MALTA COMMUNICATIONS AUTHORITY

Pricing of Leased Lines and Ethernet Connections

Response to Consultation and Decision

August 2013

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TABLE OF CONTENTS

1 EXECUTIVE SUMMARY

This Decision mandates the new prices for national wholesale terminating and trunk services of leased lines as well as the prices for Ethernet connections.

This Document sets out the MCA's conclusions following the feedback from the respondents received from the Public Consultation issued in February 2013 as well as the comments received from the EU Commission under the Article 7 Notification Procedure of the Electronic Communications Framework.

The revised prices stem from the new Bottom-Up Cost Model for Fixed Networks, which has been developed by the MCA with the objective of calculating efficient cost oriented prices for various wholesale regulated services including leased lines and Ethernet connections.

The revised prices, found in Section 5 of this Decision, are being reproduced hereunder. These shall come into force on 1 October 2013.

Table 1: *Prices for Wholesale Local Leased Lines*
Prices quoted are exclusive of VAT.

	Connection Fee	Annual Rental Prices		
		Terminating Segment	Trunk Segment	End-to-End Connection[1]
	€	€	€	€
2 Mbit/s	280	663	1,974	3,300
34 Mbit/s	280	787	16,174	17,748
STM-1	280	1,120	72,324	74,564
I/C Path (to GO plc)	2,078	587	1,975	2,562
Protected I/C Path (to GO plc) additional to Standard I/C Path	2,078	587	1,975	2,562

[1] This price is assumed to include two terminating segments and a trunk segment, except for IC Paths.

Table 2: ***Prices for Wholesale Ethernet Connections***

Prices quoted are exclusive of VAT.

	Connection Fee	Annual Rental Prices Half-Circuit Connection (One terminating segment plus half trunk segment)
	€	€
10 Mbit/s	280	1,994
100 Mbit/s	280	8,366
1 Gbit/s	280	43,110

As a way forward, this Decision conveys the MCA's intention to refine these prices further (see Section 3.2.3), as well as to revise the terms and conditions governing these wholesale services with the ultimate objective being to effect any improvements necessary in the interest of effective competition.

2 INTRODUCTION

In February 2013, the Malta Communications Authority (hereafter 'the Authority' or 'MCA') published a Consultation and Proposed Decision on Pricing of Leased Lines and Ethernet Connections[2] (hereafter 'the Proposed Decision'). This Proposed Decision put forward for consultation the prices for wholesale local leased lines and Ethernet connections resulting from the MCA's new Bottom-Up Cost Model for Fixed Networks (hereafter 'BUCM2').

This Response to Consultation and Decision (hereafter 'Decision') is a result of an extensive consultative process and a number of distinct technical and public consultations. In fact in October 2012, the MCA launched a public consultation[3] dealing with the model structure, the main network configurations, and assumptions, of BUCM2. This had been preceded by a detailed technical consultation document, complemented with presentations and meetings held with GO plc (hereafter 'GO') to discuss and explain all the parameters and assumptions made in the model.

The consultation period for the aforementioned Proposed Decision ended on 10 April 2013, with two operators, GO and Vodafone Malta Limited (hereafter 'Vodafone') submitting their formal feedback.

The Authority would like to take the opportunity to thank the respondents for their contributions.

This Decision contains a summary of the feedback received from the respondents including the feedback from the Commission, the Authority's position in relation to these comments, and subsequently, the Authority's decisions on the proposed prices.

[2] MCA/C/13-1503
[3] MCA-C/mc/12-1375

3 SUMMARY OF FEEDBACK RECEIVED

3.1 TYPICAL ETHERNET SET-UP

3.1.1 Background

The definition in the Leased Lines Market Analysis[4], as published by the MCA in December 2012, defines the delineation between wholesale trunk and terminating segments of leased lines as follows:

- **Terminating segments** – these are the physical connections, over copper or fibre, between a local exchange (or an operator's trunk network) and a user site, including a modem (or other CPE) at the user site, used for the provision of dedicated capacity;

- **Trunk segments** – these are the physical connections connecting two terminating segments.

This delineation is applicable to both traditional leased lines and Ethernet connections. BUCM2 calculated the prices for the wholesale trunk and terminating segments of leased lines and Ethernet connections in line with these definitions.

In its Proposed Decision, the MCA proposed the prices for a non-exhaustive number of speeds for both leased lines and Ethernet connections. This afforded GO an element of pricing flexibility on the remaining in-between speeds. However, in the Proposed Decision, the MCA made it clear that all speeds at the wholesale level remain regulated and reserved the right to intervene on any claims of uncompetitive pricing behaviour in this regard.

3.1.2 Summary of Responses

GO commented that the Ethernet set-up illustrated in the Proposed Decision is not faithful to the existing charging model, in view that Ethernet connections are always sold as half circuits and the trunk and terminating segments are not sold separately. Accordingly GO argued that what is being proposed by the MCA is not simply a change in prices but a change in the whole pricing structure of GO, which in turn gives rise to logistical and implementation problems.

On its part Vodafone requested a clarification of whether, in view of the trunk and terminating segments definitions, the current Ethernet half-circuit setup would still apply.

3.1.3 MCA Response and Decision

The objective of the Proposed Decision is to implement the price control obligation stemming from the Leased Lines Market Analysis in accordance with the definitions established therein. This was reflected in the pricing structure for Leased Lines and Ethernet connections put forward in the Proposed Decision.

[4] MCA/D/12-1441

Whilst the MCA notes that in the responses submitted to the Leased Lines Market Analysis neither GO nor Vodafone expressed any reservations vis-a-vis the definitions and resulting pricing structure, the MCA is amenable to consider changes to the proposed Ethernet pricing structure if these changes contribute to increased clarity and understanding in the market. The MCA also notes that all the respondents favour the Ethernet pricing structure currently in place.

In the light of this, the MCA shall retain the current pricing set-up, as follows:

- **Leased lines:** Annual rental charges for terminating, trunk and end-to-end connections will be established;

- **Ethernet connection:** An annual rental charge for a half-circuit connection (computed as half the cost of a trunk plus the cost of a terminating segment) will be established.

This notwithstanding, the MCA shall keep the market under review. Should the above pricing structure prove unable to satisfy any latent demand for more granular wholesale Ethernet segments, the MCA shall revisit this decision in line with its original proposal.

Decision 1:

The following charging models shall become applicable:

- **for local leased lines: the annual rental charges for terminating segments, trunk segments and end-to-end connections;**

- **for Ethernet connections: the annual rental charge for half-circuit connections (being half the cost of a trunk plus the cost of a terminating segment).**

Going forward, the Authority shall keep the market under review and reserves the right to intervene on the pricing structure should it result in a failure to satisfy the demand for more granular wholesale segments.

3.2 CONNECTION FEE

3.2.1 Background

The current pricing structure of a leased line or an Ethernet connection consists of a connection fee and an annual rental charge, apart from a refundable deposit[5]. In its Proposed Decision, the MCA proposed:

- to change the nature of the connection fee from a non-refundable fee to a refundable deposit since the annual fees for the trunk and terminating segments resulting from BUCM2 already take into account all the costs associated with the provision of leased lines and Ethernet connections;

- that GO retains the above refundable deposit for a period of twelve months from when the service is made available, following which, GO refunds the said deposit to the customer. In the event that the customer terminates the contract prior to this date, the customer will automatically forfeit this deposit;

- that the concept of a refundable deposit will also apply to interconnect paths. In this case the MCA also proposed that the value of the refundable deposit is equal to that applied to other traditional leased lines.

3.2.2 Summary of Responses

GO strongly disagreed with the proposal to replace the current connection fee with another refundable deposit on the following grounds:

- GO was particularly concerned at the losses it stands to make in cases, where it has to incur substantial up-front costs on trenching and other infrastructural works to service requests for leased lines;

- GO stated that an installation charge is by definition levied for the connection of a service and is aimed to recover the costs incurred during this installation process;

- GO pointed out that installation charges are the norm for other services in the telecoms industry and in other utilities industries such as water and electricity;

- GO further argued that a 12-month refundable deposit period requires the design of a new costly software system to track these deposits and be able to issue these refunds on the appointed deadline.

With respect to the interconnect paths, GO further argued that the costs involved to install this type of service are higher.

[5] Applicable only to leased lines.

Following a consultative meeting where GO re-iterated the above-mentioned arguments, GO forwarded a communication to the Authority explaining that the average installation costs incurred for a typical Ethernet connection is in the range of the connection fee currently in place for a leased line connection.

3.2.3 MCA Response and Decision

The MCA understands the concerns GO raised in its response vis-a-vis the issue of the connection fee. The MCA also acknowledges GO's argument concerning the setup costs for interconnect paths.

In view of the above, particularly the possible under recovery of costs in case of early termination, the MCA has decided that, for the time being, the connection fee will be retained as follows:

1. Leased Lines: The connection fee shall be retained at the current rate including the current rate applicable to an interconnection path; and

2. Ethernet Connections: The connection fee is to be revised downward to €280.

The above charges shall remain subject to non-discrimination obligations between GO's retail and wholesale clients.

This decision triggers the need to revisit BUCM2 to carry out the necessary adjustments such that the applicable installation costs would be removed from the annual rental charges. This process is rather complex and time consuming. Nonetheless, it is expected that the resulting impact on the annual charges is not significant. For these reasons, in order for the market to benefit as early as possible from the proposed reductions in the annual charges, the revised annual rental fees (as spelt out under Section 5 hereunder) will come into force on 1 October 2013.

Subsequently, the MCA shall proceed to carry out the necessary amendments to BUCM2, as explained above. This revision shall be carried out following the normal consultation process.

Decision 2:

The Authority directs that:

a. **the connection fee for a local leased line shall be retained at the current rate. This also applies to interconnection paths;**

b. **the connection fee for an Ethernet connection will be equal to €280.**

3.3 TERMS AND CONDITIONS

3.3.1 Background

Whilst the Proposed Decision focused on the revision of the wholesale local leased lines and Ethernet connections, the MCA invited interested parties to put forward any comments in relation to the terms and conditions currently in place for the above services.

3.3.2 Summary of Responses

Vodafone urged the MCA to ensure that GO's wholesale service is in actual fact provided in accordance with the same SLA that is provided to its retail arm. Vodafone argued that such an exercise is essential so as to guarantee that GO does not act in breach of the regulatory obligations of non-discrimination mandated by the Market 6 Decision.

Vodafone also commented on the fact that GO's Ethernet template agreement stipulates that GO shall ensure that the service is active within no later than eight weeks from the date of signature of the agreement. Vodafone opined that GO's SLA should set specific lead times catering for instances where there would be an existing fibre connection leading to the customer as well as cases where trenching works would be required in order to reach the customer's premises. Vodafone believes that such timeframes should be specified upfront in any commercial agreement entered into by GO.

3.3.3 MCA Response and Decision

The MCA takes note of the concerns raised by Vodafone particularly where the SLA is concerned.

The MCA shall in due course engage in a separate workstream to analyse the current terms and conditions regulating leased lines and Ethernet connections. The objective of this workstream would be to effect any improvements necessary to safeguard competition and ensure that GO respects its regulatory obligation of non-discrimination. Any revisions to the current terms and conditions will be the subject of a separate consultation process.

4 RESPONSE FROM THE EU COMMISSION

4.1 SUMMARY OF THE COMMISSION'S COMMENTS LETTER

On 25 July 2013, the Commission sent its final comments pursuant to Article 7 (3) of Directive 2002/21/EC (hereafter 'Comments Letter') concerning the MCA's notification. This notification followed a request for information ('RFI') dated 2 July 2013 and a second one dated 10 July 2013.

In its comments letter, the Commission, whilst acknowledging the MCA's efforts to promote competition on the relevant leased lines markets by applying lower regulated charges at the earliest, urged the MCA to proceed to the adjustment of the BUCM2 without delay in order to ensure that the regulated prices are set in a cost-oriented and transparent manner and, in particular, that wholesale leased lines prices resulting from the BUCM2 model accurately reflect the pricing structure envisaged by the MCA.

In its comments letter, the Commission made reference to the exchanges related to the RFIs, including those related to the regulation of the connection speeds falling between the set prices ('anchor' prices). In this regard, in its RFI of the 2 July, the Commission requested a clarification on the regulation of these in-between speeds, enquiring particularly on the degree of pricing flexibility that would be afforded to GO through this measure, since in its view a certain degree of flexibility should be preceded by a market analysis justifying such change in regulation.

4.2 MCA RESPONSE TO THE COMMISSION'S RFI AND COMMENTS LETTER

The MCA took utmost account of the Commission's comments insofar as the requirement to adjust BUCM2 to eliminate any form of double counting and in fact it intends to carry out the adjustment of the BUCM2 as soon as possible and as soon as the specific information that would be required from GO is made available. The MCA intends also to combine this workstream with a consultation on the review of the terms and conditions of the contracts regulating both wholesale leased lines as well as Ethernet connections as stated in section 3.3.3 above.

The MCA reserves the right to decouple these two workstreams if during the scoping and execution of any one of them, the Authority would detect the risk of unnecessary delays on the other. This would be done in the interest of competition so as to pass on the benefits to the market in the timeliest fashion possible.

With regards to the Commission's comments on the pricing flexibility, in its RFI response, the MCA assured the Commission that the Decision will mandate GO to revise the prices for the 'in-between' connections in a way that respects the relativity as well as the absolute levels of the 'anchor' prices. For this reason, the MCA was not proposing any relaxation of the price control obligations incumbent on GO therefore making the Proposed Decision fully consistent with the provisions set in the Leased Lines Market Analysis.

In this respect, to reinforce this stance, the MCA further assured the Commission that it will be mandating GO to publish the full revised price list for leased lines and Ethernet connections (including the prices for the in-between speeds) within a month from the date of the coming into force of this decision. The MCA also clarified its intention to keep close scrutiny on the market and GO's price changes effected on the remaining speeds and shall reserve the right to intervene if any price anomalies are detected.

5 MCA DECISIONS

After taking into account the respondents' feedback, the MCA is hereby mandating the prices featured in Tables 3 and 4 below for wholesale local leased lines and Ethernet connections respectively. These will apply from 1 October 2013.

The MCA also directs GO to revise the prices for the remaining in-between speeds in a manner so as to appropriately reflect the gradation from the anchor prices established in Tables 3 and 4. Furthermore, the MCA mandates GO to publish the full revised price list by speed within a month from the effective date of the coming into force of this Decision i.e. 1 November 2013.

The MCA shall keep close scrutiny on the wholesale leased lines and Ethernet services market holistically including all the relative associated services. The MCA reserves the right to intervene on any claims of uncompetitive and/or anomalous pricing behaviour in this regard.

MCA reminds GO of its non-discrimination obligation, arising from the Leased Lines Market Analysis, whereby GO is obliged to offer access to its wholesale leased lines and Ethernet connections to OAOs under the same conditions as it provides to its retail and downstream providers.

Table 3: ***Prices for Wholesale Local Leased Lines***
Prices quoted are exclusive of VAT.

	Connection Fee	Annual Rental Prices		
		Terminating Segment	**Trunk Segment**	**End-to-End Connection**[6]
	€	€	€	€
2 Mbit/s	280	663	1,974	3,300
34 Mbit/s	280	787	16,174	17,748
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[6] This price is assumed to include two terminating segments and a trunk segment, except for IC Paths.

Table 4: ***Prices for Wholesale Ethernet Connections***

Prices quoted are exclusive of VAT.

	Connection Fee	Annual Rental Prices Half-Circuit Connection (One terminating segment plus half trunk segment)
	€	€
10 Mbit/s	280	1,994
100 Mbit/s	280	8,366
1 Gbit/s	280	43,110

6 WAY FORWARD

Going forward, as a result of the envisaged revisions to the BUCM2, the MCA shall revisit these established prices as explained in Section 3.2.3. The MCA will in any event do so following a consultative process in which it explains the sources of such changes.

It is also the MCA's intention to analyse the terms and conditions currently in place for the above services and, if deemed necessary, propose amendments. These will also be the subject of a public consultation process which the MCA intends to launch in conjunction with the above workstream, unless during the execution of the work it is found to be more efficient to decouple the two workstreams.