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Malta Communications Authority
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For the attention of:
Ms. Patricia Calleja

Dear Ms. Calleja,

Subject: Case MT/2005/0214: Voice call termination on individual mobile networks in Malta

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

I. PROCEDURE

On 4 May 2005, the Commission registered a notification by the Malta Communications Authority ("MCA"), concerning the wholesale market for voice call termination on individual mobile networks in Malta.

A national consultation² runs in parallel with the Community consultation under Article 7 of the Framework Directive.

A request for information was issued on 8 July 2005 and a response was received on 13 July 2005.

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.

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 (the "Framework Directive"), OJ L 108, 24.4.2002, p. 33.

² In accordance with Article 6 of the Directive 2002/21/EC of the Framework Directive.

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Market definition

The notified draft measure concerns the wholesale market for voice call termination on individual mobile networks in Malta, which corresponds to market 16 of the Recommendation on relevant markets³.

MCA considers that there is no demand or supply side substitution for mobile call termination services at wholesale level. In addition, based on the principle of technological neutrality and the characteristics of the service provided, MCA believes that it is reasonable to include 2G and 3G voice call termination services in the same product market. MCA further clarifies that were a new operator to provide only 3G services, MCA would then define a separate relevant market for mobile call termination on a 3G network. On the contrary, where an operator (including a new entrant) provides both 2G and 3G voice call termination services, such services will be included within the same relevant market.

MCA considers that the geographic scope of each market coincides with the geographic coverage of each network. MCA therefore defines two relevant markets:

1. Wholesale voice call termination provided by Vodafone Malta Ltd. (“Vodafone”), and
2. Wholesale voice call termination provided by Mobisle Communications Ltd. (“Go Mobile”).

MCA further states that it will carry out a fresh separate market analysis in accordance with Article 7 of the Framework Directive in case a new entrant starts also providing call termination services on its own network.

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

On the basis of its market analysis, MCA considers that each mobile network operator (“MNO”) in Malta, i.e. Vodafone and Go Mobile, should be designated as having SMP in each respective market. The main criteria considered by MCA when reaching its conclusion on SMP include: (i) market shares, (ii) entry barriers, (iii) price evolution⁴ and (iv) absence of countervailing buying power due to the “calling party pays” (CPP) principle⁵.

³ Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service market within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ L 114, 8.5.2003, p. 45 (the “Recommendation”).

⁴ MCA is of the view that the decrease in mobile termination charges (“MTRs”) occurred in the last three years has been exclusively the result of the regulatory pressure and in absence of regulation mobile operators would not have any incentive to lower their termination charges.

⁵ The “calling party pays” principle makes customers not sensitive to what others are paying to call them and therefore mobile operators do not have an incentive to lower termination rates.

II.3. Regulatory remedies

MCA proposes to impose on Vodafone and Go Mobile the following obligations: (i) access; (ii) non-discrimination against alternative fixed or mobile operators; (iii) transparency (provision to the MCA of information regarding prices, technical specifications and accounting, and publication of a reference offer); (iv) accounting separation; (v) price control and cost accounting⁶.

As to price control and cost accounting, MCA states that the revision of the interconnection strategy is currently under discussion with all MNOs. The issues under discussion include *inter alia* (i) the move from Historic to Current Costs based accounting methodology (using Long Run Incremental Costs (“LRIC”)); and (ii) the introduction of glide paths to facilitate the process of setting cost oriented MTRs. MCA is not however in position to confirm whether the implementation of the new cost orientation methodology will take place within the timeframe of this review⁷. MCA states that in case it decides to implement a new cost orientation methodology, it will notify the Commission accordingly⁸.

III. COMMENTS

The Commission has examined the notification and the additional information provided by MCA, and has no comments⁹.

Pursuant to article 7 (5) of the Framework Directive, MCA may adopt the resulting draft measures 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.

Pursuant to Point 12 of Recommendation 2003/561/EC¹⁰ 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 Commission¹¹ 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

⁶ MCA specifies that these obligations were already imposed on both SMP MNOs under the previous regulatory regime in the form of cost orientation based on Historic costs. The MTRs are currently cost oriented, and are reviewed every year following submission of detailed accounting information by each MNO.

⁷ MCA expects to review this market by no later than December 2007.

⁸ The Commission services expect that MCA will also notify in accordance with Article 7 of the Framework Directive any glide paths further introduced to facilitate the process of setting cost oriented MTRs.

⁹ Pursuant to Article 7(3) of the Framework Directive.

¹⁰ 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.

¹¹ Your request should be sent either by email: INFISO-COMP-ARTICLE7@cec.eu.int or by fax: +32.2.298.87.82.

you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours faithfully,

For the Commission,
Neelie Kroes
Member of the Commission