Review of Wholesale Mobile Termination Rate - 2011

Response to Consultation and Decision

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1 INTRODUCTION

1.1 Background

In August 2010, the Malta Communications Authority (hereafter 'MCA') published a decision entitled "*Review of Wholesale Mobile Termination Rates*" (hereafter 'MTR Decision (2010)'), wherein the MCA established a number of criteria that would determine the interconnection rates in the interim period until the Authority would be in a position to calculate the applicable rates based on a pure-LRIC bottom-up cost model of the Maltese market.

Specifically Decision 2 of the above-mentioned Decision established that:

1. Going forward, the MCA will be using the BEREC Snapshot report instead of the Implementation Report as its data source for its interim benchmarking methodology;

2. In the eventuality that 25% of Member States report rates based on 'pure' LRIC, the MCA will shift its methodology to that based on a target rate calculated from those termination rates emanating from a 'pure' LRIC model. The MCA will kick start a new consultative process comprising, amongst others, of a proposed glide path towards this target rate together with the MCA's proposed dates of when the glide path rates will come into force;

3. In the eventuality that the 25% of Member States do not report rates based on 'pure' LRIC, the MCA will calculate the rate using the absolute average factor excluding the upper 25th percentile (i.e. using the 75% percentile methodology). The MCA will however use the rates published in the BEREC Snapshot report as the data source of this interim benchmark. In this case rates shall remain applicable to a maximum of one year unless Decision 2.2 above comes into force.

Consistent with the above criteria, the MCA surveyed the BEREC Snapshot report[1] for the number of countries reporting a pure-LRIC methodology and it transpired that the representation requirement of a 25% minimum threshold was not met and

[1] Reference is being made to the BEREC Snapshot report as of January 2011 which was the latest available at the time of writing the Proposed Decision.

consequently the methodology would have to be based on point 3 of the same Decision.

The MCA concluded that essentially the alternative methodology referred to criterion 3 would be the same system which established the applicable rates in the MTR Decision (2010), namely calculating the simple average of the lowest 75th percentile[2] of EU member states' rate as reported in the BEREC Snapshot report.

In June 2011, the MCA published a consultation and proposed decision entitled "*Review of Wholesale Mobile Termination Rate"*" (hereafter 'Proposed Decision'). This document proposed a MTR of €0.0418 to be applicable to all operators having been designated with an SMP status in the provision of the mobile termination services market.

The consultation period ended on 30 June 2011, with two operators, Melita plc (hereafter 'Melita') and Vodafone Malta (hereafter 'Vodafone') submitting their formal feedback.

This report on consultation and decision contains a summary of the feedback received from the respondents followed by the MCA's position in relation to these comments; and subsequently, the MCA's decision on the proposed interconnection charges.

Besides, the MCA is also including the Commission's comments following the notification process as stipulated under Article 7 and Article 7A of the Framework Directive.

The MCA takes the opportunity to thank the respondents for their contribution.

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[22] The average of the termination rates reported for the lowest 20 European countries (75% of 26 countries [excluding Malta from the 27 member states] results in 20 countries)

2 SUMMARY OF RESPONSES

The feedback from the respondents is being analysed hereunder:

2.1 Responses Received from Local Operators

2.1.1 Proposed Mobile Termination Rate

In its response, Melita welcomed the fact that the proposed MTR represents a 32% reduction, which translates at a level that is below the EU27 average. This notwithstanding Melita argued that it still continues to be of the view that the speed of reduction is not as fast as it could be. Melita argued that further significant reductions would still be required in order to bring the rate in Malta fully in line with EU best practice. Melita also criticised MCA's decision to use a benchmarking approach based on a 75th percentile average results stating that this translated into a MTR being set at a higher rate than would be the case where it to be set by reference solely to those Member States where best practice pertains in relation to the calculation of MTRs.

Melita contended that a better approach would be to construct a far tighter benchmark, one that only includes the average MTRs of Member States who exhibit best practice in relation to the setting of MTRs suggesting a benchmark exercise based on a lowest 25th percentile that would only include six Member States with the lowest MTRs within the EU at the time the benchmark is set.

Melita also expressed its reservations on the MCA's approach compared to other regulators who have already put in place firm plans to continue pushing down their MTRs.

On the other hand, Vodafone saw the proposed MTR as a drastic reduction arguing that supposedly such decreases should feed through to lower prices for fixed telephone consumers. Vodafone stated that whereas retail mobile rates are decreasing both due to effective competition and reduction in MTRs, the same cannot be said in relation to retail fixed rates for consumers making calls to mobile numbers. Hence Vodafone argued that, being largely a mobile operator, it will inevitably end up suffering from a decrease in revenues as opposed to significant cost savings made by local fixed operators, particularly in view of the lack of competition in relation to fixed to mobile rates.

2.1.2 Implementation of a 'Pure' LRIC Model

Vodafone argued that the implementation of a 'Pure' LRIC model will require mobile network operators to invest significant time, resources and expenses in training their employees and engaging external consultants to assist in these work streams. Hence Vodafone criticised the fact that, given the scale, scope and the competitiveness which exists nowadays in the Maltese market, together with the fact that the major network operators are all striving for more cost efficiency, introducing such model would be an overkill and yet another significant burden on all network operators especially in the light of the relatively small size and unique nature of the Maltese market.

Consequently Vodafone is of the view that LRIC does not represent the most efficient methodology to calculate termination rates, as opposed to benchmarking techniques which are more justifiable and reasonable in relation to the Maltese scenario.

2.1.3 Effective Date of the new Proposed MTR

Vodafone commented on the fact that whereas the Proposed Decision specifies that the rate shall be applicable for a maximum period of one (1) calendar year, the Proposed Decision fails to mention the effective date when the new rate will actually come into force.

2.2 Response received from the EU Commission

In its comments letter, the Commission noted that in setting the 75th percentile methodology, the MCA did not set out why it believes this particular benchmarking methodology appropriately reflects the conditions prevailing in Malta and further noted that inappropriate benchmarks that do not represent efficient cost-based estimates could imply that competitive distortions resulting from inconsistent and above-cost termination rates persist. The Commission recognised the MCA's commitment to be in line with the Recommendation by 2012, and furthermore it invited the MCA to revise the proposed price control methodology by benchmarking with the termination rates of those member states that already apply a pure LRIC methodology or are currently working towards them. Accordingly the Commission noted that the MCA could then comply with the Termination Rates Recommendation by the end of 2012, while at the same time avoiding sudden falls in MTRs in the interim or when the results of MCA's BU-LRIC model are applied.

3 MCA's RESPONSE AND DECISION

3.1 Proposed Mobile Termination Rate

With respect to Melita's comments on the MCA's methodology, the MCA is of the opinion that in its MTR Decision (2010), it had amply explained the underlying rationale of the 75th percentile method as an interim measure, highlighting in particular the flaws related to the 25th percentile alternative advocated by this said operator.

In addition with respect to Melita's appeal to move faster towards the methods of other 'best-practice' operators, the MCA notes that, at the time of writing, the proposed rates are within the glidepath rates set by those member states who to date have already set 'pure-LRIC' target rates. For this reason the Authority strongly feels that its interim methods are already giving results that are in line with best-practice in Europe, since according to the MTR recommendation, this best-practice is defined as rates based on pure-LRIC models.

The above notwithstanding, the MCA will shift its methodology to that based on termination rates or glide paths emanating from a 'pure' LRIC model subject to the normal consultation process.

3.2 Implementation of a 'Pure' LRIC Model

With respect to Vodafone's comment on the burden on the MNOs to build a 'pure' LRIC, the MCA would like to clarify that there is no obligation on the MNOs to build such a Model. As clearly spelt out in the Interconnection Strategy Decision, through Decision 4, the Authority is committed to build the LRIC Model itself. In fact in the said decision, the MCA has set as its primary target to conclude 'pure' LRIC models for both the MTR and FTR respectively by December 2012. The same Decision also stated that the Authority will stagger the building of these models according to the MCA's identified regulatory needs of the markets and hence these will not be built in parallel. Accordingly there is no obligation to build such models by the operators themselves.

3.3 Effective Date of the new Proposed MTR

The MCA, as done in previous years, will mandate the new MTR with effect from a date after the publication of this Decision and not retrospectively.

3.4 Commission's Comments

With regards to the comments raised by the Commission, the MCA notes that the proposed benchmarking methodology reflects the MCA's efforts to eliminate as much as possible the potential for including outliers from its benchmarking calculation. Given Malta's distinctive market characteristics, it is very difficult to construct a representative sample of strictly comparable countries. For this reason, as laid out in the Interconnection Strategy, the MCA's interim benchmarking rationale reflects the hypothesis that termination costs in Malta should be as efficient as the average of those prevailing in the corresponding European member states, after adjusting for the possibility of excessive termination rates (defined as rates lying in the last quartile of the European termination rates distribution).

As a matter of fact, the MCA's proposed rate is not only below the EU average, and hence in line with the Recommendation, but is also well within the rates of those countries which have set a glide path towards the pure LRIC rate. The MCA expects this trend to continue as more reference countries embark on such target rates.

This notwithstanding, the MCA is committed to implement all the possible safeguards to ensure that the Commission's concerns are fully addressed and that at no particular point in time Malta's rate becomes one of the outliers. Consequently the MCA shall endeavour to keep close scrutiny on the BEREC snapshot reports and to affect the necessary adjustment to the MTR in a timely fashion. In this regard, should the next snapshot report fall short of the 25% threshold of pure-LRIC rates set in the Interconnection Strategy, the MCA may consider taking into account those reference rates based on a pure-LRIC target (including those which have set a glide path towards the pure LRIC rate) as suggested by the Commission following the normal consultation process. Consultation on this methodology would be necessary since this would in effect represent a change in the interim methodology laid out in the Interconnection Strategy. Thus the MCA feels that such a change cannot take place at present, but can be accommodated following consultation with all stakeholders in order to safeguard the regulatory certainty of the whole process.

The MCA intends to proceed as stipulated above going forward from the publication of this decision and hence the Authority may call for revisions even before the elapse of the one year from when the proposed rates will come into force. All proposed revisions will be subject to the normal consultation process.

4 MCA'S DECISION ON MOBILE TERMINATION RATE

Decision 1:

After taking into account the feedback from respondents and the EU Commission, the MCA is hereby directing that all operators having been designated with SMP in the provision of the mobile termination services market shall apply the rate of €0.0418 per minute as their MTR with effect from 1 September 2011.

The MCA is committed to do its utmost to bring the Maltese MTR in line with the principles of the EU Recommendation. Hence it is the MCA's intention to keep reviewing the BEREC snapshot reports and to affect the necessary adjustments following consultation.

Decision 2:

Going forward, after taking into account the feedback from respondents and the EU Commission, in the eventuality that 25% of Member States do not report rates based on "pure" LRIC, the MCA may consult on adopting an updated interim mechanism that takes into account those reference rates based on a pure-LRIC target (including those rates which are set on a glide path towards the pure LRIC rate).

This decision shall serve as an advance notice to the market (as per decision 6 found in the Interconnection Strategy) that in the eventuality that 25% of Member States do not report rates based on "pure" LRIC the MCA may consult on an updated interim mechanism to calculate MTRs. This would be done to be able to comply with the Termination Rates Recommendation by the end of 2012, while at the same time avoiding sudden falls in MTRs in the interim or when the results of MCA's BU-LRIC model are applied.

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