and community radio station would not find it feasible to switch over its transmission from an analogue terrestrial network to be carried solely on a cable or satellite network system. Given the target audience, the radio broadcaster would find such a move not feasible since it would lose a significant number of listeners.

### **Supply-side substitutability**

The MCA has assessed whether a hypothetical 10% increase in price of the transmission of radio broadcasting on a particular platform would induce new entrants or existing network operators to offer radio broadcasting services. It is most likely that following such a price increase the most credible supply-side substitution would happen from existing networks particularly cable and satellite operators. However a terrestrial analogue radio broadcaster would not find it feasible to be carried over a cable or satellite network given that these do not offer mobility. Furthermore, on the cable network radio stations are bundled with television packages and therefore the service is not available for free to end-users. As a result the supply side substitution would not be feasible.

### **Preliminary Conclusion**

The MCA takes the view that national AM and FM radio transmission services, local (community) radio transmission services and cable and satellite radio transmission services fall in separate markets.

## 2.4.2 Are radio and television broadcasting services in the same relevant market?

### Demand-side substitutability

It is understood that it is unlikely that end-users consider radio and television to be substitutes given the different program content broadcast over the two types of transmission media. The MCA believes that the end-users listen to radio or watch television programs to satisfy different needs. Whilst radio broadcasts involve only the listening of talk shows or music, television broadcasts involve both viewing and listening of a program at the same time. As a result end-users are likely to view radio and television services as complements rather than substitutes.

From a wholesale perspective, a radio broadcaster would not consider switching to television broadcasting if the cost of radio broadcasting increases by 10%, and vice versa. The cost of switching would not be justified given the different infrastructures required for the transmission of radio and television broadcasting. Apart from the cost of switching, there are other factors that do not make television and radio broadcasting appropriate substitutes. Whilst radio listeners can listen to their radio station when they are on the move television viewing is not yet possible for the majority of the population (mobile TV penetration is negligible). Furthermore, radio and television broadcasters wishing to transmit a particular program to a target audience would take this into account when identifying the most appropriate media to choose for transmission.

### Supply-side substitutability

As regards supply-side substitutability, the MCA assessed whether a provider of television broadcasting services could also offer radio broadcasting if its price increased by 5-10%, and vice versa.

As discussed before, satellite and cable operators already supply television and radio broadcasting services over their network. Therefore, a cable or satellite operator would be in a position to offer radio and television services following a hypothetical price increase without any excessive costs. Such a practice is already happening in Malta in the case of the cable network and some satellite providers, where radio stations are bundled together with television channels in retail packages.

In the case of terrestrial transmission, supply-side substitution would be highly unlikely to happen following a hypothetical price increase. All terrestrial radio operators own their own transmission equipment however they do not have the frequencies or the equipment to transmit television broadcasts. In order to start offering television services new frequencies would need to be assigned and significant capital investment would be required. A provider of terrestrial television broadcasting services would be in a better position to start providing radio broadcasts however even in this case the operator would need to obtain the necessary frequencies. In conclusion, the MCA believes that for providers of terrestrial broadcasting services supply-side substitution would not be feasible.

### Preliminary Conclusion

Due to the lack of substitutability the MCA believes that terrestrial television transmission and analogue cable transmission fall in a separate market from that for radio transmission services. On the other hand, the MCA believes that there is no separate market for digital cable and satellite radio transmission services given that television and radio services are sold as a bundled package on cable and satellite platforms.



### 2.4.3 Are all types of television broadcasting services in the same relevant market?

A television broadcaster can choose from a number of platforms on which to deliver its content to end-users. The following table illustrates the network coverage of available platforms and also the percentage of all residential and non-residential units connected to one or more of these broadcasting platforms as at the end of September 2006.

	Network coverage	Units connected*
Cable Digital	95%+	14.9%
Cable Analogue	95%+	47.2%
Analogue Terrestrial	99%	26.3%
Digital Terrestrial	70%	5.6%
Satellite	99%	12.5%

*Data estimates MCA and NSO*

\* Approx. number of units 160,000. Units can have more than one service available.

From the figures above it is clear that although a number of units are connected to more than one platform, the majority of end-users (62.1%) are connected to the cable network. Apart from the digital terrestrial network, which has a geographic coverage of approximately 70% of the national territory, all of the other platforms have a nationwide coverage. This enables broadcasters to choose from a range of broadcasting transmission networks that can potentially be accessed by the entire population.

#### Demand-side substitutability

##### 1) Terrestrial transmission vs. cable transmission services

When assessing demand-side substitutability for a broadcaster between transmission services provided over different platforms, a number of factors need to be considered, namely; network coverage, target audience, capacity and legal limitations, cost and quality of the transmission.

In terms of network coverage, a Maltese broadcaster would not find it difficult to switch from a provider of analogue terrestrial transmission to a cable transmission service given that both platforms offer nationwide coverage. To date the digital terrestrial network does not have nationwide coverage, however nationwide coverage is to be achieved during 2007.

Although coverage is similar for analogue terrestrial and cable platforms, the target audience that a broadcaster can reach over one network is different from the others. As depicted in the table above at present 26.3% of end-users receive analogue terrestrial television, 5.6% are connected to the digital terrestrial network, whilst 14.9% and 47.2% are connected to the digital and analogue cable network respectively. As a result a broadcaster wishing to target the majority of the population would not find it feasible to be carried on just one platform but would need to be carried on all of them. This indicates that for such a broadcaster all platforms are not substitutable but rather complementary. If the broadcaster is interested in achieving just the widest audience it is likely that it would choose to be carried on the analogue cable transmission platform.

An existing analogue terrestrial broadcaster does not have the capacity of offering wholesale broadcast transmission as it utilises all of its licensed bandwidth for its own programming services. Furthermore, given that the target turn off date for analogue terrestrial transmission is set by 2010 the government has imposed a moratorium on the issuance of new licences.

The capacity of a cable network is far higher than a digital terrestrial network. A cable analogue channel occupies the whole spectrum dedicated to it thus only one programme

channel can be carried. A digital channel however can support a larger number of program channels given that a digital channel is more efficient with the use of compression and modulation techniques. Furthermore, a digital cable channel can support a higher bandwidth payload than a digital terrestrial channel due to the possible higher level of modulation used (256 QAM). Thus a cable network can carry a larger number of digital programmes within each channel, than a digital terrestrial network using a different modulation system (64 QAM).

On the other hand the capacity of a digital terrestrial system is limited by the number of channels assigned to the network. Spectrum is a scarce resource and is shared between the existing analogue terrestrial television operators as well as by neighbouring countries. The present digital terrestrial operator has been assigned 8 frequencies and an increase in the number of channels would be difficult to achieve due to lack of available free spectrum.

As a result a broadcaster may not be able to switch freely from one platform to another due to capacity constraints on different platforms. Therefore, from a capacity point of view terrestrial and cable networks are not substitutable.

The cost of transmission services over different platforms will vary depending on a number of factors. An analogue terrestrial operator can only provide limited airtime to another broadcaster given that it has only one frequency. On the other hand the cable network and the digital terrestrial operators have a larger number of channels on which to accommodate broadcasters. At present the transmission cost is agreed upon by the network operator and the broadcaster through commercial negotiations. The price would be influenced by a number of factors including the countervailing buyer power of the broadcaster. A broadcaster would also need to take into account any financial implications that it might incur as a result of the switch between different platforms, including revenue sources from advertising, subscriptions and other income, costs associated with the change of transmission platform. A broadcaster would therefore not find all terrestrial and cable platforms as substitutable and would have to consider which platform minimises its cost of transmission whilst ensuring that it is able to reach its desired audience effectively.

In terms of quality, all platforms support a high quality image with the only difference being that the analogue cable network does not support stereo sound transmissions. As a result, a broadcaster would find it substitutable to switch between analogue terrestrial transmission, digital cable transmission and digital terrestrial transmission however not to analogue cable transmission, if the transmission needs to be in stereo sound. However, this is not likely to be the determinant factor for broadcasters' choice of transmission network.

In conclusion, it transpires that there is a clear distinction between terrestrial and cable transmission services arising from a number of factors. Therefore following a price increase by a hypothetical monopolist provider of terrestrial transmission services, a broadcaster would not find it always feasible to switch to a provider of cable transmission services and vice versa.

## *II) Terrestrial and cable transmission vs. satellite transmission services*

As stated earlier, there are no providers of satellite transmission services registered in Malta. Consequently, there are no Maltese broadcasters that use satellite transmission services to deliver broadcast content to end-users.

Following a 10% price increase by a hypothetical monopolist providing terrestrial or cable transmission services, a broadcaster is highly unlikely that it would find it feasible to switch to satellite transmission. The cost of such a move would be prohibitive compared to the original price increase. Given the scale of the Maltese market and the few end-users that have

access to satellite receiver system, such demand-side substitutability is rendered practically impossible to achieve.

As a result, there is no credible demand-side constraint on a hypothetical monopolist provider of terrestrial or cable transmission services, arising from the availability of satellite transmission services.

### *III) Analogue transmission services vs. digital transmission services*

At present in Malta there are 4 analogue terrestrial network operators and 1 analogue cable network operator. There are also 2 licensed digital terrestrial network operators, of which only one has started deploying its network (70% coverage) and one digital cable network operator.

In terms of coverage therefore, a broadcaster would find it feasible to switch between analogue terrestrial transmission to analogue or digital cable transmission given that these have nationwide coverage. Switching to digital terrestrial would result in the broadcaster not being able to reach 30% of the territory.

A broadcaster will not find it feasible to switch from analogue transmission to digital transmission since the potential audience having a digital connection is still low compared to that of analogue cable and terrestrial.

In terms of capacity the analogue and digital terrestrial networks are using all the allocated frequencies. The cable network has two unused channels. Therefore currently excess capacity exists on the cable network. As a result a broadcaster would not be able to be carried on any terrestrial network.

As regards quality a broadcaster would not find it feasible to switch from any digital transmission or analogue terrestrial transmission to analogue cable transmission given that the latter does not provide stereo sound.

Consequently, the MCA believes that there are sufficient reasons to consider that analogue transmission services are not appropriate substitutes to digital services and should therefore form part of a different market.

### **Supply-side substitutability**

In order to assess supply-side substitutability the MCA needs to assess whether an operator of a particular transmission network would switch production, or invest, in another transmission network if the price of the latter increases by 5-10%.

It is highly unlikely that following such a small price increase any network operator of platform A would consider investing in a new network to start offering broadcasting services over platform B. If for example a cable network operator has increased the price for transmission services, no terrestrial (digital or analogue) network operator or satellite provider will consider deploying a cable network given the high barriers to entry and the prohibitive investment cost.

Similarly, a cable operator would not consider deploying a terrestrial network to offer terrestrial broadcasting following a hypothetical price increase. The scarcity of analogue and digital terrestrial frequencies coupled with the cost of deploying such networks would not make supply-side substitution credible. The provision of satellite broadcasting transmission is not considered possible given the cost involved in providing satellite transmission services.

## Preliminary Conclusion

Given the lack of demand and supply side substitution between the different transmission platforms, the MCA believes that analogue terrestrial transmission services, digital terrestrial transmission services, analogue cable transmission services and digital cable transmission services all fall in separate markets.

### 02.5 Relevant geographic markets

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

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

Based on the market boundaries and the market conditions described earlier on, the MCA takes the view that the geographic scope for the following wholesale broadcasting transmission services provided over:

- Analogue terrestrial television networks;
- Digital terrestrial television network<sup>7</sup>;
- Cable analogue television network;
- Cable digital television and radio network;
- Satellite television and radio networks; and
- National AM and FM analogue terrestrial radio networks;

is national in scope and extends to the geographic coverage of each individual network.

The geographic scope of the market for local (community) analogue terrestrial radio stations is limited to the geographic coverage area of each individual radio network.

### 02.6 Wholesale broadcasting services susceptible to ex ante regulation

In the analysis above the MCA identified a number of broadcasting transmission services, which are defined more narrowly than the market defined by the EU Commission in the Recommendation on relevant markets. The MCA believes that throughout its assessment it has identified the markets based on competition principles and has also taken the utmost account of the Commission's SMP Guidelines paper.

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<sup>7</sup> At present the digital terrestrial network does not have a nationwide coverage, however it is safe to assume that nationwide coverage will be achieved during 2007. The MCA therefore considers that based on a forward looking analysis the market for digital terrestrial television broadcasting transmission services can be defined as national in scope.

Before establishing that all the above-mentioned markets constitute relevant markets for the purpose of ex ante regulation, the MCA needs to assess whether these markets satisfy the three criteria test as outlined in the Recommendation on relevant markets. For each services market, the MCA therefore needs to assess:

- the presence of high and non-transitory entry barriers;
- the market must be a market the structure of which does not tend towards effective competition, during the timeframe of this review; and
- the application of competition law alone would not adequately address any market failures that may arise.

Paragraph 16 of the Recommendation on relevant markets states that when identifying electronic communications markets as justifying possible ex ante regulation, the above three criteria should be applied cumulatively, so that failing any one means that the market should not be identified as justifying possible ex ante regulation.

### **2.6.1 Terrestrial television transmission services**

The MCA has identified two separate markets for analogue and digital terrestrial transmission services.

At present there are four national analogue terrestrial broadcasters all of which have a licence to operate one frequency, which is wholly utilised for their own transmission services. One of the stations is operated by public broadcasting and the other three stations are privately owned.

The government has set the analogue television switch off date for 2010 and has imposed a moratorium on the issuance of new analogue television licences. As a result the MCA believes that this market is a dying market and analogue terrestrial broadcasting has been superseded by digital terrestrial broadcasting. Although there are absolute barriers to entry for the provision of analogue transmission services the MCA believes that no new broadcasters would seek to invest in such a technology when the lifetime of such a transmission would be at best three years. The MCA believes that such an investment would not be economically viable at this stage. Furthermore, all four analogue broadcasters are already being transmitted over the analogue and digital cable network, whereas three of them are carried on the digital terrestrial network. Furthermore, it is likely that some or all of these channels will also enjoy 'must carry' status.

As a result the MCA believes that the analogue terrestrial transmission services market is not subject to ex ante regulation.

The MCA has assigned two licences for the deployment of a digital terrestrial network to Multiplus and Maltacom, however to date only Multiplus has started the deployment of its network and has to date achieved approximately 70% coverage. Nationwide coverage is expected during 2007.

The MCA considers that there are high entry barriers to this market given the high cost involved in deploying a digital terrestrial network. Apart from the transmission equipment, sites and masts, the operator needs also sufficient digital frequencies to be in a position to offer its customers a competitive and attractive package. Currently each operator has been assigned eight channels and there are presently no more channels available. This therefore constitutes another barrier to entry given the scarcity of frequencies. A further barrier could also be encountered in obtaining the necessary planning permits for the erection of

transmission towers around the country. As a practical example Multiplus has already experienced delays in the rollout due to pending planning permits.

Given that there is only one operator providing digital terrestrial services yet, it is unlikely that the market will converge to effective competition within the timeframe of this review. However, the potential entry of Maltacom could increase significantly the competition in this market. For the time being however, the market is not subject to effective competition and therefore competition law will not be sufficient to address any market failures.

The MCA therefore believes that digital terrestrial transmission services should be subject to analysis for ex ante regulation.

### **2.6.2 Cable and satellite television and radio transmissions services**

Melita Cable owns the cable network in Malta and has nationwide coverage. It offers both analogue and digital transmission services and the MCA has already concluded that these two transmission services fall into separate markets.

It is evident that these two markets present very high barriers to entry and it is highly unlikely that any operator would be able to replicate such an infrastructure during the timeframe of this review. Given that there is only one cable network operator it is highly unlikely that the market would tend towards effective competition during the timeframe of this review. It can also be concluded that given the nature of the market, competition law would not suffice to address market failures for both the analogue and digital transmission markets.

Since there are no registered satellite operators in Malta it is not within the remit of the MCA to regulate these operators. Furthermore, at present there are no Maltese broadcasters that are transmitting content to the end-users over satellite transmission. Such an option would be financially prohibitive for any broadcaster given the size of the market. Furthermore, end-users having a satellite receiver system mainly use it to view free-to-air satellite channels given that pay-per-view channels are not targeted to the Maltese market.

The MCA therefore believes that analogue and digital cable transmission services should be defined as relevant markets, whilst satellite transmission services should not at this point in time be considered susceptible for ex ante regulation.

### **2.6.3 Radio transmission services**

The only national AM radio station is operated by the public broadcaster and no demand for an AM frequency has been registered for a long time. The MCA takes the view there are low barriers to entry for this market and that the market is effectively competitive.

The numerous national FM stations indicate that there are low barriers to entry to provide national FM radio transmission. Each network owns its transmission equipment. End-users have ample choice to which FM radio station to listen and there are clear signs that this market is also subject to effective competition.

Finally, the MCA takes the view that the market for local (community) radio stations is also effectively competitive. Currently there are 28 permanent and 18 temporary licences for the operation of such a radio station and the fact that each radio station owns its transmission equipment masts and sits indicates that the market does not present high entry barriers. To date all demand for these radio stations has been met and it does not seem that there are competition problems that would require ex ante regulation to be addressed.

The MCA therefore believes that no relevant market should be defined for the purpose of ex ante regulation for any terrestrial radio transmission network.

The market for digital terrestrial radio transmission is not existent in Malta given that the licensed operator has not yet started deployment of its network. The MCA therefore will not define any market yet and will consider defining such market when this operator will start providing services.

## 02.7 Preliminary Markets

Following the analysis presented above, and in line with the principles set out in the European Commission's Recommendation on relevant markets, the MCA concluded that the following markets for wholesale broadcasting transmission services exist in Malta:

- Analogue terrestrial television broadcasting;
- Digital terrestrial television broadcasting;
- Cable analogue television broadcasting;
- Cable digital television and radio broadcasting;
- Satellite television and radio broadcasting;
- National AM and FM analogue terrestrial radio broadcasting; and
- Local (community) analogue terrestrial radio broadcasting.

The MCA then assessed which of these markets fulfil the three criteria test, and are therefore susceptible for ex ante regulation. From the analysis carried out above, only the following three service markets will be subject to further analysis for the purpose of ex ante regulation:

- Wholesale television broadcasting transmission services provided over digital terrestrial networks;
- Wholesale television broadcasting transmission services provided over analogue cable networks;
- Wholesale television and radio broadcasting transmission services provided over digital cable networks.

## Chapter 3 Market Analysis

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Having identified the relevant markets as discussed in **Chapter 02** the MCA is required to analyse these markets in order to assess whether any undertaking/s has significant market power as defined in Regulation 8 of the ECNS (Article 14 of the Framework Directive).

### 03.1 Method to assess Significant Market Power

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

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

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

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

### 03.2 Wholesale television broadcasting transmission services provided over digital terrestrial networks

#### 3.2.1 Analysis of market shares

Although, high market shares are not in themselves decisive as to whether an undertaking enjoys SMP in a market, the MCA is of the opinion that market shares higher than 50 per cent would be indicative of SMP.

In the context of the definition of the wholesale market the MCA included self-supplied transmission of broadcasting services. Provided that currently there is only one operator operating a digital terrestrial network, this implies that Multiplus has 100 per cent market share in the provision of digital transmission services over its terrestrial network.

#### 3.2.2 Barriers to entry

There are substantial barriers to entry for a new operator to enter the market for television broadcasting transmission services over the digital terrestrial network. There are two main barriers first the availability of frequencies and second the deployment of the network itself.

Multiplus has been assigned 8 multiplexes and another 8 multiplexes have been assigned to a second digital terrestrial operator – Maltacom. At present, there are no more digital terrestrial frequencies available. As a result a new operator would not be able to enter the market given the lack of frequencies. Frequencies are a scarce resource given that these have to be also shared between the analogue transmission networks and coordinated with neighbouring countries.



Even if frequencies were available, the deployment of a nationwide digital terrestrial network would entail significant costs and deployment timeframe. As a result a new entrant would not be able to effectively constrain the existing operator within the timeframe of this review given the magnitude of the investment in question.

### **3.2.3 Countervailing buyer power**

A broadcaster wanting to transmit its content to end-users connected to the digital terrestrial network, would not be able to exert significant countervailing buyer power on Multiplus given that it is the only provider of such a service. Although alternative transmission platforms exist such as the cable network, these platforms have already been assessed as being not substitutable to the digital terrestrial network

When deciding which transmission platform to choose, the broadcaster would need to consider the target audience to which the content is to be delivered. A broadcaster wishing to deliver its content to end-users connected to the digital terrestrial network of Multiplus would not find it feasible to transmit its content over other networks. As a result broadcasters cannot exert credible countervailing buyer power on the network operator.

Limited countervailing buyer power can in theory be exerted by broadcasters which are classified as 'must carry' broadcasters. The network operator would have to carry these broadcasters as a legal obligation. However the terms and conditions of carriage would also likely be set out at law, and therefore there will be limited scope for commercial negotiations between the broadcaster and the network operator.

### **3.2.4 Potential Competition**

Maltacom has also been licensed to deploy a nationwide digital terrestrial network. To date no deployment of this network has started, however it is reasonable to expect that rollout will start sometime in 2007.

When Maltacom deploys its network, a broadcaster would need to consider whether it would be feasible to be transmitted over Maltacom's digital terrestrial network. Although the transmission service would be identical to that provided by Multiplus, the potential audience would be different. As a result a broadcaster would still need to assess what will be the impact of transmitting its content over Maltacom as opposed to Multiplus.

The MCA believes that given that Maltacom has not yet deployed its network it is not possible to assess the impact of a second digital terrestrial network on Multiplus. The MCA would firstly need to assess whether Maltacom's network is to be considered within this relevant market or in a separate market based on a demand and supply-side substitutability analysis. Only then the MCA can assess the impact that such a network would have on Multiplus.

### **3.2.5 Conclusion**

Given the assessment above the MCA considers that Multiplus Ltd. has significant market power in the wholesale market for television broadcasting transmission services provided over digital terrestrial networks. The MCA believes that since Multiplus is the only provider of this service over its own digital terrestrial network, broadcasters do not have any buyer power to constrain the network operator from potentially engaging in uncompetitive behaviour.

### **03.3 Wholesale television broadcasting transmission services provided over analogue cable networks**

#### **3.3.1 Analysis of market shares**

Although high market shares are not in themselves decisive as to whether an undertaking enjoys SMP in a market, the MCA is of the opinion that market shares higher than 50 per cent would be indicative of SMP.

In the context of the definition of the wholesale market the MCA includes self-supply transmission of broadcasting services in the market. Provided that currently there is only one operator operating an analogue cable network, this implies that Melita Cable has 100 per cent market share in the provision of analogue transmission services over its cable network.

This market share is an enduring one given that Melita Cable has been providing analogue digital television broadcasting services over its network since 1991.

#### **3.3.2 Barriers to entry**

There are substantial barriers to entry for a new operator to enter the market for television broadcasting transmission services over the cable network. The cable network has been in place since 1991, and has been deployed under a legal monopoly status that has been terminated in January 2003.

Melita Cable is a vertical and horizontal network operator and apart from television transmission services it also provides different services over its network such as broadband and telephony services. Over time, the network operator acquired significant economies of scale and scope. Small or new entrants would find it very difficult to enjoy such economies of scale.

The MCA believes that it is practically impossible for a new entrant to be able to deploy a second nationwide cable network during the timeframe of this review. The sunk costs associated with such an investment are prohibitive for any new entrant to undertake such an investment profitably.

As a result the MCA concludes that the market presents very high barriers to entry such that no new operator would be able to replicate the cable network during the two-year timeframe of this review.

#### **3.3.3 Countervailing buyer power**

A broadcaster wanting to transmit its content to end-users via the analogue cable network would not be able to exert significant countervailing buyer power on Melita Cable given that it is the only provider of such a service. Although alternative transmission platforms exist, such as the digital terrestrial network, these platforms have already been assessed as being not substitutable to the analogue cable network.

When deciding which transmission platform to choose, the broadcaster would need to consider the target audience to which the content is to be delivered. A broadcaster wishing to deliver its content to end-users connected to the analogue cable network would not find it feasible to transmit its content over other networks. As a result broadcasters cannot exert credible countervailing buyer power on the network operator.

Limited countervailing buyer power can in theory be exerted by broadcasters which are classified as 'must carry' broadcasters. The cable network operator would have to carry

these broadcasters as a legal obligation. However the terms and conditions of carriage would also likely be set out at law, and therefore there will be limited scope for commercial negotiations between the broadcaster and the network operator.

### **3.3.4 Potential Competition**

To date there has only been one national cable network in Malta. Melita Cable has been the only provider of analogue cable transmission services since 1991 and the MCA does not believe that there is any new entrant that will be able to replicate the cable network within the time frame of this review.

The MCA considered that given the barriers to entry in this market it is practically impossible that a new operator will enter this market and constrain Melita Cable. As a result it is reasonable to assume that there is no evidence of potential competition in this market.

Even in the event that a new operator deploys a cable network, the MCA would firstly need to assess whether this network is to be considered within this relevant market or in a separate market based on a demand and supply-side substitutability analysis. Only then the MCA can assess the impact that such a network would have on Melita Cable.

### **3.3.5 Conclusion**

The MCA considers that Melita Cable plc. has significant market power in the wholesale market for television broadcasting transmission services provided over analogue cable networks. The MCA believes that since Melita Cable is the only provider of this service over its own analogue cable network, broadcasters do not have any buyer power to constrain the network operator from potentially engaging in uncompetitive behaviour.

## **03.4 Wholesale television and radio broadcasting transmission services provided over digital cable networks**

### **3.4.1 Analysis of market shares**

Although, high market shares are not in themselves decisive as to whether an undertaking enjoys SMP in a market, the MCA is of the opinion that market shares higher than 50 per cent would be indicative of SMP.

In the context of the definition of the wholesale market the MCA includes self-supply transmission of broadcasting services in the market. Provided that currently there is only one operator operating a digital cable network, this implies that Melita Cable has 100 per cent market share in the provision of digital transmission services over its digital cable network.

### **3.4.2 Barriers to entry**

There are substantial barriers to entry for a new operator to enter the market for television broadcasting transmission services over the cable network. The cable network has been in place since 1991, and has been deployed under a legal monopoly status. In 2005 Melita Cable launched the digital cable television service, following an upgrade of the existing cable network.

Melita Cable is a vertically and horizontal network operator and apart from television transmission services it also provides different services over its network such as broadband and telephony services. Over time, the network operator acquired significant economies of scale and scope. Small or new entrants would find it very difficult to enjoy such economies of scale.

The MCA believes that it is practically impossible for a new entrant to be able to deploy a second nationwide cable network during the timeframe of this review. The sunk costs associated with such an investment are prohibitive for any new entrant to undertake such an investment profitably.

As a result the MCA concludes that the market present very high barriers to entry such that no new operator would be able to replicate the cable network during the two-year timeframe of this review.

### **3.4.3 Countervailing buyer power**

A broadcaster wanting to transmit its content to end-users via the digital cable network would not be able to exert significant countervailing buyer power on Melita Cable given that it is the only provider of such a service. Although alternative transmission platforms exist, such as the digital terrestrial network, these platforms have already been assessed as being not substitutable to the digital cable network.

When deciding which transmission platform to choose, the broadcaster would need to consider the target audience to which the content is to be delivered. A broadcaster wishing to deliver its content to end-users connected to the digital cable network would not find it feasible to transmit its content over other networks. As a result broadcasters cannot exert credible countervailing buyer power on the network operator.

Limited countervailing buyer power can in theory be applied by broadcasters which are classified as 'must carry' broadcasters. The cable network operator would have to carry these broadcasters as a legal obligation. However the terms and conditions of carriage would also likely be set out at law, and therefore there will be limited scope for commercial negotiations between the broadcaster and the network operator.

### **3.4.4 Potential Competition**

To date there has only been one national cable network in Malta. Melita Cable is the only provider of digital cable transmission services and the MCA does not believe that there is any new entrant that will be able to replicate the cable network within the time frame of this review.

The MCA considers that given the barriers to entry in this market it is practically impossible that a new operator will enter this market and constrain Melita Cable. As a result it is reasonable to conclude that there is no evidence of potential competition in this market.

Even in the event that a new operator deploys a cable network, the MCA would firstly need to assess whether this network is to be considered within this relevant market or in a separate market based on a demand and supply-side substitutability analysis. Only then the MCA can assess the impact that such a network would have on Melita Cable.

### **3.4.5 Conclusion**

The MCA considers that Melita Cable plc. has significant market power in the wholesale market for television broadcasting transmission services provided over digital cable networks. The MCA believes that since Melita Cable is the only provider of this service over its own digital cable network, broadcasters do not have any buyer power to constrain the network operator from potentially engaging in uncompetitive behaviour.

### 03.5 Preliminary conclusions and SMP designations

The evidence presented above suggests that the following network operators<sup>8</sup> hold SMP in the provision of wholesale transmission of broadcasting services over their own network:

**Multiplus Ltd.** – has SMP in the wholesale television broadcasting transmission services provided over digital terrestrial networks;

**Melita Cable plc.** – has SMP in the wholesale television broadcasting transmission services provided over analogue cable networks; and

**Melita Cable plc.** – has SMP in the wholesale television and radio broadcasting transmission services provided over digital cable networks.

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<sup>8</sup> A reference to Melita Cable plc. and/or Multiplus Ltd. shall be deemed to include that undertaking and any undertaking which is associated with, or is controlled by, or controls, directly or indirectly, the undertaking in question and which carries out business activities in Malta, where the activities engaged in (either directly or indirectly) are activities falling within the scope of the relevant market defined above.

## Chapter 4 Regulatory Implications

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### 04.1 Introduction

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

Moreover, in accordance with Article 17 of the Universal Service Directive, Regulation 37 of the ECNSR requires the MCA, after having designated an operator as having significant market power on a relevant retail market, to impose on such operator such obligations as it considers appropriate to achieve those objectives set out in Article 4 of the Electronic Communications Regulation Act.

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

### 04.2 Competition Problems

The MCA identified a number of competition problems arising from the dominance held by Multiplus and Melita Cable in these markets. Leveraging may be exercised by operators having SMP in two forms:

**Vertical leveraging** is the practice of a dominant firm whereby proper access to an essential input that it provides is denied with the dominant's firm intent of extending its power from one segment of the market (the bottleneck segment) to the other (the potentially competitive segment). Such practice may be both price-related and otherwise.

The MCA believes that there exists a potential for vertical leveraging with respect to the wholesale markets under review. Multiplus and Melita Cable are both vertically integrated operators which are dominant in an upstream market and therefore they may, unless prohibited by effective regulatory intervention, engage in pricing that gives rise to a margin squeeze. Both operators may also resort to other price leveraging strategies such as price discrimination and predatory pricing. This would put uncompetitive pressures on broadcasters to obtain transmission services from these network operators.

The MCA believes that non-price leveraging strategies such as denial of access, the discriminatory use or withholding of information, delaying tactics, quality discrimination and the imposition of undue requirements on, and with respect to, broadcasters, may contribute significantly to the creation of a non-competitive environment.

**Horizontal leveraging** involves the dominant undertaking using its position in one market to exert undue influence on other markets at the same level in the value chain. This form of leveraging can be exercised by Melita Cable as it operates in a number of horizontal wholesale markets and can potentially leverage its power from one market to another.

The above competition problems are further accentuated by the fact that Melita Cable has single market dominance in two of the relevant markets under review. This results in the possibility of Melita Cable to exercise entry deterrence, exploitative behaviour and productive inefficiencies.

Furthermore, since Melita Cable enjoys economies of scale and scope that are not so readily available to new entrants, it can resort to cross-subsidisation techniques in order to leverage its market power to the analogue and digital broadcasting transmission services markets from other markets where it is present.

### **04.3 Available Remedies**

As stated previously, the MCA is obliged under the ECNSR to impose at least one of the remedies outlined in the Regulations on undertakings with significant market power. In particular the following obligations may be imposed:

- Transparency (Regulation 18)
- Non-discrimination (Regulation 19)
- Accounting Separation (Regulation 20)
- Access to, and use of, specific network facilities (Regulation 21)
- Price control and Cost Accounting (Regulation 22)

### **04.4 Principles applied in the Selection of Remedies**

In accordance with regulation 37(2) of the ECNSR, the MCA is obliged to ensure that any remedy imposed on undertakings enjoying significant market power shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in Article 4 of the ECRA. Remedies imposed shall operate in such manner as to protect end-user interests whilst promoting effective competition in the relevant markets.

The MCA is obliged to impose the least burdensome and most effective remedy or remedies to address the potential competition problems identified in this market. However, depending on the competition problem being addressed, an interaction between diverse remedies may be necessary. Thus, the available remedies detailed above are complementary in that they support and reinforce each other.

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

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

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

## **04.5 Wholesale Remedies in the wholesale broadcasting transmission services provided over the digital terrestrial networks market**

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

The MCA will however continue to monitor market developments and where appropriate shall issue directions to further fine-tune the proposed remedies to the needs of the market.

The MCA concluded that Multiplus Ltd. holds SMP in the market for wholesale broadcasting transmission services provided over the digital terrestrial networks. Therefore, in order to bring the benefits of competition to the consumers, it is essential that broadcasters can gain access to the infrastructure of Multiplus. This implies that remedies should be imposed in order to provide broadcasters with sufficient access to inputs, so that they may start offering services over the existing infrastructure.

The MCA believes that the remedies being imposed herein must ensure that Multiplus offers broadcasters sufficient access to its wholesale inputs.

### **4.5.1 Access**

In accordance with Article 21 of the ECNSR, Multiplus is required to provide access to its network for the provision of wholesale transmission services to deliver broadcast content to end-users, in response to reasonable requests for access by broadcasters. Multiplus is also required to give access to specified network elements and, or associated facilities, where such access is required for the purpose of the provision of wholesale transmission services.

The MCA believes that Multiplus ought to provide information relevant to the access obligation to broadcasters and the MCA upon request. Multiplus must provide all the above-mentioned access-related remedies in a fair, timely and reasonable fashion.

Consequently, Multiplus is required to negotiate in good faith with all undertakings requesting access services to its network. Where commercial negotiations fail, the MCA will then proceed to enforce the access obligation, where it is found that the access seeker has been refused access upon unjustified grounds.

According to regulation 21 (4) of the ECNSR, when considering whether to impose obligations relating to access and, in particular, when assessing whether such obligations would be proportionate to the objectives set out in the Act, the Authority shall in particular take into account the following factors:

- (a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved;
- (b) the feasibility of providing the access proposed, in relation to the capacity available;
- (c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment;
- (d) the need to safeguard competition in the long term;
- (e) where appropriate, any relevant intellectual property rights; and



(f) the provision of pan-European services.

The MCA will therefore carry out an analysis on a case-by-case basis prior to enforcing the access obligation on the said operator.

The obligations of non-discrimination and transparency are considered essential to complement the access obligation.

#### **4.5.2 Non-discrimination**

A cardinal remedy aimed at defeating the competition problems resulting from vertical foreclosure is that of non-discrimination in the provision of access services. In accordance with Regulation 19 of the ECNSR, Multiplus, as the vertically integrated provider, is obliged to:

- a) apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and
- b) provide services and information to others under the same conditions (including timescales, on a basis and of a quality) equivalent to that which it provides to its own services, or those of its subsidiaries or partners.

The MCA believes that the obligation of non-discrimination is essential to ensure reasonable provision of access services. Multiplus also makes use of wholesale transmission services provided internally to be able to offer downstream services. In view of this, the imposition of a non-discrimination remedy, obliging Multiplus to offer access to its wholesale product to broadcasters under the same conditions as it provides to its downstream provider is necessary.

In this light, the MCA is of the preliminary view that the access obligation delineated above needs to be supplemented with an obligation of non-discrimination in the provision of access. The MCA believes that such a non-discrimination obligation shall tackle price parameters as well as target non-price parameters, such as the withholding of information, delaying tactics, undue requirements, low or discriminatory quality, strategic design of products, and discriminatory use of information, which would disadvantage competing providers and in turn consumers.

#### **4.5.3 Transparency**

Regulation 18 of the ECNSR authorises the Authority to impose transparency obligations on undertakings enjoying significant market power in relation to interconnection and, or access. This obligation would require operators to make available to the MCA and interested third parties during negotiations specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.

The MCA believes it is proportionate and justified to supplement the access obligation also by imposing a transparency obligation on Multiplus. The imposition of this remedy guarantees that access seekers and third party providers have access to all the necessary information for the provision of access.

Moreover, in particular because of the non-discrimination remedy, the MCA requires Multiplus to make available to the MCA, upon request, a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the services requested. The reference offer shall give a description of the relevant offerings broken down into components according to market needs and shall

provide the associated terms and conditions, including prices. In such instances, the Authority will be able to impose changes to reference offers to give effect to the obligations imposed according to this Decision and under the Act. The Authority may also specify the precise information to be made available, the level of detail required and the manner of publication.

The MCA is imposing the transparency obligation on Multiplus as specified under regulation 18 of the ECNSR. The MCA believes that the imposition of transparency obligation ensures that a) services are not provided on a discriminatory basis, b) helps avoid any possible disputes, and c) accelerate negotiations between existing and potential operators. This obligation makes the access requirements more effective and makes it easier for the Authority to ascertain whether non-discrimination obligations are being met. The MCA believes that the requirements outlined are not excessively burdensome and will promote sustainable competition in the market.

#### **4.5.4 Price control and cost accounting**

Regulation 22 of the ECNSR authorises the imposition on the undertaking with SMP (in this case Multiplus) of obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and, or access.

Such intervention is required in supporting competition in the retail market to the benefit of end-users, whilst at the same time supporting the obligations of non-discrimination and transparency at a wholesale level.

In applying obligations relating to cost recovery or pricing, the MCA is obliged to ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition as well as maximise consumer benefits.<sup>9</sup>

In view of the risk of excessive pricing being applied by Multiplus in the wholesale market under review, the MCA is of the opinion that a cost orientation would prove efficient in curbing such possible abuses of dominance. By mandating that wholesale transmission services over the digital terrestrial network of Multiplus must be cost oriented, the MCA believes that it would be in a position to ensure fair and efficient access to its network and services.

In this light, the MCA is to require a Cost Accounting System in order to calculate efficient wholesale pricing on the basis of underlying costs. In all cases, the MCA shall endeavour to ensure that a sufficient return on capital is allowed so as to encourage innovation in the network area. In the past, the MCA has issued a number of directives highlighting the manner in which cost accounting systems are to be implemented<sup>10</sup>. These decisions and guidelines shall apply also to the provision of wholesale transmission services provided by Multiplus, insofar as they do not prejudice this decision and any other provision at law. The MCA reserves the right to amend these decisions at any point in time following appropriate consultation with interested parties.

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<sup>9</sup> ECNSR, Reg. 22(2)

<sup>10</sup> 'Implementation of Cost Based Accounting Systems for the Telecommunications Sector - Report on Consultation and Decision', July 2002; 'Current Cost Accounting Methodologies for the Electronic Communications Sector - Consultative Paper on Proposed Decision', July 2005

In all cases, the MCA is allowing Multiplus to primarily negotiate the price and other terms and conditions of the provision of wholesale transmission services on its network, on a commercial basis and in good faith based on reasonable pricing. Should commercial negotiations fail, the MCA shall intervene as necessary to guarantee acceptable terms and cost-oriented pricing.

#### **04.6 Wholesale Remedies in the wholesale broadcasting transmission services provided over the analogue and digital cable networks markets**

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

The MCA will however continue to monitor market developments and where appropriate shall issue directions to further fine-tune the proposed remedies to the needs of the market.

The MCA concluded that Melita Cable plc. holds SMP in the markets for wholesale broadcasting transmission services provided over the analogue and digital cable networks. Therefore, in order to bring the benefits of competition to the consumers, it is essential that broadcasters can gain access to the infrastructure of Melita Cable. This implies that remedies should be imposed in order to provide broadcasters with sufficient access to inputs, so that they may start offering services over the existing infrastructure.

The MCA believes that the remedies being imposed herein must ensure that Melita Cable offers broadcasters sufficient access to its wholesale inputs.

##### **4.6.1 Access**

In accordance with Article 21 of the ECNSR, Melita Cable is required to provide access to its network for the provision of wholesale transmission services to deliver broadcast content to end-users, in response to reasonable requests for access by broadcasters. Melita Cable is also required to give access to specified network elements and, or associated facilities, where such access is required for the purpose of the provision of wholesale transmission services.

The MCA believes that Melita Cable ought to provide information relevant to the access obligation to broadcasters and the MCA upon request. Melita Cable must provide all the above-mentioned access-related remedies in a fair, timely and reasonable fashion.

Consequently, Melita Cable is required to negotiate in good faith with all undertakings requesting access services to its analogue and digital network. Where commercial negotiations fail, the MCA will then proceed to enforce the access obligation, where it is found that the access seeker has been refused access upon unjustified grounds.

According to regulation 21 (4) of the ECNSR, when considering whether to impose obligations relating to access and, in particular, when assessing whether such obligations would be proportionate to the objectives set out in the Act, the Authority shall in particular take into account the following factors:

- (a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved;
- (b) the feasibility of providing the access proposed, in relation to the capacity available;

- (c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment;
- (d) the need to safeguard competition in the long term;
- (e) where appropriate, any relevant intellectual property rights; and
- (f) the provision of pan-European services.

The MCA will therefore carry out an analysis on a case-by-case basis prior to enforcing the access obligation on the said operator.

The obligations of non-discrimination and transparency are considered essential to complement the access obligation.

#### **4.6.2 Non-discrimination**

A cardinal remedy aimed at defeating the competition problems resulting from vertical foreclosure is that of non-discrimination in the provision of access services. In accordance with Regulation 19 of the ECNSR, Melita Cable, as the vertically integrated provider, is obliged to:

- a) apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and
- b) provide services and information to others under the same conditions (including timescales, on a basis and of a quality) equivalent to that which it provides to its own services, or those of its subsidiaries or partners.

The MCA believes that the obligation of non-discrimination is essential to ensure reasonable provision of access services. Melita Cable also makes use of wholesale transmission services provided internally to be able to offer downstream services. In view of this, the imposition of a non-discrimination remedy, obliging Melita Cable to offer access to its wholesale product to broadcasters under the same conditions as it provides to its downstream provider is necessary.

In this light, the MCA is of the preliminary view that the access obligation delineated above needs to be supplemented with an obligation of non-discrimination in the provision of access. The MCA believes that such a non-discrimination obligation shall tackle price parameters as well as target non-price parameters, such as the withholding of information, delaying tactics, undue requirements, low or discriminatory quality, strategic design of products, and discriminatory use of information, which would disadvantage competing providers and in turn consumers.

#### **4.6.3 Transparency**

Regulation 18 of the ECNSR authorises the Authority to impose transparency obligations on undertakings enjoying significant market power in relation to interconnection and, or access. This obligation would require operators to make available to the MCA and interested third parties during negotiations specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.

The MCA believes it is proportionate and justified to supplement the access obligation also by imposing a transparency obligation on Melita Cable. The imposition of this remedy guarantees that access seekers and third party providers have access to all the necessary information for the provision of access.

Moreover, in particular because of the non-discrimination remedy, the MCA requires Melita Cable to make available to the MCA, upon request, a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the services requested. The reference offer shall give a description of the relevant offerings broken down into components according to market needs and shall provide the associated terms and conditions, including prices. In such instances, the Authority will be able to impose changes to reference offers to give effect to the obligations imposed according to this Decision and under the Act. The MCA may also specify the precise information to be made available, the level of detail required and the manner of publication.

The MCA is imposing the transparency obligation on Melita Cable as specified under regulation 18 of the ECNSR. The MCA believes that the imposition of transparency obligation ensures that a) services are not provided on a discriminatory basis, b) helps avoid any possible disputes, and c) accelerate negotiations between existing and potential operators. This obligation makes the access requirements more effective and makes it easier for the Authority to ascertain whether non-discrimination obligations are being met. The MCA believes that the requirements outlined are not excessively burdensome and will promote sustainable competition in the market.

#### **4.6.4 Price control and cost accounting**

Regulation 22 of the ECNSR authorises the imposition on the undertaking with SMP (in this case Melita Cable) of obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and, or access.

Such intervention is required in supporting competition in the retail market to the benefit of end-users, whilst at the same time supporting the obligations of non-discrimination and transparency at a wholesale level.

In applying obligations relating to cost recovery or pricing, the MCA is obliged to ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition as well as maximise consumer benefits.<sup>11</sup>

In view of the risk of excessive pricing being applied by Melita Cable in the wholesale market under review, the MCA is of the opinion that a cost orientation would prove efficient in curbing such possible abuses of dominance. By mandating that wholesale transmission services over the analogue and digital cable network of Melita Cable must be cost oriented, the MCA believes that it would be in a position to ensure fair and efficient access to its network and services.

In this light, the MCA is to require a Cost Accounting System in order to calculate efficient wholesale pricing on the basis of underlying costs. In all cases, the MCA shall endeavour to ensure that a sufficient return on capital is allowed so as to encourage innovation in the network area. In the past, the MCA has issued a number of directives highlighting the manner in which cost accounting systems are to be implemented<sup>12</sup>. These decisions and guidelines shall apply also to the provision of wholesale transmission services provided by

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<sup>11</sup> ECNSR, Reg. 22(2)

<sup>12</sup> 'Implementation of Cost Based Accounting Systems for the Telecommunications Sector - Report on Consultation and Decision', July 2002; 'Current Cost Accounting Methodologies for the Electronic Communications Sector - Consultative Paper on Proposed Decision', July 2005.

Melita Cable, insofar as they do not prejudice this decision and any other provision at law. The MCA reserves the right to amend these decisions at any point in time following appropriate consultation with interested parties.

In all cases, the MCA is allowing Melita Cable to primarily negotiate the price and other terms and conditions of the provision of wholesale transmission services on its network, on a commercial basis and in good faith based on reasonable pricing. Should commercial negotiations fail, the MCA shall intervene as necessary to guarantee acceptable terms and cost-oriented pricing.

#### **4.6.5 Accounting separation**

The obligation of accounting separation is important in the disclosure of possible market failures such as cross-subsidisation by an undertaking with SMP. By evidencing the wholesale and internal transfer prices of each of the products and services provided by the undertaking with SMP, accounting separation ensures that no horizontal leveraging takes place and ensures transparency in the pricing of different products and services.

In view of the above and of the fact that the Melita Cable offers a wide range of services over its cable network including; analogue and digital television services, broadband and telephony services, the MCA believes that the imposition of an accounting separation obligation is essential and fully justified. Given the strong position that Melita Cable holds in the broadband market and the capability to offer triple play services, the MCA believes that an accounting separation obligation is required in order to monitor the pricing regime of Melita Cable for wholesale transmission services over the analogue and digital network, such that it does not engage in anticompetitive behaviour.

Melita Cable is therefore to comply with the accounting separation obligation as described in the MCA decision on Accounting Separation<sup>13</sup>. This level of obligation shall be maintained until further consultation is deemed necessary. The MCA reserves the right to amend the accounting separation decision at any point in time it deems necessary, following appropriate consultation with interested parties. The accounting separation obligation shall become effective on the date of publication of the final decision on this market review.

#### **04.7 Summary of proposed obligations**

Given the position of dominance held by Multiplus in the market for wholesale television broadcasting transmission services provided over digital terrestrial networks, the MCA proposes to impose on Multiplus Ltd. the following wholesale obligations:

- Access – provision of wholesale transmission services subject to reasonable request for access;
- Non-discrimination;
- Transparency; and
- Price control and cost accounting.

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<sup>13</sup> Accounting Separation and Publication of Financial Information for Telecommunications Operators - Report on Consultation and Decision of October 2002, as amended in July 2003

Given the position of dominance held by Melita Cable in the markets for wholesale television broadcasting transmission services provided over analogue cable networks, and the wholesale television and radio broadcasting transmission services provided over digital cable networks, the MCA proposes to impose on Melita Cable plc. the following wholesale obligations:

- Access – provision of wholesale transmission services subject to reasonable request for access;
- Non-discrimination;
- Transparency;
- Price control and cost accounting; and
- Accounting Separation.

## Chapter 5 Submitting Comments

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All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document. The consultation period will run from 29<sup>th</sup> December 2006 to the 2<sup>nd</sup> February 2007, during which the MCA welcomes written comments on any of the issues raised in this paper.

In order to promote further openness and transparency the MCA will publish the names of all respondents. Moreover, in the interests of transparency, all representations will be published, except where respondents indicate that a response, or part of it, is confidential.<sup>14</sup> The MCA will take steps to protect the confidentiality of all such material from the moment that it is received at MCA's offices. In the interests of transparency, respondents should avoid applying confidential markings wherever possible.

All responses must arrive at the MCA no later than 16.00hrs of the 2<sup>nd</sup> February 2007. Submission received after this time will not be taken into account.

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

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<sup>14</sup> In accordance with the MCA's confidentiality guidelines and procedures.