



EUROPEAN COMMISSION

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Malta Communications Authority (MCA)  
Valletta Waterfront – Pinto Wharf  
VLT 01 Valletta  
Malta

For the attention of:  
Ms. Patricia Calleja  
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E-mail: pcalleja@mca.org.mt

Dear Ms Calleja,

**Subject: Case MT/2006/0396: Publicly available national telephone services provided at a fixed location for residential customers in Malta;**

**Case MT/2006/0397: Publicly available national telephone services provided at a fixed location for non-residential customers in Malta**

**Comments pursuant to Article 7(3) of Directive 2002/21/EC<sup>1</sup>**

## **I. PROCEDURE**

On 8 May 2006 the Commission registered notifications provided by the Maltese national regulatory authority, Malta Communications Authority (“the MCA”), concerning the markets for publicly available national telephone services provided at a fixed location for residential customers and publicly available national telephone services provided at a fixed location for non-residential customers under numbers MT/2006/0396 and MT/2006/0397 respectively.

A national consultation<sup>2</sup> was carried out between 14 October 2005 and 31 December 2005.

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<sup>1</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (the “Framework Directive”), OJ L 108, 24.4.2002, p. 33.

<sup>2</sup> In accordance with Article 6 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (the “Framework Directive”).

On 23 May 2006, the Commission sent a request for information to the MCA. The response was received on 26 May 2006.

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

## **II. DESCRIPTION OF THE DRAFT MEASURE**

### **II.1. Market definition**

There are two operators in Malta providing national telephone services at a fixed location: the incumbent, fixed operator Maltacom and the cable operator Melita Cable<sup>3</sup>.

In line with the Recommendation, the MCA differentiates between publicly available national telephone services provided at a fixed location for residential customers and publicly available national telephone services provided at a fixed location for non-residential customers. According to the MCA both markets include services provided over PSTN, cable<sup>4</sup>, broadband wireless access<sup>5</sup> and Voice over IP<sup>6</sup>.

The MCA considers that the geographic scope of both markets is national.

### **II.2. Finding of significant market power (“SMP”)**

The main criteria considered by the MCA when reaching its conclusion on SMP include:

(i) market shares expressed in national minutes<sup>7</sup>:

<b>Market shares for non-residential customers</b>	<b>Q 2 2005</b>	<b>Q 3 2005</b>	<b>Q 4 2005</b>
<b>Melita Cable</b>	0,0%	0,0%	0,0%

<sup>3</sup> Maltacom is a PSTN incumbent offering a comprehensive package of telephone services which includes, *inter alia* on-net calls, calls to mobile, dial up internet, Voice over IP international calls and Voice over Broadband internet services. Melita Cable is providing Voice over Broadband which enables its subscribers to make on-net and international calls. Melita Cable is currently negotiating with all network operators for interconnection.

<sup>4</sup> In the MCA’s view, cable can presently be treated as partial substitution (from a demand side perspective) as cable services currently enable only on-net and international calls but is expected to, within the period of the review, become a full substitute.

<sup>5</sup> On 21 October 2005 MCA allocated frequency spectrum for three undertakings. Two licensees have agreed to cover at least 90% of the territory within two years and one licensee has undertaken to cover at least 60% of the territory within two years. None of the licensees have yet launched their BWA service. Since according to MCA, although BWA gives the possibility to provide voice services, these operators will in the beginning concentrate on the supply of broadband data services this technology will have a limited impact on the market during the timeframe of the review. Nonetheless, the MCA considers that since the BWA networks will allow for providing voice services this technology should fall in the same market.

<sup>6</sup> MCA excluded from market definition so called unmanaged Voice over IP (i.e. Skype Classic, Skype Out) where services are conveyed over the public internet and are not able to guarantee the same level of quality as managed Voice over IP.

<sup>7</sup> As at the end of 2005.

<b>Maltacom</b>	100%	100%	100%
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<b>Market shares for residential customers</b>	<b>Q 2 2005</b>	<b>Q 3 2005</b>	<b>Q 4 2005</b>
<b>Melita Cable</b>	0,0%	0,2%	0,9%
<b>Maltacom</b>	100%	99,8%	99,1%

(ii) barriers to entry, (iii) lack of countervailing buying power.

### **II.3. Regulatory remedies**

As regards access to wholesale inputs, Maltacom will be required to continue providing Carrier Selection (“CS”) and Carrier Pre-selection (“CPS”), with supporting remedies concerning non-discrimination, transparency, price control and cost accounting as well as accounting separation.

According to the MCA, the imposition of the above-mentioned remedies are insufficient to obtain effective competition in the relevant markets. Therefore, these remedies will be complemented by the following obligations in retail markets.

- (i) cost orientation of retail prices;
- (ii) transparency and non-discrimination;
- (iii) cost accounting and accounting separation;
- (iv) measures to counter the unreasonable bundling of services.

The MCA intends to maintain (except price cap at retail level) the obligations of cost-orientation and accounting separation imposed on Maltacom<sup>8</sup> in 2002.

### **III. NO COMMENTS**

The Commission has examined the notification and has no comments.<sup>9</sup>

Pursuant to Article 7(5) of the Framework Directive, the MCA may adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

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

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<sup>8</sup> Maltacom is obliged to support a cost accounting system by virtue of a decision published in July 2002. This decision established that operators having a Dominant Market Position should implement cost-based accounting systems based on a Fully Allocated Costs (FAHC) accounting methodology.

<sup>9</sup> Pursuant to Article 7(3) of the Framework Directive.

Pursuant to Point 12 of Recommendation 2003/561/EC<sup>10</sup> the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission<sup>11</sup> within three working days following receipt whether you consider, in accordance with Community and national rules on business confidentiality, that this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours faithfully,  
For the Commission,  
Fabio Colasanti  
Director General

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<sup>10</sup> Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

<sup>11</sup> Your request should be sent either by email: [INFSO-COMP-ARTICLE7@cec.eu.int](mailto:INFSO-COMP-ARTICLE7@cec.eu.int) or by fax: +32.2.298.87.82