EUROPEAN COMMISSION

Brussels,
C(2014)

Malta Communications Authority
(MCA)

Valletta Waterfront
Pinto Wharf
FRN 1913 Valletta
Malta

For the attention of:
Mr Edward Woods
Executive Chairman

Fax: +356 21 336 846

Dear Mr Woods,

Subject: Commission Decision concerning Case MT/2014/1565 Voice-call termination on individual mobile networks in Malta — remedies

Article 7(3) of Directive 2002/21/EC: no comments

I. PROCEDURE

On 11 February 2014, the Commission registered a notification from the Maltese national regulatory authority, Malta Communications Authority (MCA),[1] concerning the remedies on the markets for voice-call termination on individual mobile networks[2] in Malta.

The national consultation[3] ran from 5 July to 23 August 2013 (on the market definition, SMP assessment and regulatory approach), from 16 August to 6 September 2013 (on the details of the BU-LRIC model) and from 23 August to 20 September 2013 (‘Addendum to the public consultation’ on the exact date of introduction of the pure BU-LRIC rates).

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs), the Body of European Regulators for Electronic Communications (BEREC) and the Commission may make comments on notified draft measures to the NRA concerned.

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1 Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

2 Corresponding to Market 7 in Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

3 In accordance with Article 6 of the Framework Directive.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

MCA's previous notification (assessed under Case MT/2012/1330)[4] concerned a shift in the level of mobile termination rates (MTRs) in Malta towards pure BU-LRIC rates. MCA proposed to set the MTR price cap (based on benchmarking) at € 0.0232/min. as from 1 July 2012.

At the time, MCA underlined its absolute commitment:

(i) to have the BU-LRIC model in place by no later than July 2013, subject to potential procurement-related delays; and

(ii) to replace the interim rate by July 2013 with the price regulation resulting from the model.

In its comments letter, the Commission took note of this commitment but reminded MCA that, should the price control remedy for the period after 1 July 2013 deviate from EU law and the principles of the Termination Rates Recommendation, it could open a Phase II investigation pursuant to Article 7a of the Framework Directive.

In its final decision, MCA revised its benchmarked rate downward to € 0.0207/min.

On 8 October 2013, MCA notified the Commission of its third round review of the market for voice-call termination in individual mobile networks in Malta. That notification concerned the market definition and the assessment of SMP (Case MT/2013/1510). The Commission made no comments.[5]

II.2. Regulatory remedies

With the present draft measure MCA notifies the remedies it proposes to maintain on each of the mobile operators designated with SMP (Vodafone Malta Ltd, Mobisle Communications Ltd and Melita Mobile Ltd), which are as follows:

- access to/and use of specific facilities;
- non-discrimination;
- transparency;
- accounting separation; and
- price control and cost accounting.

With regard to price control, MCA now proposes to set the MTRs, on the basis of a pure BU-LRIC model, at € 0.004045/min. as of 1 April 2014.

The delay, as compared with MCA's commitment in 2012, in the notification of the remedies and implementation of the pure BU-LRIC MTRs in Malta was caused by the need to conduct an additional public consultation on the introduction of the pure BU-LRIC rate. In view of the steeply reduced MTRs (from € 0.0207 to € 0.004), MCA decided to consult on the possible introduction of a glide-path. Following the public consultation, however, it concluded that implementation of the pure BU-LRIC rate should be delayed no longer.[6]

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4 C(2012) 4360.

5 C(2013) 7875.

6 The calculated MTR level has been disputed by one mobile operator only – the other two did not disagree with the immediate introduction of the pure BU-LRIC rate.

MCA states that it has engaged in extensive consultation with the industry, explaining the underlying reasons why the model produced such low results and why it is not appropriate to compare them with MTRs calculated in other EU Member States.

It claims that the low level of MTRs is attributable mainly to:

- geographical and demographic characteristics (hilly terrain, high indoor coverage requirements and high population density)[7];
- relatively low voice usage and network deployment driven by data services (not affecting voice-call termination and hence not included in incremental costs); and
- redundancy and over-capacity of switching equipment (the large modular capacities of switches and servers contribute only to a limited extent to incremental costs).[8]

MCA explains that these factors mean that the majority of costs are considered as fixed cost and are therefore not taken into account in pure BU-LRIC calculations. It further considers that, with increasing volume in terms of minutes, more and more network equipment will become capacity-constrained and thus capacity-driven. However, it also considers that there is no reason to assume unrealistically high volumes of traffic and that the model should be based on current traffic volumes.

III. NO COMMENTS

The Commission has examined the notification and has no comments.[9]

Pursuant to Article 7(7) of the Framework Directive, MCA may adopt the draft measure and, where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

7 High population density results in operators requiring high nationally available coverage and capacity.

8 MCA provides more detail and an external consultant's assessment of the results of the model in the Addendum to the public consultation, available at:

http://www.mca.org.mt/sites/default/files/attachments/consultations/2013/Addendum%20MBUCM%20Consultation%20Document.pdf

9 In accordance with Article 7(3) of the Framework Directive.

Pursuant to Point 15 of Recommendation 2008/850/EC[10] the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission[11] within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.[12] You should give reasons for any such request.

Yours sincerely,

For the Commission,
Robert Madelin
Director-General

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10 Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

11 Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

12 The Commission may inform the public of the result of its assessment before the end of this three-day period.