



EUROPEAN COMMISSION

Brussels, 22-XII-2006

SG-Greffe (2006) D/208615

Malta Communications Authority
(MCA) 'II-Piazzetta',
Suite 43/44, Tower Road
SLM 16 Sliema
Malta

Fax : +35 62 13 36 846

For the attention of:
Ms. Patricia Calleja

Dear Ms. Calleja,

Subject: Case MT/2006/0549: Wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services in Malta

Article 7(3) of Directive 2002/21/EC¹: No comments

I. PROCEDURE

On 27 November 2006, the Commission received a notification from the national regulatory authority of Malta, *Malta Communication Authority* ("MCA").

The notification covers the wholesale market for unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services in Malta.

MCA carries out a national consultation² in parallel with the Community consultation from 27 November 2006 to 29 December 2006.

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

² In accordance with Article 6 of the Framework Directive.

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 MEASURES

II.1. Market definition

MCA defines the relevant market as wholesale unbundled access, including shared access, to metallic local loops and sub-loops, made available for the purpose of providing broadband and voice services. Access through alternative technologies, *i.e.* cable access *via* cable TV network, digital terrestrial TV, satellite access, 3G, or broadband wireless access is not considered part of the relevant market.

This market corresponds to market 11 of the Recommendation on relevant markets.³

MCA considers the geographic scope of the relevant market to be national.

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

As regards the analysis of the SMP, MCA considers the following criteria: market shares, control over infrastructure difficult to duplicate, vertical and horizontal integration, economies of scale and scope and absence of countervailing buyer power.

MCA indicates that there is currently no third party service provider purchasing wholesale unbundled access from Maltacom, and the market consists only of the incumbent operator supplying its retail part.

II.3 Regulatory remedies

On the basis of the above, MCA proposes to impose the following obligations on Maltacom:

- non-discrimination;
- accounting separation;
- access to and use of specific network facilities;
- transparency (including the publication of a reference offer);
- cost orientation and cost accounting⁴.

As regards cost orientation, MCA states that it will carefully monitor Maltacom's costs which are shared amongst a number of products. It will also ensure that only efficiently incurred costs will be reflected in Maltacom's charges.

³ Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and services markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive, OJ L 114, 8.5.2003, p. 45 (“the Recommendation”).

⁴ As to cost accounting, the MCA's previous decision, which obliges SMP operators to use a Fully Allocated Cost accounting methodology using a historic cost base, remains in force.

III. NO COMMENTS

On the basis of the notification the Commission has no comment.⁵

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

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

Pursuant to Point 12 of Recommendation 2003/561/EC⁶ 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 Commission⁷ within three working days following receipt whether you consider that, in accordance with Community and national rules on business confidentiality, 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,
Philip Lowe
Director-General



⁵ Pursuant to Article 7(3) of the Framework Directive.

⁶ 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.

⁷ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.