Wholesale voice call termination on individual mobile networks in Malta

Definition of relevant markets, assessment of SMP and regulatory intervention

Responses to consultation and final decision

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Executive Summary

The Malta Communications Authority (MCA) is hereby presenting its decision on the wholesale markets for the provision of mobile voice call termination on individual mobile networks in Malta, in accordance with the EU regulatory framework of electronic communications networks and services.

This decision follows a national consultation exercise carried out by the MCA between the 5th of July 2013 and the 23rd of August 2013. Comments to the national consultation were submitted by Mobisle Communications Ltd. (also referred to as GO Mobile), Vodafone (Malta) Ltd., Melita Mobile Ltd. and the Malta Competition and Consumer Affairs Authority ('the MCCAA'). These submissions together with the respective MCA reactions are integrated into this document in earmarked sections.

Following the closure of the consultation period and in line with the requirements set out in Article 7(3) of the Framework Directive, the MCA notified its response to consultation and draft decisions to the EU Commission and the body of European Regulators for Electronic Communications (BEREC).

The MCA draft decisions concerning the definition of relevant wholesale markets for 'the provision of voice call termination on individual mobile networks in Malta' and the assessment of competition in the identified markets were notified to the EU Commission on the 8th of October 2013. This notification was registered by the European Commission as Case MT/2013/1510. In this regard, two requests for information (RFIs) were made by the EU Commission on the 10th of October 2013 and the 16th of October 2013. The necessary information was provided in full by the MCA on the 14th and 18th of October 2013 respectively. The EU Commission published its no comments letter on Case MT/2013/1510 on the 8th of November 2013.

The MCA draft decision concerning the implementation of regulatory remedies in wholesale mobile voice call termination markets in Malta was notified on the 11th of February 2014. The EU commission examined the said notification, registered as Case MT/2014/1565, and published its no comments letter on the 11th of March 2014.

The EU Commission no comments letters are being published together with this decision.

Main conclusions

i. Relevant markets

The MCA identifies three relevant wholesale mobile voice call termination markets in accordance with competition law principles, as follows:

- wholesale voice call termination provided by Vodafone Malta Ltd.;
- wholesale voice call termination provided by Mobisle Communications Ltd.; and
- wholesale voice call termination provided by Melita Mobile Ltd.

The geographical scope of each relevant market corresponds to the nationwide physical coverage of the respective MNO.

Full details of the market definition exercise are contained in Chapter 2 of this document.

ii. SMP assessment

The MCA considers that Mobisle Communications Ltd., Melita Mobile Ltd. and Vodafone (Malta) Ltd. enjoy significant market power (SMP) in the provision of wholesale voice call termination on their own individual mobile network.

The SMP designations are based on the following considerations:

- a 100% market share for own voice call termination;
- the setting of own termination charges not constrained by potential market entry;
- no deterrence on charging behaviour from countervailing buyer power (CBP); and
- an incentive to increase mobile termination charges, which reduces the scope for price competition.

It is considered that the undertakings identified with SMP are able to set their mobile termination charges independently of competitors, customers and consumers.

Regulatory intervention is therefore required to ensure that the identified wholesale markets function properly and to ensure stronger competition at the retail level.

Full details of the MCA's assessment of SMP are contained in Chapter 3 of this document.

iii. Regulatory approach

The MCA considers that Vodafone (Malta) Ltd., Mobisle Communications Ltd. and Melita Mobile Ltd. - are able to set their mobile termination charges independently of competitors, customers and consumers.

Regulatory intervention is therefore required to ensure that the identified wholesale markets function properly and to ensure stronger competition at the retail level.

To this effect, the MCA is to impose ex ante regulatory conditions on each SMP operator, as follows:

- Access to/and use of specific facilities;
- Non-discrimination;
- Transparency;
- Accounting separation; and
- Price control and cost accounting.

The MCA believes that these regulatory obligations are based on the nature of the competition problems that are identified in each relevant market. Each obligation is considered proportionate and justified in light of the objectives set out in Article 4 of the Electronic Communications (Regulation) Act.

Full details of the MCA's approach to regulatory intervention are contained in Chapter 4 of this document.

Monitoring of market developments

The MCA considers that it is sensible to keep a close watch on the progress of the wholesale mobile termination markets in Malta.

To this end, the MCA intends to analyse market trends and developments on an ongoing basis, and remains committed to issue a new market analysis at any point in time in response to a significant change in market conditions.

The MCA, in accordance with its powers at law, is also reserving the right to change any of the above mentioned regulatory obligations following changes in the market structure.

1 Introduction

This chapter focuses on the regulatory and methodological aspects underpinning the MCA's approach in identifying and analysing the relevant wholesale mobile voice call termination market(s) in Malta.

It also sheds light upon previous decisions on the said markets, dating from 2005 to 2010.

It encompasses four separate sections, briefly described below:

Section 1.1 provides a brief general insight into the regulation of electronic communications markets, outlining in the process the developments concerning the EU Commission Recommendation on relevant markets susceptible to ex ante regulation;

Section 1.2 outlines the methodology used by the MCA in defining and analyzing the market(s) for the service in question, taking utmost account of the product and service markets listed in the Recommendation.

Section 1.3 gives an overview of the main conclusions in the MCA's previous decisions concerning wholesale mobile voice call termination.

Section 1.4 provides a general overview of key market trends and developments for the mobile sector in Malta, in terms of the competitive structure, retail demand and take-up, and developments in mobile retail tariffs and wholesale termination charges.

1.1 Regulatory insight

The European Union (EU) regulatory framework for electronic communications networks and services aims to create a harmonized regulatory environment across Europe and to foster effective competition for the benefit of industry and consumers.

1.1.1 The regulatory framework for electronic communications

The Framework Directive provides the overall structure for the regulatory regime governing the provision of electronic communications products and services. It essentially sets out the fundamental rules, policy objectives and regulatory principles that national regulatory authorities (NRAs) must follow in regulating relevant markets.

In particular, Article 8 of the Framework Directive stipulates that the key policy objectives of the NRAs shall be the promotion of competition, the development of the internal market and the promotion of the interests of citizens of the European Union.

There are five directives underpinning the regulatory framework of electronic communications[1]:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services ('the Framework Directive');

[1] Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services and Directive of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

- 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 ePrivacy Directive').

The EU Directives were transposed into Maltese law on 12th July 2011. The relevant national legislation are the Malta Communications Authority Act (Cap 418), the Electronic Communications (Regulation) Act (Cap. 399) (hereinafter referred to as 'the ECRA'); and the Electronic Communications Networks and Services (General) Regulations of 2011 (hereinafter referred to as 'the ECNSR').

1.1.2 The EU Commission Recommendation on relevant markets

The EU Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation (hereinafter referred to as 'the Recommendation') promotes harmonisation across the single market and guarantees legal certainty across the EU.

The Explanatory Memorandum to the Recommendation[2] states that the Recommendation '*seeks to ensure that the same product and service markets will be subject to a market analysis in all Member States and that market players will be aware in advance of the markets to be analysed'*.

The Memorandum also explains that the Recommendation allows NRAs to regulate markets that differ from those identified in the Recommendation, as long as this is justified by national circumstances. Accordingly, NRAs are allowed to define relevant markets appropriate to national circumstances, provided that utmost account is taken of the product markets listed in the Recommendation.

Both the Annex to the initial Recommendation 2003/311/EC of 11 February 2003 and the Annex to the revised Recommendation 2007/879/EC of 17 December 2007 include the wholesale market for the provision of '*voice call termination on individual mobile networks*' referred to as Market 16 and Market 7 respectively.

When referring to wholesale voice call termination on mobile networks, the Explanatory Memorandum to the revised Recommendation considers that a mobile termination service '*is the least replicable input for retail mobile services'.*

The Memorandum underlines that '*since the termination charge is set by the called network, which is chosen by the called subscriber, the calling party in general does not have the ability to affect or influence termination charges*'. It adds that the '*Calling Party Pays (CPP) convention allows the terminating operator to raise its prices without a*

[2] Link to "Explanatory Note": http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/eu_consultation_procedures/sec_2007_1483_2.pdf

constraint from either party to the call' and that there is no potential for demand-side substitution both at the retail and wholesale level.

From a supply-side point of view, the Memorandum argues that '*if the supplier of call termination raises its price, it is not easy for alternative suppliers to switch to supply that market because they would need the SIM card details of that user to do so*'. It adds that '*a constraint would exist if, when a network operator tried to raise termination rates (or resisted lowering them), the overall impact were unprofitable*' although it recognizes that '*such supply-side substitution is not currently possible*'.

The Memorandum concludes that '*there is limited evidence of widespread constraints on the pricing of wholesale call termination*' and that therefore '*call termination by third parties on individual networks is the appropriate relevant market*', which in turn would imply that '*currently each mobile network operator is a single supplier on each market*'.

1.2 The market review process

The MCA carries out its market reviews in line with the prevailing legal and economic standards established under EU Community competition law and accepted antitrust economic principles.

The market review process typically follows three main stages:

- the definition of the relevant market or markets;
- an assessment of the state of competition in each market, in particular whether any undertaking is deemed to have SMP in the market in question; and
- an assessment of the appropriate regulatory obligations which should be maintained, amended, or withdrawn, given the findings of SMP, to ensure that regulation remains appropriate in the light of changing market conditions (NRAs are obliged to impose some form of regulation where SMP is identified).

The market review process is further informed by the Commission's 'Guidelines for market analysis and the assessment of significant market power' (the 'SMP Guidelines')[3], referred to in Article 15(2) of the Framework Directive, and the MCA's 'Market Review Methodology'[4], which assume particular relevance in the assessment of competition and the identification of SMP operators in the relevant market(s).

More detailed requirements and guidance on the conduct of market reviews are provided in the Directives, the ECRA, and the ECNSR and in additional documents issued by the Commission and the MCA.

1.2.1 The identification of relevant markets

The market definition exercise aims to identify the competitive constraints faced by undertakings in the provision of mobile voice call termination services.

The assessment is forward looking in nature, taking into account '*expected or foreseeable technological or economic developments over a reasonable horizon*'[5]. The timeframe of the analysis is notionally set at two years.

[3] The Guidelines are referred to in Article 15(2) of the Framework Directive.

[4] Link to MCA market review methodology: http://www.mca.org.mt/sites/default/files/articles/marketreviewmethod.04.pdf

[5] See Section 2.1 of the Explanatory Memorandum to the Recommendation.

There are two dimensions to the market definition exercise: the product market dimension and the geographic market dimension.

Central to the various dimensions of the market definition exercise are the demand-side and supply-side substitutability conditions amongst the different products and services that could potentially form part of the market(s) under investigation.

As per the Commission's guidelines on market analysis and the assessment of SMP, demand-side substitutability is used to measure the extent to which consumers are prepared to substitute other services or products for the service or product under investigation.

Supply-side substitutability, on the other hand, indicates whether in the immediate to short term, suppliers other than those offering the product or service in question would switch their line of production to offer the relevant products or services without incurring considerable additional costs.

The Hypothetical Monopolist Test (the 'HMT Test'), otherwise commonly referred to as the SSNIP test (meaning 'small but significant non-transitory increase in price') is a key element in the substitutability assessment.

The HMT test considers the interchangeability of products in the case of a hypothetical small increase in price, usually understood as being an increase in the range of 5 to 10 percent, in any of the products/services under investigation.

Overall, the HMT test would determine whether a hypothetical monopolist would be in a position to sustain a 5 to 10 percent increase in price because of significant demand-side and supply-side substitution effects.

To this effect, the relevant product market(s) shall comprise all those products and services that are substitutable, not only in terms of the price and the intended use of the product under investigation, but also in terms of the overall conditions of supply and demand.

With respect to the geographic market definition, the Recommendation states that '*a relevant geographic market comprises an area in which the undertakings concerned are involved in the supply and demand of the relevant products or services, in which area the conditions of competition are similar or sufficiently homogenous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different'*.

The MCA defines relevant geographic markets on the basis of an interchangeability assessment between products and services following a SSNIP. It applies two main criteria in its assessment of the geographic dimension of the market definition exercise:

- the area covered by the network; and
- the scope of application of legal and other regulatory instruments.

Finally, it is pointed out that the market definition exercise takes appropriate account of the 'technology neutrality' principle. In this regard, the current review takes utmost account of all network platforms in Malta, irrespective of the underlying technology.

1.2.2 An assessment of the state of competition

According to Regulation 6(2) of the ECNSR '*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*'.

Regulation 6(4) also states that '*where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking'*.

Therefore, in view of the above, the current review would only designate an undertaking with SMP where it is found that such undertaking enjoys a position of dominance in the provision of mobile voice call termination.

It therefore follows that the existing designations of SMP on Melita Mobile Ltd., Mobisle Communications Ltd. and Vodafone (Malta) Ltd. would have to be re-assessed.

To this end, the SMP assessment takes into account the general competition conditions in the identified markets, by considering the following criteria:

- market shares;
- countervailing buyer power ('CBP');
- potential competition; and
- evolving pricing structures in the mobile sector[6].

1.2.3 Regulatory approach

In accordance with Regulation (6) of the ECNSR, the MCA is obliged to impose regulatory obligations if an operator is designated as having SMP on a relevant market, either individually or jointly with others, as referred to in sub regulation (2) of regulation 5 of the ECNSR. If such obligations already exist, as is the case for the provision of mobile voice call termination services in Malta, and a finding of dominance is ascertained, the MCA would have to maintain or amend the regulatory conditions accordingly.

If, on the other hand, a finding of SMP cannot be ascertained in an already regulated environment, the MCA would have to withdraw such regulation, in accordance with Regulation (5) of the ECNSR, subject to an appropriate period of notice given to all parties affected by such withdrawal.

1.3 Background to previous MCA decisions

In accordance with its powers at law, the MCA has already carried out two market reviews with respect to the provision of wholesale mobile voice call termination services.

The two main findings under both reviews is that each mobile network operator (MNO) characterises a distinct market in the provision of wholesale voice call termination services over its own network and that each MNO has significant market power (SMP) in the provision of such services.

1.3.1 The first market review decision (2005)

The first review of mobile voice call termination in Malta was carried out in 2005 (see case MT/2005/0214[7]) and a Decision published on the 21st of December of that same

[6] The analysis concerned shall also be supported by market data, which is collected from various internal and external sources, including users and providers of electronic communications networks and services and from regular consumer surveys.

[7] Link to MCA notification Case MT/2005/0214.

year[8]. At that time, the MCA designated Vodafone Malta Ltd. and Mobisle Communications Ltd. as SMP operators in the provision of voice call termination on their own individual mobile network.

The main factors supporting the finding of SMP include the evolution of market shares; the presence of barriers to entry; lack of potential competition; weak CBP due to the CPP principle; and the pricing structures for the mobile sector.

In view of the finding of SMP, the MCA applied the following regulatory obligations:

- Access;
- Non-discrimination against alternative fixed or mobile operators;
- Transparency (provision of information to the MCA regarding prices, technical specifications and accounting, and publication of a reference offer);
- Accounting separation;
- Price control and cost accounting.

1.3.2 The second market review decision (2008 / 2009 / 2010)

The MCA carried out a second review of this market (see case MT/2008/0790)[9] and published a Decision on 6th October 2008[10]. The Decision it confirmed the designation of SMP on Mobisle Communications Ltd. and Vodafone (Malta) Ltd. in the provision of voice call termination on their respective mobile networks.

The MCA notified the Commission with an extension of the second market review in 2009 (see case MT/2009/0926)[11], taking into account the new market entrant, Melita (Mobile) Ltd. This MNO was also found to have SMP in the provision of mobile voice call termination over its own network. Hence, the MCA extended the regulatory obligations already imposed on Go Mobile and Vodafone (Malta) to this MNO.

1.4 The mobile sector in Malta

The focus of this section is to provide some background on the mobile sector in Malta, specifically on the distribution of market shares in terms of subscriptions and traffic volumes and on developments in local mobile termination charges and retail voice call tariffs.

1.4.1 Market presence and distribution of market shares

Three MNOs are currently active in the local mobile sector, each owning a nationwide 3G mobile network infrastructure. These are Vodafone Malta, Go Mobile, and Melita Mobile.

Vodafone started its operations way back in 1990, while Go Mobile launched their services in December 2000. The launch of mobile telephony services by Melita Mobile became a reality on the 1st of February 2009.

Malta has also seen the launch of four mobile virtual network operators (MVNOs) in 2008 and 2009, namely Bay Mobile, Ping, RedTouch Fone and VFC Mobile. Ping used Go Mobile's infrastructure in its operations, whist the rest used Vodafone's infrastructure. To

[8] Link to MCA Decision: http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/wholesale-voice-term-indiv-mob-networks.pdf

[9] Link to MCA notification Case MT/2008/0790.

[10] Link to MCA Decision: http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/wholesale-voice-call-term.pdf

[11] Link to MCA notification Case MT/2009/0926.

date, only Redtouch Fone and VFC Mobile are active on the market, as Bay Mobile and Ping have both ceased operations.

Latest data on the spread of market shares between the three MNOs in terms of subscriptions and originating voice traffic volumes shows that:

- Vodafone accounted for 50.4% of total mobile subscriptions at the end of last year, whilst capturing 51% of outgoing mobile voice call minutes recorded in 2012.

- Meanwhile, Go Mobile accounted for 34.8% of subscriptions and 25.5% of mobile voice traffic volumes.

- Melita Mobile accounted for a market share of approximately 13% in terms subscriptions and 23% in terms of outgoing voice traffic volumes.

MVNOs showed a market share of just 2.1% in terms of subscriptions and 0.6% in terms of traffic volumes.

	Absolute figures				Market shares			
	2009	2010	2011	2012	2009	2010	2011	2012
Subscriptions	422,083	455,579	521,748	539,452				
Vodafone (Malta)	209,157	217,262	259,713	271,769	49.55%	47.69%	49.78%	50.38%
Go Mobile	182,174	191,876	195,333	187,875	43.16%	42.12%	37.44%	34.83%
Melita Mobile	23,702	36,326	55,665	68,367	5.62%	7.97%	10.67%	12.67%
Other	7,050	10,115	11,037	11,441	1.67%	2.22%	2.12%	2.12%
Originating voice traffic volumes (minutes)	308,433,355	381,829,153	492,602,139	581,209,624				
Vodafone (Malta)	163,954,521	192,110,866	230,971,818	296,514,881	53.16%	50.31%	46.89%	51.02%
Go Mobile	117,675,566	137,317,069	154,393,237	148,436,440	38.15%	35.96%	31.34%	25.54%
Melita Mobile	24,759,169	49,738,437	102,839,279	132,852,136	8.03%	13.03%	20.88%	22.86%
Other	2,044,098	2,662,782	4,397,805	3,406,167	0.66%	0.70%	0.89%	0.59%

Table 1: Market shares by operator, in terms of subscriptions and originating voice traffic volumes

1.4.2 Developments in local mobile termination charges

Local mobile termination charges were on a downward trend over the last few years as a result of regulatory intervention.

The average mobile termination charge in Malta fell by approximately 30% from 2005 to 2009, i.e. from €0.1246 per minute to €0.0866 per minute, as a result of the glide path mechanism implemented by the MCA.

Mobile termination charges in Malta fell by a further 76% in the following years, from €0.0866 per minute in 2009 to €0.0207 per minute in 2012.

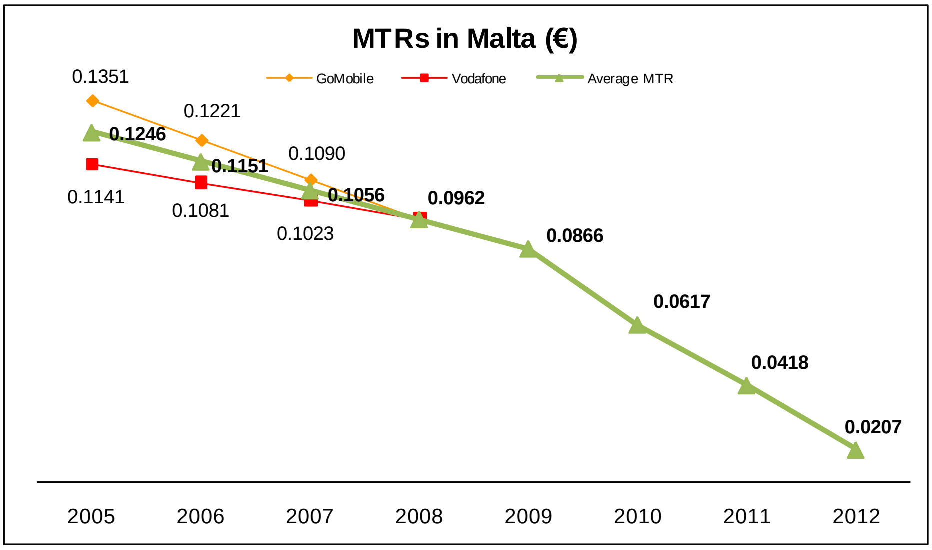

Chart 1: Development of mobile termination charges in Malta

Compared to developments at an EU level, mobile termination charges in Malta were above the EU27 average prior to 2009. The scenario changed in the following years as Malta benchmarked consistently below the EU27 average.

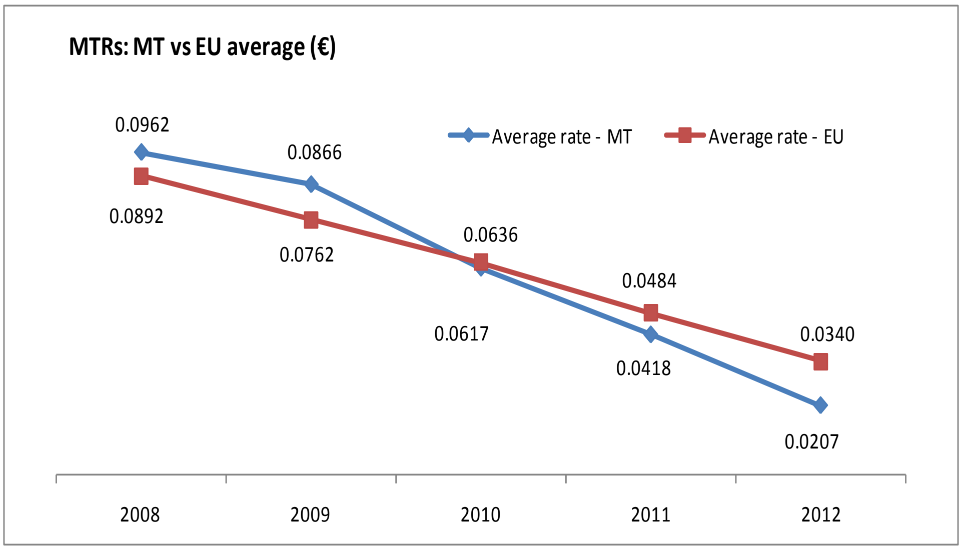

Chart 2: Mobile termination charges in Malta and the EU27

Chart 2 also shows that the rate of decline for mobile termination charges in Malta was higher than that of the EU27 average, as evidenced by the widening gap between the two respective rates.

i. Impact on retail price developments

The most evident impact of declining mobile termination charges relates to retail price developments for the mobile sector. As expected, lower mobile termination charges contributed towards lower retail mobile voice call tariffs.

MCA workings show that, on the basis of calculations for the average rate per minute of mobile communications (ARPM), domestically bound mobile voice call tariffs went down significantly since 2009.

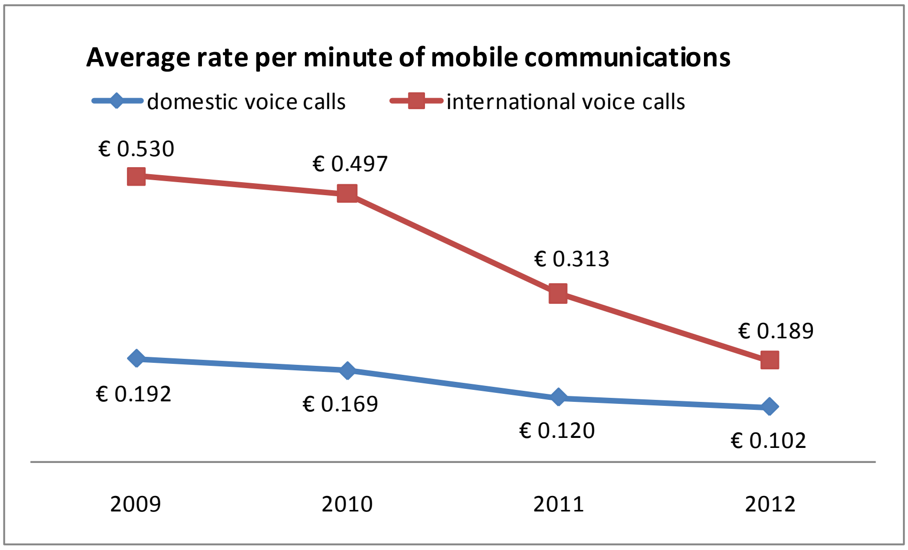

Chart 3: Average rates per minute of mobile communications

In this regard, the ARPM for mobile calls to local network operators in 2012 - including mobile-to-mobile (MTM) calls and mobile-to-fixed (MTF) calls - was down by 47% compared to the rate prevailing four years earlier, from €0.192 to €0.102.

The observed decline in the ARPM of mobile communications also contradicts the so called 'waterbed effect' argument cited by an empirical study of Genakos and Valletti in 2008, whereby it is claimed that a 10% drop in mobile termination charges would lead to a 10% rise in mobile retail prices. This is evidently not the case for Malta, where it is clear from the above that lower mobile termination charges contributed towards a decline in retail mobile prices.

Lower mobile voice call tariffs have in turn contributed towards a higher usage of mobile telephony services. Chart 4 shows that, on a per user basis, the number of mobile voice calls went up from 618 in 2009 to 692 in 2012 whilst the number of voice call minutes jumped from 764 to 1,095. This upward trend is mainly explained by the surge in on-net traffic volumes observed during the period under consideration.

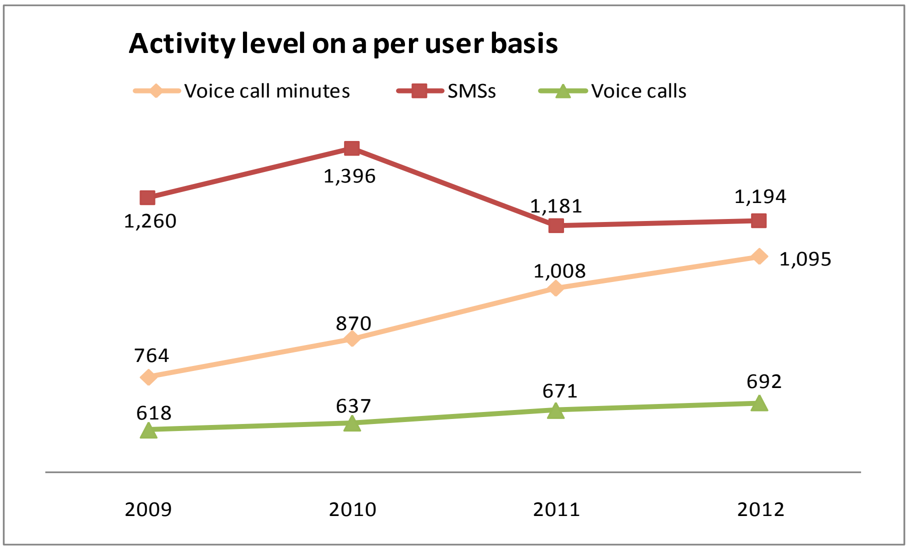

Chart 4: The local usage profile for mobile telephony

Meanwhile, fixed line traffic volumes declined. In fact, whilst in 2009 nearly 53% of all domestic voice calls originated via a mobile subscription, the respective rate went up to nearly 66% in 2012.

It is also of relevance to underline at this stage that the price differential between mobile and fixed line call tariffs narrowed significantly over the last few years.

Chart 5 clearly depicts this trend for domestically bound calls, with the ARPM for mobile originating calls declining at a much faster rate than the ARPM for fixed line originating calls.

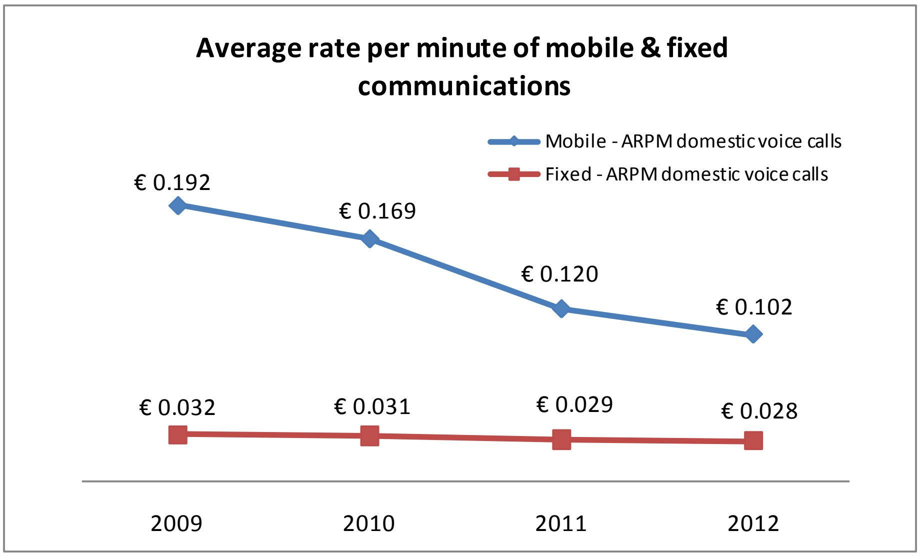

Chart 5: Average rates per minute of mobile and fixed communications

i. Impact on revenues for the sector

The ratio of retail mobile revenues from voice services (excluding access related revenues) is falling. This ratio has in fact gone down to around 30% in 2012, from around 41% in 2009.

On the other hand, revenues from data and other value-added services are increasing. Data revenues accounted for around 3% of the sector's turnover in 2012, up from around 1.7% in 2009. Meanwhile, revenues related to value-added services increased from around 3% of the total in 2009 to 6% last year.

Overall, the total revenues for the mobile sector increased from €106.4 million in 2009 to €110.3 million last year.

ii. A comparison of mobile and fixed line termination charges

In 2012, the mobile termination charge in Malta was almost three times the fixed line termination charge[12].

[12] The average FTR in Malta is also on a downward trend as a result of regulatory intervention, although its rate of decrease is much lower than for its mobile counterpart. The average FTR in Malta fell by approximately 40% from 2005 to 2012, i.e. from 1.195 eurocents/minute to 0.7163 eurocents/minute.

	Absolute figures			
	2009	2010	2011	2012
Voice traffic volumes (calls)				
MTF	22,961,962	24,706,815	33,905,691	37,907,701
FTM	42,320,780	40,381,120	39,706,470	41,739,230
Voice traffic volumes (call minutes)				
MTF	26,826,901	35,836,441	58,812,739	69,237,490
FTM	60,305,995	58,456,867	58,598,807	63,772,529

Table 2: Traffic originating from FNO/MNOs and terminating on MNOs/FNOs

1.5 Closure of national consultation and notification of draft decisions

On the 5th of July 2013, the MCA initiated a national consultation exercise in relation to the provision of wholesale voice call termination on individual mobile networks in Malta.

Comments to the above-mentioned consultation were submitted by GO Mobile, Melita Mobile and Vodafone (Malta).

As specified by Regulation 4 of the ECNSR and in line with the cooperation agreement signed on 20th May 2005 between the MCA and the Office of Fair Competition, the MCA has also asked the Office for Competition, which forms part of the Malta Competition and Consumer Affairs Authority ('the MCCAA'). The MCCAA submitted its opinion on the market definition and analysis of the products and services under investigation on the 8th of August 2013.

The MCCAA expressed agreement on the MCA's 'identification and analysis of the markets concerned'. The MCCAA's comments letter is provided as an annex to this document.

As required by Regulation 7 of the ECNSR, the MCA also notified the results of this market review and the regulatory measures to the Commission and to other NRAs in Europe.

1.6 Responses to consultation and MCA reaction

Vodafone (Malta) considers that 'the reduction in retail call rates are heavily driven by the inclusion of free on-net minutes (via the free community/family traffic and also free minutes between fixed and mobile lines of the same operator) in multi-product bundles supplied by the two larger quad-play operators.

It is understandable to argue that retail call rates are likely to be affected by a range of factors other than just termination charges, including the free minutes offered in multi-product bundles. Therefore, whilst the MCA acknowledges that the positive effect of a reduction in mobile termination charges on retail prices may be difficult to quantify, it is similarly difficult to stipulate the net positive affect of free minutes in multi-product bundles on retail call rates. All-in-all, however, the MCA considers that, in view of local retail price developments since 2009, reductions in mobile termination charges were an important factor in bringing about lower retail mobile prices and increased traffic volumes for the sector.

Vodafone also comments on the fact that 'the rate per minute of FTM calls has remained fairly constant whereas absolute traffic, or demand, seems practically inelastic' thereby showing 'an almost complete lack of pass-through of MTR reductions'.

The MCA observes that retail price competition may be more aggressive on some call types than on others. It is therefore realistic to consider that not all categories of end-users enjoy the same extent of pass-through of reductions in mobile termination charges to retail prices. For example, retail price reductions have been significantly more pronounced for local on-net MTM calls and off-net MTM calls, than has evidently been the case for FTM calls. In itself, this manifestation of differing pass-through rates reinforces the case for seeking mobile termination charges that are closer to the underlying costs of providing mobile termination services. Such a strategy, which is being pursued through reductions in local mobile termination charges, should help to improve the state of competition in the market within which the FTM service is provided.

Therefore, whilst it is correct to highlight that reductions in mobile termination charges may seem to have had limited impact on local FTM retail prices and FTM usage, the MCA cannot play down the significance of a partial pass-through of reductions of mobile termination charges to lower FTM retail call rates. The MCA considers that as mobile termination charges move closer to the underlying costs of supplying termination, the extent of FTM pass-through should improve and so be expected to contribute to further reductions in retail average FTM call rates.

The MCA also reiterates its view that regulatory induced reductions in local mobile termination charges did not have a negative impact on retail mobile prices. Instead, these reductions and other factors contributed to lower mobile retail call charges, which eventually translated in increased usage levels for the mobile sector. It is relevant to note here that, since 2009, local mobile termination charges declined by 76%. Meanwhile, retail prices for domestic mobile originated calls (measured on the basis of the ARPM) went down by 47%. Despite these declines in mobile originated call rates, the revenue of the mobile sector increased from €106.4 million in 2009 to €110.3 million last year.

The MCA considers that, in the circumstances, further regulatory intervention is required to pursue efficient mobile termination charges in Malta, as this would contribute toward more competitive outcomes for the consumer.

2 Market definition

The Commission Recommendation considers call termination on individual mobile networks as relevant for the purposes of ex ante regulation. In particular, the Recommendation states that the market for mobile voice call termination is defined at the individual network level, which effectively means that each MNO constitutes a separate call termination market given that it is the sole supplier of termination services on its own network.

The MCA's second round market review decision concurs with the Recommendation in that it defines three separate markets for call termination that are as wide as each local MNO. The following analysis determines whether such a conclusion remains appropriate in the circumstances.

2.1 Structure of the chapter

The rest of this chapter is structured as follows:

Section 2.2 explains the relevance of mobile voice call termination in the provision of retail mobile telephony services and highlights upon the principles governing the payment mechanisms for the service in question.

Sections 2.3, 2.4 and 2.5 assess the extent to which the provision of voice call termination and the setting of mobile termination charges by a local MNO might be constrained via demand-side and supply-side substitution possibilities at the retail and wholesale levels.

Section 2.6 identifies the wholesale markets concerning the provision of mobile voice call termination services in Malta and the relevant geographic scope of these markets.

2.2 Voice call termination on mobile networks

Mobile voice call termination is a wholesale input, which in addition to wholesale call access and wholesale call origination services, enables the provision of various types of mobile voice call services at the retail level.

Technically, these wholesale inputs allow for a call to be carried over two distinct networks, namely the network to which the customer making the call is subscribed (i.e. the network of the calling party) and the network to which the customer receiving the call belongs to (i.e. the network of the called party).

Therefore, mobile voice call termination services enable customers to receive calls initiated by customers on other FNOs and MNOs.

2.2.1 Transactions based on the CPP arrangement

Under current commercial agreements, local network operators abide by the principles of the so-called CPP model for transactions related to termination services. Under the CPP arrangement, the originating MNO or FNO pays a charge to the MNO that is terminating the call. This charge is typically referred to as the mobile termination charge.

The originating operator would subsequently recover the mobile termination charge, together with the costs it incurs for originating a call, through the retail price it charges to its customer when the latter makes a call (i.e. the calling party).

It is considered that the CPP arrangement contributes to end users being relatively insensitive to the pricing of voice call termination on mobile networks. Hence, due consideration is given to this factor at a later stage in the forthcoming analysis.

2.2.2 A uniform mobile termination charge

Due to regulatory intervention, local MNOs apply the same charge when terminating a call from other network operators. The logic behind the application of a uniform mobile termination charge rests on the reasoning that a call terminated on a mobile network uses the same network elements, and therefore incurs the same cost, regardless of the origination network being either fixed or mobile.

It is also of note that since MVNOs in Malta are only service providers, and are therefore hosted on one of the local MNOs, these are dependent on the host's network for termination services and therefore apply the same termination charge as the network hosting them.

2.3 The substitutability assessment

The substitutability assessment focuses on whether voice call termination on individual mobile networks does have a direct substitute, such that an end-user and/or a network operator has the ability to pose a competitive constraint on the provision of the service and the setting of mobile termination charges.

Two important considerations are however worth highlighting, prior to pursuing with the analysis.

First, the market definition exercise takes into account the degree of interrelationship between the wholesale and retail levels of competition. This is particularly relevant in the context of mobile voice call termination, as this service is a wholesale input to the provision of mobile retail voice call services. Of particular relevance in this regard is the price sensitivity of customers to mobile termination charges.

Second, the assessment abides by the principle of 'technology neutrality'. Here, it is relevant to highlight upon the interoperability of local MNOs, MVNOs and FNOs, as all operators are interconnected.

Furthermore, this review stands by the conclusion that, from a technological and functional point of view, the dynamics of voice call termination on 2G mobile networks are the same as those for 3G mobile networks. There are also no technical obstacles for a customer to make a call to and/or receive calls from a customer on a 3G handset or vice-versa. Hence, voice call termination on a 3G network is not different to voice call termination on a 2G network.

2.4 Demand-side substitutability

The demand-side substitutability analysis considers whether there are by-pass options for voice call termination on a given mobile network, both at the retail and wholesale level.

2.4.1 Demand-side substitutability at the wholesale level

A network operator wishing to allow its customers to call users of any particular mobile network has no alternative but to purchase voice call termination from the MNO to which the called party is subscribed.

This means that there is no potential for demand-side substitution at the wholesale level.

2.4.2 Demand-side substitutability at the retail level

Wholesale voice call termination is an input to the provision of mobile retail services. Hence, the notion that there might be by-pass options for mobile voice call termination at the retail level to constrain the behaviour of MNOs in the provision of voice call termination services and the setting of their mobile termination charges.

Effectively, a demand-side constraint would arise if a 5 to 10% increase in the mobile termination charge becomes unprofitable as a result of the consumer purchasing voice call termination from alternative sources instead of the MNO implementing the said increase in price.

It should however be mentioned that the CPP arrangement bears major influence on consumers in that it makes them relatively insensitive to the pricing of mobile voice call termination. This is because it is the calling party that pays for the termination costs of a call and not the called party. The CPP arrangement therefore leaves no space for a direct relationship between the termination charges that are applied and demand for the service in question by the called party. To put it in another way, the called party has no incentive to act to reduce the charges paid by the calling party, which in turns suggests that the onus for demand-side substitutability at the retail level mainly rests on the behaviour of the calling party.

Demand-side constraints at the retail level may therefore arise from the ability of the calling party to react to changes in mobile termination charges, which are reflected in the retail mobile voice call tariffs charged by MNOs.

To this effect, the forthcoming analysis shall consider whether, in response to an increase in the price of termination, the calling party might opt for one of the options listed below:

- calling a fixed number instead of a mobile number;
- calling from a mobile number instead of a fixed number;
- making an on-net mobile-to-mobile (MTM) call instead of an off-net MTM call;
- using call back and call forwarding solutions;
- resorting to SMS messaging; and
- taking-up a mobile subscription in a bundle and/or closed-user group.

It is however of note here that even the calling party may be price insensitive to mobile termination charges. Qualitative research carried out by the MCA has consistently shown that the majority of mobile users lack awareness of the final retail price they pay for mobile calls, let alone awareness of the underlying cost components of the final price.

This is partly due to the fact that MNOs provide various tariff plans targeting different customer groups whilst the applicable call rates vary according to the network of the called party, time of the call and usage profiles. The calling party would also lack awareness of the terminating network, given that a mobile number may be ported by the called party without the knowledge of the calling party. These two factors could therefore be seen as hindering the calling party's ability to make effective use of the by-pass options discussed in more detail below.

2.4.3 Calling a fixed number instead of a mobile number

This type of substitution refers to a situation where consumers consider making a call to a fixed number rather than the mobile number to which the called party is subscribed.

However, a fundamental consideration here is that mobile numbers are intrinsically by nature 'mobile' and not set at fixed locations as a fixed line number. This means that the calling party does not really have a choice in trying to reach a third party on the move by calling a fixed line number.

Market trends do in fact suggest that there is a strong level of consumer acceptance of the above, as calls to fixed line numbers are falling whilst those to mobile numbers are on the increase.

Substitution of mobile originated calls with fixed line originated calls does not therefore pose a sufficiently strong constraint on the setting of mobile termination charges.

2.4.4 Calling from a mobile number instead of a fixed number

This type of substitution refers to a situation where consumers consider calling from a mobile number instead of fixed line number when trying to reach another mobile number.

The most important aspect here is that a calling party incurs the same termination charge when reaching a third party on a mobile number, irrespective of the originating network. This is because a call terminated on a mobile network will use the same network elements for the provision of the service and at the same cost, irrespective of the originating operator.

Given that the current mobile termination charge does not discriminate between originating operators, the calling party would be indifferent to making a call via a fixed line or a mobile number as long as it succeeds to communicate with the intended third party.

The MCA therefore considers that this type of substitution is not sufficiently strong as to constrain mobile termination charges.

2.4.5 Making an on-net MTM call instead of an off-net mobile calls

On-net MTM calls are generally cheaper than off-net MTM calls and MTF calls. Many times local MNOs do offer incentives to attract new customers by offering free on-net minutes in their plans or else by offering cheaper rates for on-net calls. Another effect of on-net call offers is to preserve customer loyalty.

For substitution between off-net MTM calls with on-net MTM calls to happen, the calling party and the called party need to have a subscription on the same MNO or else to have multiple SIM cards.

The latter solution is however unlikely to pose a significant impact on market dynamics given that only around 8% of local mobile customers have multiple subscriptions. Furthermore, this solution is somewhat inconvenient as it entails a constant change in the SIM card being used. Mechanisms for automatic substitution are not universally available and, where they are, constant updates would be necessary to keep up with the large number of new subscriptions and number portings on the market. The MCA does not consider that the take-up of multiple subscriptions would increase significantly over the timescale of this review.

In the circumstances, therefore, substitution between on-net MTM calls and off-net MTM calls would only constrain an increase in mobile termination charges in the event of strong shifts in the choice of network and high churn levels in response to the change.

Nevertheless, the MCA has already argued that switching decisions are not determined by the costs of termination, especially as consumers are generally not aware of such costs. Therefore, while it is possible for substitution between on-net MTM calls and off-net MTM calls to happen, such substitution is not considered sufficiently widespread as to pose a constraint on the pricing of wholesale call termination.

2.4.6 Using call-back and call-forwarding solutions

Call-back and call-forwarding solutions are automatically established to re-route calls for intensive users, such as businesses and Closed User Groups (CUGs). In general, however, these solutions are neither commercially available on a large scale nor widely in demand.

Take-up of these solutions is limited at this time and the situation is unlikely to change within the timeframe of this review. This means that the usage of call-back and call-forwarding solutions is unlikely to impact on the setting of local mobile termination charges.

2.4.7 Resorting to SMS messaging

An SMS is likely to be considered a good substitute for a mobile voice call when such a call is intended to be of a short duration and does not require real time delivery.

The latest mobile perception survey carried out by the MCA[13] however indicates that, despite the price differential in favour of SMSs when compared to mobile voice calls, only 14% of respondents consider SMS to be a good substitute for mobile voice calls. Another 26% of respondents very often consider SMS to be a good substitute. These percentages are lower compared to those recorded in previous years, which makes sense in view of falling retail mobile call rates and lengthier mobile calls.

A look at the growth rate of SMS and mobile voice call traffic volumes between 2009 and 2012 further confirms this notion, as consumption for mobile voice call telephony increased by a faster rate than that for SMS messaging.

Traffic volumes	Year-on-year change			
	2009	2010	2011	2012
SMS messaging	1.02%	20.41%	-5.83%	9.83%
Mobile voice call minutes	23.60%	23.80%	29.01%	17.99%

Table 3: Rate of increase in traffic volumes: SMS messaging vs. voice call minutes

Overall, the MCA considers that SMSs and voice calls qualify as complementary services rather than substitutes, which means that SMS usage is not an adequate instrument to constrain the setting of mobile termination charges in the absence of regulation.

2.4.8 Taking up a mobile subscription in a bundle and/or closed-user group

Other strategies that could have an impact on the setting of mobile termination charges relate to the take-up of mobile subscriptions in a bundle offer and/or a CUG, especially in the case of end-users that are concerned about the termination costs incurred by their family and friends.

The more widespread the number of such subscriptions, the more likely it is for such behaviour to put downward pressure on call termination charges.

[13] Link to MCA survey results: http://www.mca.org.mt/consumer/surveys/consumer-perception-survey-mobile-services

Nevertheless, the MCA considers that, even in this case, consumers are more likely to consider the costs of making a (on-net) call rather than the costs incurred when receiving a call when opting for a mobile subscription in a bundle or CUG. Furthermore, the number of mobile subscriptions in a bundle and CUGs remains rather low. For example, only 10% of local mobile subscriptions are included in a bundle.

It is therefore considered that the take-up of mobile subscriptions in a bundle do not pose a sufficient constraint on the setting of mobile voice call termination charges[14].

2.4.9 Conclusion on demand-side substitutability

The MCA maintains its original position that:

- consumers of retail mobile services are not in a position to pose a sufficient constraint on the provision of mobile voice call termination and the setting of the relevant termination charges; and that
- there is no possibility for a network operator to terminate a call other than on the MNO to which the called party is subscribed.

2.5 Supply-side substitutability

In this case, the analysis focuses upon whether existing or potential suppliers would be able to switch production into the supply of mobile voice call termination services, in response to a small but significant increase in price.

This must happen fast enough in order to prevent the price rise of the product from being profitable for the firm that implemented the change in price.

The MCA however considers that no service provider or network operator could readily substitute the supply of call termination on a mobile network to which the called party is subscribed.

2.5.1 Conclusion on supply-side substitutability

Calls can only be terminated on the network chosen by the called party. This means that, in the current circumstances, supply-side substitution for mobile termination services is not possible.

2.6 A distinct termination market

As stated earlier, mobile operators provide access, call origination and call termination as a cluster of services over the same network.

Notwithstanding this, the services in question differ in terms of their characteristics, pricing or intended use.

Wholesale mobile call origination, for example, guarantees the ability of retail customers to make voice calls and use other mobile related services such as SMS. Meanwhile, wholesale mobile voice call termination enables end-users to receive calls.

With respect to pricing, an increase in price for wholesale access and call origination services can be competed away in the market, as the services in question are not

[14] Here it is also relevant to underline that although bundle oriented and CUG-based mobile subscriptions might benefit the price sensitive customer through lower on-net pricing, MNOs might still price-discriminate against less price-sensitive customers when setting their mobile termination charges.

network dependent. This would be the case if a hypothetical monopolist were to increase the price of, say, its prepaid voice call services. This may entice existing mobile operators to try matching the said increase in price. Moreover, new operators may consider offering the service at the new price, thus rendering the monopolist's actions a non-profitable strategy.

On the contrary, wholesale termination services offered by a particular network operator cannot be provided elsewhere. This means that network operators offering termination services have an incentive to increase termination charges to boost revenue and subsequently increase the costs of end-users subscribed with competing operators.

It is therefore considered that the provision of wholesale termination services does not share the same pricing and competitive conditions as the provision of wholesale access and origination services and that the overall conditions of supply and demand for the two services differ significantly.

Hence, the conclusion that the provision of mobile voice call termination services forms a distinct wholesale market.

2.7 Decision on relevant markets

In respect of the analysis presented above, and in accordance with competition law principles, the MCA identifies the provision of wholesale voice call termination on individual mobile networks in Malta as relevant for the purposes of ex ante regulation.

2.7.1 Wholesale mobile termination markets

On this basis, the MCA identifies three distinct mobile termination markets in Malta:

1. wholesale voice call termination provided by Vodafone Malta Ltd.;
2. wholesale voice call termination provided by Mobisle Communications Ltd.; and
3. wholesale voice call termination provided by Melita Mobile Ltd.

The three markets include wholesale voice call termination services provided over both 2G and/or 3G network equipment.

2.7.2 Relevant geographic markets

A relevant geographical market comprises the area in which the undertakings concerned are involved in the demand and supply of a product / service in relation to which the conditions of competition are sufficiently similar or sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different to those areas.

The current conditions of competition are deemed to be geographically homogenous in the identified wholesale markets. The markets in question are indeed subject to a national pricing constraint, as all authorised or licensed MNOs offer mobile termination services on a nationwide basis. MNOs also charge geographically uniform mobile termination charges, without differentiating by reference to geographic location.

The geographical scope of each relevant market therefore corresponds to the nationwide physical coverage of the respective MNO comprising it.

3 Market analysis

Having identified the relevant markets that comprise mobile wholesale voice call termination in Malta, the next step is to analyse whether any undertaking holds a position of SMP in the relevant market, as defined in and required by Regulation 5 of the ECNSR (Article 16 of the Framework Directive).

3.1 Criteria used in determining SMP

For the purposes of this assessment, a number of criteria are investigated to determine whether the identified wholesale markets are subject to potential market shortcomings.

The criteria taken into consideration are the following:

- distribution of market shares;
- the potential of market entry;
- the extent of countervailing buyer power (CBP); and
- the scope for price competition.

The analysis takes full account of the Commission's guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communication networks and services, as well as the MCA's market review methodology.

3.1.1 Distribution of market shares

The area covered by each MNO constitutes a separate wholesale termination market given that there is no substitute for termination on a particular MNO.

This implies that each MNO has a 100% market share in terms of voice call traffic volumes terminating on its own network. This market share is the result of the way termination services are provided exclusively on each individual MNO, with no alternatives available for those purchasing the service. By definition, therefore, each MNO is a monopolist when terminating calls on its own network.

Conclusion

If left unregulated, each MNO would be a monopolist in the setting of its own termination charge. Since the payment of mobile termination charges abides by the CPP arrangement and the network operator purchasing the termination service is a price-taker, MNOs have an incentive to set their termination charge above the competitive level.

3.1.2 Potential market entry

As described earlier on, the provision of mobile voice termination services is governed by the CPP arrangement, which eliminates any opportunity for supply-side substitutability. There is indeed no possibility for network operators to terminate a call other than on the mobile network to which the called party is subscribed.

There have also been no technological breakthroughs, nor are these being envisaged within the timeframe of this review, that would allow for an alteration in the dynamics of the provision of mobile voice call termination services.

In the context of mobile voice call termination, established MNOs are expected to continue terminating outgoing calls on the network to which the called number belongs. Any new market entrant would still have to buy termination from established MNOs, for the purposes of completing off-net calls. Furthermore, established MNOs would have to buy termination from the new market entrant, so as to guarantee end-to-end connectivity for their subscribers.

This means that both established and new MNOs would have a 100% market share for the termination of calls on their own network.

Conclusion

Given the pace of technological developments and the forward looking nature of this review, new market entry would not constrain MNOs from setting high termination charges.

3.1.3 Countervailing buyer power

The presence of effective CBP would tend to restrict the ability of MNOs to exercise market power in the provision of voice call termination services and the setting of mobile termination charges.

There are two economic agents that have an interest in keeping mobile termination charges as low as possible. These are end-users (retail consumers) and network operators (wholesale customers) that are purchasing mobile termination services.

Their ability to constrain mobile termination charges depends on the extent to which they could exercise CBP in the identified markets.

The bargaining position of the retail consumer

The relative bargaining position of the retail consumer to influence the setting of mobile termination charges rests on its ability either to discontinue purchasing the service in question from a particular MNO or to consider any alternative seller of termination services.

However, it is considered that retail customers are likely to be indifferent to the charges applied by their network operator in providing voice call termination. The market definition exercise has in fact already shown that end-users are typically insensitive and unaware of mobile termination charges.

This goes to suggest that retail customers do not have sufficient CBP to influence the setting of mobile termination charges by local MNOs.

The bargaining position of the wholesale customer

The next step is to evaluate the possibility for network operators to exert pressure on MNOs selling them termination services.

It is relevant to underline here that wholesale customers of mobile voice call termination are small in number but typically large in size. These include fixed network operators, namely the incumbent Go plc and Melita plc., and mobile network operators themselves, namely Go Mobile, Melita Mobile and Vodafone (Malta).

There are other smaller operators, including Ozone (Malta) and SIS in the fixed line sector and Redtouch Fone and VFC Mobile in the mobile sector. The latter two operators classify as MVNOs, which generally buy minutes of use from the licensed MNO and then resell minutes of usage to their customers. These MVNOs are constrained to use the same mobile termination charges being charged by their host MNO.

For the purposes of assessing the extent of CBP exerted by network operators on the setting of mobile termination charges, three scenarios are taken into account.

i. The fixed-to-mobile (FTM) scenario

Here, the analysis assumes a hypothetical situation where there is no regulation on any MNO, which means that an MNO can freely set its termination charge, whilst fixed termination charges are still regulated. Hence, the main consideration as to whether FNOs, such as GO and Melita, are in a sufficiently strong bargaining position as to influence the setting of mobile termination charges.

As it is vital for MNOs to be connected to established fixed networks, one way for FNOs to constrain the price-setting behaviour for mobile termination services would be to threaten interconnection.

For example, the incumbent FNO may hypothetically refuse/deny interconnection with a MNO implementing what are deemed by the said FNO as excessive mobile termination charges, unless these are brought down to a reasonable level.

However, due to regulatory intervention and the imposition of the interconnection obligation on the incumbent FNO, this course of action is not possible.

Minutes terminating on MNOs	2009	2010	2011	2012
FTM traffic share	17.54%	14.54%	11.71%	11.28%
On-net MTM traffic share	52.97%	58.06%	60.74%	65.02%
Off-net MTM traffic share	26.55%	25.98%	23.40%	22.44%
International-to-mobile traffic share	2.94%	1.42%	4.15%	1.26%

Table 4: Minutes terminating on MNOs – market share by type of traffic

It is also relevant to underline that, last year, FNOs catered for just 11.3% of all voice call minutes terminating on local MNOs, down from 17.5% in 2009. This suggests that the relative bargaining position of the fixed line sector as a purchaser of mobile termination services is in fact weakening over time. Table 4 also shows that FTM traffic also accounts for a very small share of minutes terminating on mobile networks, which means that the FNOs cannot effectively exert strong CBP on the setting of mobile termination charges.

For this reason, absent regulation, MNOs would freely increase their FTM termination charges above the competitive level, thereby leading to high costs for FNOs at the wholesale level and thus to high prices for FTM calls at the retail level.

The MCA therefore considers that FNOs do not have sufficient CBP to ensure competitive mobile termination charges.

ii. The mobile-to-mobile (MTM) scenario

Mobile operators themselves purchase termination services from each other. Hence, the main consideration here is whether, absent regulation, MNOs are in a sufficiently strong bargaining position as to influence an increase in mobile termination charges by their competitors.

So far it has already emerged that MNOs have a monopoly position in the provision of mobile termination services over their own network. For this reason, and without regulatory restraint, MNOs have an incentive to increase their mobile termination charges above the competitive level.

MNOs are aware that, due to the CPP principle, setting a high termination charge will not impact their own subscribers, but subscribers of other MNOs. This is because other MNOs purchasing termination would have to face increased costs for off-net MTM calls and thus end-up charging higher rates for such calls at the retail level.

Meanwhile, an opportunity would arise for the MNO charging high rates for mobile termination on its own network to pass-through (partially or in full) the excess revenues from incoming calls on the retail market by charging, for example, cheaper on-net MTM call rates[15]. Given the realisation that a cost would still have to be incurred when terminating a voice call over its own network, the MNO would also tend to discriminate in favour of its own internal termination charge and thereby implement higher off-net termination charges[16].

A price differential between on-net MTM calls and off-net MTM calls is quite likely to emerge in this instance. The higher the termination charge for off-net calls, the higher is likely to be the resulting price differential. Such a price differential would in turn contribute to higher turnover levels and wider profit margins for the MNO implementing discriminatory termination charges. Meanwhile, rival network operators would end up less price competitive, with negative implications on their ability to appeal to customers at the retail level.

It is therefore relevant to consider at this point whether MNOs purchasing termination from other MNOs are in a position to exercise CBP, such as to constrain the setting of mobile termination charges at the competitive level.

It should first be noted here that, if a MNO implements excessively high termination charges or discriminates in its favour or some other MNO when setting these charges, no mobile network operator could effectively exercise CBP by refusing / delaying / blocking interconnection in order to bring down the costs of termination on other mobile networks. This is because all MNOs are required to have interconnection agreements in place with existing operators and to negotiate similar interconnection agreements in good faith with new entrants.

However, a MNO may raise its own termination charge in response to some other MNO charging excessively high charges for termination on its own network. This is because all MNOs effectively have an incentive to increase their termination charges, knowing beforehand that this increase would not affect their own retail customers but would instead translate into higher off-net call rates for retail customers of rival operators. MNOs also have an incentive to keep high mobile termination charges so as to generate more termination revenues from off-net calls that would then cross-subsidise lower on-net call rates.

Therefore, it is considered that, absent regulation, MNOs have the incentive to raise mobile termination charges but cannot pose CBP in the setting of mobile termination charges by rival operators.

[15] Literature suggests that the transfer or pass-through of excess termination profits is unlikely to be complete in the form of lower outgoing call prices.

[16] It may be argued here that, with the emergence of lower on-net call tariffs and increasing on-net traffic volumes, MNOs could have an incentive to push down MTRs, absent regulation, so as to lower the cost of on-net calls even further. Nevertheless, it is considered that MNOs would rather keep high mobile termination charges for other MNOs in order to compensate lower on-net revenue streams with higher off-net revenues.

iii. <u>The international-to-mobile scenario</u>

MNOs also terminate calls originating from another jurisdiction on their own network.

The share of such traffic terminating on local MNOs remains small, standing at just 1.3% in 2012.

It is therefore considered that, absent regulation, international-to-mobile traffic does not pose CBP on the behaviour of local MNOs when these are setting their mobile termination charges.

It is also relevant to point out that there is no international wholesale operator or group of operators that could effectively constrain local mobile termination charges to a level commensurate with a competitive outcome.

Conclusion

In the absence of regulation, neither fixed nor mobile network operators can exert CBP to constrain the setting of high termination charges by a particular MNO. This is a result of the intrinsic problem that termination services on a particular network are subject to monopoly pricing.

It is considered that local MNOs face the same identical 'monopolist conditions' for the setting of their own mobile termination charges and cannot be constrained in setting such charges at the competitive level.

3.1.4 The scope for price competition

It is of significance to underline at this stage that the reductions in the mobile termination charges observed over the last few years have been exclusively the result of regulatory intervention by the MCA.

Local mobile termination charges went down by 76%, from 0.0866 eurocents/minute in 2009 to 0.0207 eurocents/minute in 2012 (See Chart 7).

Meanwhile, the average rate per minute of mobile communications for domestic mobile calls (used here as a proxy for the actual retail price movements) fell by 47%, from €0.192 to €0.102 (see Chart 8).

Higher usage levels were also reported during the same period, with the number of mobile minutes per subscription increasing from 764 in 2009 to 1,095 in 2012, despite an increasingly higher mobile penetration rate.

Conclusion

Given these considerations and analysis, reductions in mobile termination charges are considered to have contributed positively towards competition in the sector, with increasing usage of mobile and lower retail prices.

Absent regulation, the scope of MNOs to compete on the basis of price would have been significantly reduced. This is because the monopolistic position of MNOs in terminating calls on their own network would have led to excessively high termination charges and less competitive retail call rates.

3.2 Responses to consultation and MCA reaction

GO Mobile, Melita Mobile and Vodafone (Malta) use different arguments to make the case that no MNO could effectively increase its mobile termination charge in the absence of ex ante regulation.

GO makes the point that 'if a mobile operator increases the wholesale call termination charge for calls incoming towards its own network, the other operators' could respond by increasing the price difference between their retail on-net calls and off-net calls' and that 'consequently this operator will face lower incoming traffic volumes and pressure to lower back the wholesale mobile termination charges'.

Vodafone argues that 'given the current market dynamics, it is not reasonable to assume that Vodafone can set a MTR independently of other networks' because it would be 'isolating itself from the market'.

Meanwhile, Melita Mobile states that 'it is incorrect to treat all mobile operators as having the same motives', in the context of an incentive to maintain high MTRs, given that 'Melita has unequivocally campaigned for lower MTRs for a number of years'.

The MCA reiterates its view that, in the absence of regulation, termination services offered by local MNOs are subject to monopoly pricing. This is because each and every MNO is a monopolist in the provision of termination on its own network, thereby capable of setting mobile termination charges that are higher than that of an efficient operator. This reasoning holds independently of whether the MNO is the incumbent or a newer market entrant and irrespective of the operator's size and presence in the market. Ultimately, the setting of high mobile termination charges can contribute to higher profits for MNOs, to the detriment of retail end-users.

The MCA recalls that there is very limited, if any, potential constraints on a mobile operator in setting its own termination charge. The MCA has in fact shown that no constraints from downstream markets can pose a credible downward pressure on the setting of local mobile termination charges. Given that mobile voice call termination is governed by the 'Calling Party Pays' (CPP) principle, an increase in the mobile termination charge would not impact the called party hosted by the MNO increasing the price of termination. It is the calling party who would have to pay for the whole cost of the call, including the relevant termination charge. The called party is therefore relatively insensitive to the pricing of termination by its own mobile network and not expected to pose a constraint on its provider's ability to charge high mobile termination charges. Meanwhile, the calling party - which is also typically insensitive to the pricing of mobile termination - cannot resort to demand-side alternatives to voice call termination on a particular MNO.

Against this background, the MCA considers that it is unlikely for a MNO to succeed in constraining the setting of mobile termination charges by other MNOs through higher off-net retail call rates. The MCA notes that, despite the current differences between on-net and off-net call rates, end-users still make off-net calls because they cannot do otherwise when they wish to call a particular number on a different network. This means that, absent regulation, higher off-net call rates are unlikely to deter off-net calling by as much as to constrain back increases in termination charges, even assuming widespread awareness of the difference in price between on-net and off-net calls. Such a strategy would instead pose a negative impact on the calling party.

On a final note, the MCA underlines that none of the local MNOs ever reduced its charges for termination on its own initiative. It was only following MCA intervention that termination charges were reduced significantly since 2005.

3.3 Decision on the assessment of SMP

The wholesale markets under consideration are not competitive and will not retract from this position during the timeframe of this review.

This conclusion is supported by a number of findings, namely that:

- Each MNO holds a 100% share in terms of voice call traffic terminating on its own network and therefore a monopolist on its own network.
- No CBP can be exercised on the setting of mobile termination charges. Due to the CPP principle, the retail customer does not sufficiently care about the costs that other parties incur when calling them. In addition, network operators have no alternative for terminating a mobile call other than the MNO to which the called number belongs.
- Absent regulation, MNOs have a strong incentive to charge excessive termination charges and to price discriminate when charging for termination.
- Mobile termination charges are likely to increase in the absence of regulatory intervention and may result in price distortions and allocative inefficiencies.
- In a scenario where MNOs can freely set high termination charges, the scope for price competition is reduced, to the detriment of retail customers.

The MCA therefore considers that the following MNOs hold SMP in their respective wholesale termination market:

i. Vodafone (Malta) Ltd.

ii. Mobisle Communications Ltd.

iii. Melita Mobile Ltd.

3.4 Impact on the MCA's regulatory approach

In view of the finding of SMP for Go Mobile, Vodafone (Malta) and Melita Mobile, the MCA is obliged to impose the necessary regulatory obligations to mitigate against potential competition problems. The MCA's regulatory approach is described in detail in the following chapter.

4 Regulatory approach

Following the assessment of competition of relevant mobile voice call termination markets, the MCA concludes that Go Mobile, Vodafone (Malta) and Melita Mobile enjoy SMP in the provision of termination services on their own individual mobile network.

Regulatory intervention is therefore required to address the potential competition problems that have been identified in the previous chapter. Regulatory intervention is to prevent SMP operators from exploiting their position of dominance and would thus guarantee that the markets in question work effectively to deliver enhanced consumer benefits.

4.1 Structure of this section

This remainder of this chapter is structured as follows:

Section 2.2 underlines the legal provisions guiding the MCA's regulatory approach.

Section 2.3 recalls the potential risks to competition arising from the SMP position of MNOs with respect to the provision of wholesale voice call termination on their individual mobile networks.

Section 2.4 lists the regulatory obligations that are currently enforced on Go Mobile, Vodafone (Malta) and Melita Mobile in the markets under investigation.

Section 2.5 highlights upon the obligations that are to be imposed on the MNOs identified with SMP in the current review.

Section 2.6 provides an overview of the consultation comments on the MCA's regulatory approach and the reaction by the MCA to these comments.

4.2 Background to regulatory approach

In accordance with regulation 11(1) of the ECNSR, where an operator is found to have SMP on a relevant market, the MCA is obliged to impose on such an operator appropriate regulatory obligations or to revise such obligations where they already exist.

The MCA is to ensure that the selected remedies are in accordance with regulation 11(4) of the ECNSR and article 8.4 of the Access Directive, in that these are:

- based on the nature of the competition problems that have been identified;
- proportionate and justified, in light of the objectives laid down in Article 4 of the ECRA; and
- only be imposed following consultation, in accordance with regulation 7 and article 4A of the MCA Act.

4.3 Potential competition problems

As a result of the SMP position held by MNOs in their relevant wholesale market, Vodafone, Go Mobile, and Melita Mobile may engage in the following practices if left unregulated:

i. Excessive pricing

Each MNO has an incentive to charge excessive charges for voice call termination on its own network. This is more likely to happen with the MNO charging high termination charges for FTM calls and off-net MTM calls in order to increase the inflow of termination revenues and subsequently cross-subsidise its on-net MTM call tariffs.

ii. Price discrimination

A MNO could charge 'itself' or its subsidiary a lower termination than it charges to other network operators. Through these price discriminatory practices a MNO could ultimately foreclose the retail market from its competitors.

It has already been argued that, for example, a MNO could set high off-net termination charges in order to cross-subsidise cheaper on-net MTM call rates. In this sense, other network operators would find it more difficult to compete in the retail market given that these would in such circumstances be faced by much higher costs for completing off-net calls to the MNO charging excessively high off-net termination charges.

4.4 Current regulatory obligations

In its second market review decision concerning wholesale voice call termination on individual mobile networks in Malta, the MCA established that Vodafone (Malta), Go Mobile and Melita Mobile had to comply with the following set of obligations:

- an obligation to meet reasonable requests for access to/and use of their specific network facilities;
- an obligation not to show undue preference or undue discrimination in the provision of interconnection services;
- an obligation to ensure transparency in accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices;
- an obligation to implement accounting separation; and
- an obligation to implement price control and cost accounting.

The latter obligation ensured that MNOs reduced their mobile termination charges to a cost-oriented level. Mobile termination charges for 2009 and 2010 were eventually set according to a mechanism linked to the average yearly percentage change in mobile termination charges of the EU27 countries (backdated by one year), as determined on the basis of official data published by the EU Commission. In 2011, the MCA introduced amendments in the price control remedy, with the benchmarking approach having been adjusted to use the average of the lowest 75% of mobile termination rates in the EU Member States as its baseline.

An update to the price control obligation was notified to the EU Commission in May 2012 (see Case MT/2012/1330)[17]. This notification highlighted amendments in the price control remedy with the benchmarking approach having been adjusted to use an interim rate that represents a constant rate of decline between the then current rate (of 4.18 Euro cent per minute) and the average of the MTR of the Member States using the 'pure'

[17] Link to MCA notification Case MT/2012/1330.

LRIC methodology at the time. This interim rate was to remain in force until it is replaced by the termination rate emanating from the MCA's BU-LRIC model currently being notified.

4.5 Decision on regulatory approach

Following the evidence and conclusions provided at market analysis stage, the MCA will maintain regulatory intervention in the wholesale markets under investigation.

The following sections will discuss the regulatory obligations to be imposed on Go Mobile, Melita Mobile, and Vodafone (Malta), following the publication of the MCA's final decision concerning the provision of wholesale voice call termination on individual mobile networks in Malta.

4.5.1 Access

An access obligation would provide greater certainty in the market as it would supplement the general obligation at law on network operators to provide access to all reasonable requests for interconnection. This is in accordance with the objectives specified under the ECRA (article 13 and article 14) and the MCA Act.

As stipulated by regulation 15 of the ECNSR, Go Mobile, Vodafone (Malta), and Melita Mobile are to ensure end-to-end connectivity through the appropriate granting of access to, or interconnection with, other networks.

To this effect, the aforementioned MNOs shall amongst others be obliged to:

- give third parties access to their infrastructure for the purpose of voice call termination on their own network and interoperability of network services, whether under the form of interconnection, or access to associated facilities, or services for the purposes of interconnection;
- meet reasonable requests for access to and the use of their infrastructure for the purposes of providing voice call termination (interconnection) services in a fair, reasonable and timely manner;
- publish a reference interconnection offer (RIO), which is also subject to the transparency and non-discriminatory obligations;
- negotiate in good faith with undertakings making new requests for access and interconnection services, whereby all such requests are to be met upon the conditions covering fairness, reasonableness and timeliness; and
- not to withdraw access to facilities already granted.

The decision to provide access and interconnection services shall remain subject to scrutiny by the MCA in accordance with its powers at law and reserves the right to amend the obligation following consultation with stakeholders.

4.5.2 Non-discrimination

The obligation of non-discrimination would ensure that no SMP operator exercises any discriminatory behaviour in relation to the provision of wholesale termination services within the timeframe of this review.

Consequently, Go Mobile, Melita Mobile and Vodafone Malta would not be in a position to discriminate in their favour or in favour of a particular undertaking (such as own subsidiaries and partners), when providing other undertakings with wholesale termination services on their own network.

The imposition of a non-discrimination obligation is therefore intended to avoid a situation whereby an SMP operator would have the ability to exploit its market power in order to discriminate when providing termination services to other operators.

To this effect and in accordance with regulation (13) of the ECNSR, Melita Mobile, Go Mobile and Vodafone (Malta) shall:

- apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services; and

- provide services and information to others under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners.

4.5.3 Transparency

The relevance of the transparency obligation has to be seen in the context of various purposes, including that of supporting other regulatory remedies such as the obligations of access and non-discrimination.

This obligation will enable the MCA to monitor any anti-competitive behaviour with respect to the terms and conditions of services being offered by MNOs in relation to access and, or interconnection.

Meanwhile, it would also ensure that network operators have sufficient information and clear processes to which they would not otherwise have access. For example, the transparency obligation would assist market entry by helping MNOs comply with elements of the obligation of non-discrimination and in so doing speed up negotiation.

In accordance with regulation 12 of the ECNSR, Melita Mobile, Go Mobile and Vodafone (Malta) shall be subject to transparency obligations and are obliged to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, including any conditions limiting access to and, or use of services and applications, and prices where applicable.

To this effect, the said MNOs shall be requested to:

- make public information concerning call termination rates, network and technical specifications, terms and conditions for supply and use, and accounting information, as required by the MCA;

- deliver services of equivalent quality to all operators;

- provide sufficient information on relevant matters, including the processes that alternative operators would not otherwise have access to, in order to assist with their entry into the market; and to

- publish a RIO, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities that are not necessary for the services requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices[18].

[18] In accordance with Regulation 12(4), changes may be imposed by the MCA to RIOs, in order to give effect to the obligations imposed under the ECNSR. The MCA may also specify the precise information to be made available, the level of detail required, and the manner of publication.

In accordance with regulation 12(4) of the ECNSR, changes may be imposed by the MCA to RIOs, in order to give effect to the obligations imposed under the ECNSR. In this regard, the MCA may also specify the precise information to be made available, the level of detail required, and the manner of publication.

4.5.4 Accounting separation

The obligation of accounting separation would ensure that operators with SMP keep separate accounts to reflect, as closely as possible, the performance of separate business activities that they operate. The imposition of this obligation would also enable the MCA to make certain that the costs allocated by an operator to an individual mobile service are the actual costs being incurred to provide the respective service.

The MCA is aware that MNOs with SMP are able to cross-subsidise between services through an internal transfer pricing mechanism which is distorted in favour of their own retail operations to the detriment of existing or potential competitors, and to the disadvantage of end users purchasing other services. This is more so since all MNOs, which were identified as having SMP, offer more than one type of service in a bundle. In this scenario, accounting separation would preclude cross-subsidisation and would thereby avoid any inefficient pricing strategies that favour discriminatory behaviour. Accounting separation would therefore provide improved transparency in the accounting arrangements of operators and would also encourage non-discrimination.

It is therefore considered that an obligation of accounting separation in conjunction with a price control measure would ultimately ensure that:

- wholesale prices are set in an efficient, transparent and non-discriminatory manner; and that
- the accounting arrangements of operators are transparent to such an extent that facilitates the verification of compliance in respect of services that the MNOs provide to other operators.

The MCA therefore feels that the imposition of an accounting separation obligation is appropriate.

In accordance with regulation 14 of the ECNSR, Vodafone (Malta), Melita Mobile and Go Mobile shall be obliged to:

- make transparent wholesale retail prices and internal transfer prices to the MCA, whenever such information is requested by the said Authority, without prejudice to the generality of regulation 14(2); and to
- make available accounting records to the MCA, including data on revenues received from third parties, whenever such information is requested by the said Authority, without prejudice to the provision of articles 4(10) to (14) of the Malta Communications Authority Act.

Unless otherwise directed by the MCA, Vodafone (Malta), Go Mobile and Melita Mobile shall keep the existent methodology[19] and level of accounting separation.

[19] The methodology on how to implement the accounting separation obligation has already been outlined in other MCA decisions, published in 2002 and 2009 (see Footnote 27). This notwithstanding, the MCA reserves the right to establish or alter the details of the obligation of separated accounts, following appropriate consultation with all stakeholders.

4.5.5 Price control

Due to a lack of competition and CBP resulting from the CPP principle, MNOs do not have any incentive to reduce termination charges to cost oriented levels through self-initiative.

The MCA therefore considers the imposition of the price control obligation as an essential tool to ensure that symmetric mobile termination charges are set at levels corresponding to the costs of an efficient operator. This would serve to promote efficiency and sustainable competition to the benefit of the consumer.

In accordance with regulation 16 of the ECNSR, the price control remedy is therefore to be maintained on Go Mobile, Vodafone (Malta) and Melita Mobile.

In line with previous decisions, mobile termination rates are to be set according to cost-oriented prices[20]. The MCA published a decision entitled "Interconnection Pricing Strategy for the Electronic Communications Sector in Malta"[21] in May 2010 in which it specified the way the cost orientation obligation was to be implemented.

More details on the MCA's 'pure LRIC' cost model are available in a separate decision entitled 'Bottom-up Cost Model for Mobile Networks and Mobile Interconnection Pricing'.

4.5.6 Cost accounting

The cost accounting obligation would enable the MCA to monitor the costs incurred by MNOs in relation to the provision of termination services on an ongoing basis.

This obligation would therefore provide the MCA with the necessary oversight to ensure that MNOs apply fair, objective and transparent methodologies in allocating costs to the identified regulated products.

It would also ensure price controls in the market and prevent potential market failure.

In accordance with regulation 16 of the ECNSR, Vodafone (Malta), Go Mobile and Melita Mobile shall be required to supply detailed information to the MCA regarding the allocation of costs onto different services.

The methodology to be employed by the above-mentioned MNOs for the cost accounting obligation is already set by virtue of an MCA decision concerning the requirements imposed on operators designated with SMP status and having accounting separation obligations[22].

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[20] Cost-oriented mobile voice call termination rates are to be calculated on the basis of costs incurred by a typically efficient mobile network operator in Malta to provide voice termination services.

[21] Link to MCA Decision:

http://www.mca.org.mt/service-providers/decisions/interconnection-pricing-strategy-electronic-communications-sector

[22] Link to MCA Decision:

http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/09-07-accounting-separation-july-09.pdf

The MCA may amend the methodology in accordance with its powers at law and in line with EU obligations and recommendations, following appropriate consultation with all interested parties.

4.6 Responses to consultation and MCA reaction

The MCA identifies the same competition problems for all of the MNOs enjoying SMP. Consequently, the MCA is proposing to impose the same set of remedies on all operators in order to mitigate the said competition problems.

The comments received on the proposed remedies are grouped as follows:

- Access;
- Accounting separation;
- Cost accounting; and
- Price control.

More detail to the responses to consultation and MCA reactions is provided below.

4.6.1 Access

Vodafone argues that although it 'can accept that operators should have an obligation to interconnect with each other', it considers the 'obligation to provide access to associated facilities, or services for the purposes of interconnection as a disproportionate measure…more so in the light of the pure LRIC MTR being proposed'.

The MCA reassures operators that, in proposing the imposition of the access obligation, it has given due consideration to the burden that MNOs carry in complying with this remedy.

The access obligation imposed in this decision is consistent with the current access obligation, which also stipulates that SMP undertakings are obliged to provide access to termination services, whether under the form of interconnection or access to associated facilities or services specifically for the purpose of ensuring interconnection.

The obligation to provide access under this market effectively means that SMP operators are required to give third parties access to specified network elements and, or facilities when reasonable requests for such access are made, as well as negotiate in good faith with undertakings requesting access for the purpose of providing termination (interconnection) services. This obligation is therefore not disproportionate but simply intended to cover all aspects of the interconnection agreement between operators to ensure end-to end connectivity. These aspects are generally covered in the existing Reference Interconnection offer published by all SMP operators.

MNOs should ensure that all reasonable requests for access for the purpose of termination services are expedited in a fair, reasonable and timely manner.

4.6.2 Accounting separation

Here, Vodafone questions the necessity of the obligation of accounting separation in view of the enforcement of the MTR by the MCA, given that it 'is a costly and time consuming exercise' and given that 'there is limited, practical, benefit that appears to be derived from it'.

The MCA recalls that the obligation of accounting separation ensures that operators with SMP keep separate accounts to reflect, as closely as possible, the performance of separate business activities that they operate. In this way, the MCA would ensure that the costs allocated by an operator to an individual mobile service are the actual costs being incurred to provide the respective service.

The MCA is aware of the risk that MNOs designated with SMP embark on cross-subsidisation between services. This may happen through an internal transfer pricing mechanism that is distorted in favour of own retail operations, to the detriment of existing or potential competitors and to the disadvantage of end users purchasing other services. This is more so since all MNOs identified as having SMP are at least triple-play providers. In this scenario, accounting separation would therefore serve to preclude cross-subsidisation and thereby avoid any inefficient pricing strategies that favour discriminatory behaviour. Accounting separation ultimately provides improved transparency in the accounting arrangements of operators and therefore encourages non-discrimination.

Separated accounts may also serve to address requests by MNOs for a revision of the termination rate stipulated by the MCA. This is in line with Article (3) of the EU Commission Recommendation on the regulatory treatment of fixed and mobile termination rates (May 2009), which states that 'NRAs may compare the results of the bottom-up modelling approach with those of a top-down model which uses audited data with a view to verifying and improving the robustness of the results and may make adjustments accordingly'.

The MCA also considers that accounting separation together with a price control measure ensures that wholesale prices are set in an efficient, transparent and non-discriminatory manner.

The obligation of accounting separation is therefore required and justified and is to be maintained.

4.6.3 Price control

Following the analysis carried out in this review and the nature of competition problems identified, the MCA is to maintain the price control obligation on Vodafone, Go Mobile and Melita Mobile, in accordance with Regulation 16 of the ECNSR.

Comments received from local MNOs on the price control obligation can be grouped as follows:

- the justification for pure LRIC-based mobile termination charges;
- the pure LRIC rate for Malta compared to that of EU Member States;
- the impact on the sustainability and future investment of the mobile industry; and
- the timeline for the implementation of the pure LRIC methodology.

This market review is however limited to assess whether a price control obligation is to be maintained upon the designated SMP operators. The conclusion of the MCA in this regard is that a price control obligation on all SMP operators is necessary to ensure efficient cost-oriented mobile termination charges in compliance with the Commission's Recommendation on the regulatory treatment of fixed and mobile termination rates.

Meanwhile, the MCA notes that the issues highlighted by respondents concerning the mobile cost model and the setting of mobile termination charges on the basis of this model are beyond the scope of this consultation.

More specifically, issues regarding the choice and justification for the cost model to be used for the setting of MTRs have already been subject to a separate market review exercise.

The MCA recalls that its decision to adopt a cost model for the setting of local MTRs in line with the Recommendation on termination rates was specified in its decision entitled 'Interconnection Pricing Strategy for the Electronic Communications Sector in Malta' has been published in May 2010[23]. These issues are therefore being addressed and exhausted with the publication of that decision.

Other technical issues related to the specifics of the cost model are instead addressed in a separate MCA decision entitled 'Bottom-up Cost Model for Mobile Networks and Mobile Interconnection Pricing'.

4.6.4 Cost accounting

Vodafone questions the necessity of imposing the obligation of cost accounting on MNOs designated with SMP, given the cost oriented MTR being proposed.

The MCA reiterates that, due to a lack of competition and CBP resulting from the CPP principle and no possibility for network operators to terminate a call other than the network to which the called party is subscribed, MNOs have no incentive to set efficient termination rates through self-initiative. It therefore remains of the view that the imposition of the cost accounting obligation, together with price control, is essential to bring local termination charges down to economically efficient levels.

It is considered that the cost accounting obligation does not constitute an unreasonable burden on MNOs, given that all undertakings are currently under the obligation to support such a system by virtue of the previous MCA decision concerning the provision of wholesale mobile voice call termination.

4.7 Monitoring of future market developments

The MCA considers that it is sensible to keep a close watch on the progress of the wholesale mobile termination markets in Malta.

To this end, the MCA intends to analyse market trends and developments on an ongoing basis, and remains committed to issue a new market analysis at any point in time in response to a significant change in market conditions.

The MCA, in accordance with its powers at law, is also reserving the right to change any of the above mentioned regulatory obligations following changes in the market structure.

[23] Ibid (Footnote 21, page 36).

Annex

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Office for Competition

8 August, 2013

Dr Edward Woods
Chairman
Malta Communications Authority
Valletta Waterfront
Pinto Wharf
Floriana FRN1913

Dear Dr Woods,

The Office for Competition (OC) has been asked to provide its opinion on the review and market analysis concerning the wholesale voice call termination on individual mobile networks in Malta carried out by Malta Communications Authority (MCA).

The OC agrees with the identification and analysis of the markets concerned for the period under review. Nonetheless, the MCA should continually monitor any market developments in this regard.

The OC would like to point out that its views are being submitted in the context of the specific provisions of the SMP guidelines and it reserves the right to re-examine any or all of the issues underlying MCA's recommendations in the light of facts and evidence that may arise in specific future cases before it.

Yours sincerely,

S. Aquilina Zahra

Sylvann Aquilina Zahra
Director General