EUROPEAN COMMISSION

Brussels, 8.11.2013
C(2013) 7875 final

Malta Communications Authority
(MCA)

Valletta Waterfront
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Malta

For the attention of:
Mr Edward Woods
Executive Chairman

Fax: +356 21 336 846

Dear Mr Woods,

Subject: Commission Decision concerning Case MT/2013/1510: Voice call termination on individual mobile networks in Malta — market definition and SMP assessment

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

I. PROCEDURE

On 8 October 2013, the Commission registered a notification from the Maltese national regulatory authority, the Malta Communications Authority (MCA),[1] concerning the third round review of the markets for voice call termination on individual mobile networks in Malta.[2]

The national consultation[3] ran from 5 July 2013 to 23 August 2013.

[1] In accordance with 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, OJ L 344, 28.12.2007, p. 65.

[3] In accordance with Article 6 of the Framework Directive.

Requests for information (RFI)[4] were sent to MCA on 10 October and 16 October 2013, and responses were correspondingly received on 14 October and 18 October 2013. Furthermore, a discussion with MCA took place on 29 October 2013 and additional information was received on 30 October 2013.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

MCA's previous notification (assessed under case MT/2012/1330[5]) 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 at 2.32 euro cents as of 1 July 2012. This price cap, based on benchmarking, represented an interim rate[6] between MCA's 2011 MTR of 4.18 euro cents/min and the indicative LRIC target rate of 1.29 euro cents/min. The latter was calculated by MCA for the sole purpose of deriving the interim rate of 2.32 euro cents/min. MCA has not considered it appropriate to introduce the benchmarked target rate of 1.29 euro cents/min as early as January 2013 or prior to the results of the BU-LRIC model.[7]

At the time, MCA underlined its absolute commitment i) to have in place the BU-LRIC model not later than June 2013, subject to unforeseen procurement-related delays, and ii) to replace the interim rate with the results of the model by June 2013.

In its comments letter, while taking note of MCA's above commitment, the Commission reminded MCA that, should its price control remedy for the period following 1 July 2013 deviate from EU law and the principles of the Termination Rates Recommendation, the Commission could open a phase II investigation pursuant to Article 7a of the Framework Directive.

Moreover, the Commission called upon MCA to consider substituting the interim rate (2.32 euro cents at the time) with an appropriate benchmark rate, based on all readily available and reliable information on effective target MTRs, as calculated by all NRAs that have developed the recommended cost methodology, already by the recommended deadline of 1 January 2013. In its final decision, MCA has revised downward its estimated interim MTR to 1.03 euro cents/min (from 1.29) and the benchmarked target rate to 2.07 euro cents/min[8] (from 2.32).

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4 In accordance with Article 5(2) of the Framework Directive.

5 C(2012)4360.

6 The interim rate is 45 % lower than the MTRs at the time. It is also 45 % higher than the indicative target MTR of 1.29 euro cents, resulting from international benchmarking based on pure LRIC rates, which NRAs would achieve by the end of 2013 (as disclosed in the January 2012 BEREC MTR snapshot report).

7 MCA feared that the benchmarked rate might be below the actual modelled rate, due to particular circumstances in Malta, e.g. limited economies of scale.

8 Following the Commission's comments, MCA amended its benchmark approach in the final measure, which resulted in a new indicative benchmarked target rate of 1.03 euro cents/min corresponding to the simple average of MTRs implemented in the countries listed in the relevant Commission Article 7 decision (case MT/2012/1330), i.e. NL, BE, FR, PT, IT, ES, UK. The interim rate of 2.07 euro cents/min is based on the same approach as the one followed by MCA in the draft measure notified under case MT/2012/1330, i.e. the interim level of 2.07 is equidistant from the 4.18 euro cents/min (MTR applicable until 1 July 2012) and the indicative target of 1.03 euro cents/min (i.e. ensures a constant rate of decrease between the current, interim and benchmarked target MTR price caps).

II.2. The notified draft measure

With the present draft measure, MCA notifies its proposed market definition and SMP analysis of the wholesale markets for voice call termination on individual mobile networks in Malta.[9] The remedies part of MCA's forthcoming regulatory decision is being finalised and will be notified by MCA in due course.

II.2.1 Market definition

MCA defines three markets for wholesale voice call termination on individual mobile networks in Malta, corresponding to the national coverage of the mobile networks of GO Mobile, Vodafone (Malta) and Melita Mobile.

Two MVNOs (Redtouch Fone and VFC Mobile) are active on the retail market but are not considered to be full MVNOs as they do not own any switching or radio network elements. They are dependent on the termination services provided by their host network and cannot set their own termination rates. Therefore, MCA does not define separate wholesale markets for voice call termination by either Redtouch Fone or VFC Mobile.

II.2.2 Finding of significant market power

MCA proposes to designate GO Mobile, Vodafone (Malta) and Melita Mobile as operators with significant market power (SMP) on their respective markets for voice call termination on individual mobile networks. The criteria considered by MCA when assessing SMP are: market share, potential market entry, degree of countervailing buyer power, and scope for price competition.

II.2.3 Regulatory remedies

The present draft measure does not address the new obligations to be imposed on GO Mobile, Vodafone (Malta) and Melita Mobile, which are currently subject to the obligations of access, transparency, non-discrimination, accounting separation, price control and cost accounting. As explained above, a draft remedies decision will be further notified by MCA, as soon as the ongoing work on the national consultation on MCA's BU-LRIC model is finalised. In the meantime the MTR price cap of 2.07 euro cents/min currently applicable to all three SMP operators will be maintained.[10]

According to MCA's response to the RFI, MCA would continue to apply the rate of 2.07 euro cents/min until the imminent introduction of the BU-LRIC MTR of 0.4 euro cents/min. MCA reiterates its commitment to introduce such BU-LRIC-based MTR in Malta as soon as possible. In this respect, MCA points out in the response to the RFI that it is currently considering stakeholders' responses to the public consultations on the BULRIC model and the resulting rate.

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9 MCA clarified during the one-month period pursuant to Article 7(3) of the Framework Directive that it had carried out separate national consultations on the adoption and implementation of remedies (emanating from the market reviews) and that remedies do not constitute part of the notified draft measure.

10 As explained in the background information, the MTR of 2.07 euro cents/min corresponds to the interim rate resulting from MCA's final decision adopted in June 2012 in the context of case MT/2012/1330.

MCA has explained that the national public consultation on the BU-LRIC model was first launched on 16 August 2013 and closed on 6 September 2013. In the light of comments received on a number of points, […]an additional public consultation was held, which ended on 20 September 2013. MCA further states that the national consultations' results together with all technical issues related to the BU-LRIC model will be notified under the EU consultation procedure in due course,[11] as part of the forthcoming notification on the regulatory obligations to be imposed on the SMP operators.

III. NO COMMENTS

The Commission has examined the notifications and the additional information provided by MCA and has no comments.[12]

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

Pursuant to Point 15 of Recommendation 2008/850/EC[13] 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[14] 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.[15] You should give reasons for any such request.

Yours sincerely,
For the Commission,
Robert Madelin
Director-General

[11] […]

[12] In accordance with Article 7(3) of the Framework Directive.

[13] 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.

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

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