Market 4 – Wholesale Unbundled Infrastructure Access Market

Identification and Analysis of Markets,
Determination of Market Power and Setting of Remedies

Final Decision

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1. Executive summary

In accordance with Article 9 of the Electronic Communications (Regulation) Act, the Malta Communications Authority (MCA) is obliged, amongst other things, to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions.

This decision sets out the MCA's conclusions on the market review of the wholesale unbundled infrastructure access market in Malta. In carrying out of this analysis the MCA was assisted by independent consultants Analysys Mason.

This decision summarises the findings of a more detailed study that was published for national consultation[1] on the 15th June 2012. During this consultation period the MCA received three responses from Melita plc., GO plc., and Vodafone Malta Ltd.

As required by Regulation 7 of the Electronic Communications Networks and Services (General) Regulations, 2011, the MCA's proposals including the responses received during the national consultation, were notified to the European Commission (the 'EU Commission' or the 'Commission') and to other National Regulatory Authorities (NRAs) as well as the Body of European regulators (BEREC) on the 15th October 2012.

On the 15th November 2012 the Commission concluded its investigation and published its Comments Letter on this case. The MCA is taking utmost account of these comments in this final decision.

Based on the analysis carried out, the MCA arrives to the following conclusions.

Definition of relevant market

On the basis of substitution analysis of relevant products, and in line with the Commission's recommendations, the MCA concludes that the market for unbundled access is national in scope and:

- includes all unbundled access (including shared access) products and services provided via the existing copper network (including access to the sub-loop)
- includes unbundled access services over fibre

- excludes wholesale broadband access services
- excludes wholesale services provided over cable.

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[1] http://www.mca.org.mt/consultations/review-wholesale-broadband-access-markets-consultation-mcac12-0898

Assessment of significant market power

The MCA considers that GO enjoys significant market power (SMP) in the market for the provision of wholesale unbundled access services.

This conclusion is supported by a number of factors including GO's position as sole provider in the market, its vertical and horizontal integration, its economies of scale and scope, and the lack of countervailing buyer power.

Regulation

The MCA proposes to impose the following remedies on GO:

- **Access**:
  - continuation of the existing access remedies for access to the local loop, sub-loop, and co-location
  - negotiate access for related facilities including duct access, dark fibre or Ethernet capacity for the purpose of backhaul for local loop and sub-loop unbundling
  - obligation to provide virtual unbundled local access (VULA) and/or fibre unbundling where fibre to the home (FTTH) / fibre to the building (FTTB) are deployed.

- **Non-discrimination**:
  - application of equivalent conditions in equivalent circumstances to other undertakings providing equivalent services
  - provision of services and information to others under the same conditions (including timescales) and of the same quality as it provides for its own services, or those of its subsidiaries or partners.

- **Transparency**:
  - continuation of the existing obligation to publish (and update where necessary) reference offers related to the various wholesale unbundled access services
  - compliance with the MCA's decisions on unbundling
  - develop a VULA reference offer.

- **Price control and cost accounting**:
    - continuation of the existing cost-orientation remedy applicable to the unbundled copper access, using the same costing methodology as currently applied
    - price control of the VULA access offer based on the principle of cost orientation.
    - continuation of the existing obligation to implement cost-based accounting systems applicable to the both unbundled copper and fibre access.

- **Accounting separation**:
    - continuation of the existing obligation, applicable only to the unbundled copper access.

2. Introduction

The regulatory framework for electronic communications networks and services in the European Union (EU) is designed to create harmonised regulation across Europe and aims at reducing barriers to market entry, while fostering effective competition to the benefit of industry and consumers. The basis for the regulatory framework are five Directives which were first implemented in the EU in 2002 and later amended in 2009[2].

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

As required at law, the MCA is obliged to periodically carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions.

Each market review is divided into three main parts:

- definition of the relevant market or markets
- assessment of competition in each market, in particular whether any undertakings are deemed to have significant market power (SMP) in a given market
- assessment of the appropriate regulatory obligations which should be imposed, given the findings of SMP (NRAs are obliged to impose some form of regulation where there is SMP).

More detailed requirements and guidance on the market review process are provided in the Directives, the ECRA, the ECNSR and in additional documents issued by the European Commission and the MCA.

2.1 Market review methodology

In 2003 the Commission published its first Recommendation on relevant markets, which identifies a set of 18 markets in which *ex ante* regulation may be warranted[3].

2 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.

3 Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European

The Recommendation seeks to promote harmonisation across the EU by ensuring that the same product and service markets are subject to a market analysis in all Member States. In December 2007 the Commission adopted its revised Recommendation on relevant markets[4]. This revised Recommendation presents a much shorter list of seven markets that NRAs are required to analyse for the purpose of ex ante regulation.

The Commission has issued guidelines on market analysis and the assessment of SMP ('SMP Guidelines')[5]. These guidelines set out the principles for use by NRAs in the analysis of markets and effective competition under the regulatory framework for electronic communications networks and services. The MCA has also published its own document[6] outlining the guidelines on the methodology to be used for assessing effective competition in the Maltese electronic communications sector. The MCA is required to take these guidelines into account when analysing a product or service market in order to assess whether the market under investigation is effectively competitive.

As required by Regulation 7 of the ECNSR, the results of these market reviews and the proposed draft measures need to be notified to the Commission and to other NRAs in Europe. The Commission and other NRAs are invited to comment within the one-month consultation period. If the Commission believes that the market definition, proposals to designate an operator with SMP, or proposals to designate no operator with SMP, would create a barrier to the single market, or if the Commission has serious doubts as to its compatibility with Community law and issues a notice under Article 7(4) of the Framework Directive, the MCA is required by Regulation 8 of the ECNSR to delay the adoption of these draft measures for a further period of two months while the Commission considers its position.

The MCA has collected market data from a variety of internal and external sources, including providers of electronic communications networks and services, in order to carry out its market definition and market analysis procedures thoroughly, based on established economic and legal principles.

The MCA commissioned Analysys Mason to assist it in conducting its market review of the broadband markets.

Parliament and of the Council on a common regulatory framework for electronic communication networks and services (notified under document number C(2003) 497) (2003/311/EC). Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:114:0045:0045:EN:PDF]

4 Commission Recommendation of 17 December 2007 on relevant product and service markets 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 communications networks and services (notified under document number C(2007) 5406) (2007/879/EC). Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:344:0065:0069:en:PDF

5 Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03). Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:165:0006:0031:EN:PDF

6 http://www.mca.org.mt/article/market-review-methodology

2.2 Consultation

As required by Regulation 5(7) of the ECNSR, the MCA published the results of the market review and provided market players with the opportunity to comment on the findings prior to adopting its final proposals.

The national consultation period ran from the 15th June 2012 to the 3rd September 2012. In response to the national consultation, the MCA received contributions from three market players: GO plc., Melita plc. and Vodafone Malta Ltd..

GO complemented its contribution with two documents: an opinion paper by Professor Nicolas Petit of the University of Liège, commenting on the MCA's finding in relation to the wholesale broadband access market; and a report by Plum Consulting related to the determination of market power and setting of remedies for fibre access in the market for unbundled access. For sake of clarity, the MCA included these contributions under GO's response.

The three responses to the consultation are referred to in the relevant sections of this decision.

2.3 Liaison with the Competition Authority

Under Article 9 of the ECRA, there is a requirement on the MCA to carry out an analysis of a relevant market within the electronic communications sector. This analysis must be carried out in accordance, where appropriate, with an agreement with the National Competition Authorities (NCA) under Article 4 of the MCA Act.

In line with the co-operation agreement signed on 20 May 2005 between the MCA and the Office of Fair Competition, succeeded by the Office for Competition forming part of the Malta Competition and Consumer Affairs Authority (MCCAA), the MCA has concluded a two-week consultation process with the MCCAA.

The MCCAA agreed with the findings of the MCA and in the comments letter invited the MCA to continue to monitor the market to ensure that market remains competitive.

2.4 Structure of the document

The remainder of this document is structured as follows:

- **Section 3** provides a summary of the market definition of the wholesale unbundled infrastructure access market, including the responses received during the consultation process and the MCA final decision.

- **Section 4** presents an overview of the market analysis of the wholesale unbundled infrastructure access market, including the responses received during the consultation process and the MCA decision with respect to the finding of SMP.

- **Section 5** outlines the MCA's final decision on the approach to regulation and the feedback received during the consultation period.

3. Definition of the wholesale unbundled infrastructure access market

This section provides an overview and summary of the analysis carried out by the MCA to define the wholesale unbundled infrastructure access market in Malta. The findings and conclusions outlined below are explained in further detail in the national consultation document published by the MCA in June 2012, and the response to consultation and draft decision document notified to the EU Commission on the 15th October 2012.

3.1 Main players and the wholesale unbundling access offers

Since 2003, GO has had the obligation to publish a reference unbundling offer (RUO) for local loop unbundling (LLU) and sub-loop unbundling (SLU) as a result of the obligations imposed by the Maltese regulatory framework (prior to Malta's accession to the EU). This obligation was confirmed by the first round of market reviews of the market for wholesale unbundled access in 2006.

In the context of various evolutions of the market, GO's original RUO has been reviewed and amended several times on the initiative of the MCA. For instance, in June 2010 the MCA published a decision following a comprehensive review of GO's RUO to ensure that the RUO remained fit for purpose in light of the changing market circumstances[7].

The RUO sets out that LLU is available in two different forms:

- *full unbundling* – the ISP has full control over the access line of the end user
- *shared access* – high frequencies are allocated only to the ISP on the end user's access line; this means that the end user may retain a subscription to GO's telephony services using the low frequencies.

For both full unbundling and shared access, LLU may be achieved at different levels in the network:

- *at the local exchange level* – this is the 'standard' access to the local loop
- *at the street-cabinet level* – also known as access to the local sub-loop.

The RUO provides a detailed description of the technical specifications required of any equipment used on unbundled lines. It also details the technical and tariff conditions of co-location services and all services associated with the connection of equipment by ISPs.

[7] MCA/D/11-0690, GO's Reference Unbundling Offer: Report on Further Consultation and Statement of Decision on the Review of Sub-Loop Unbundling Related Aspects of the Reference Unbundling Offer, http://www.mca.org.mt/sites/default/files/articles/SLU%20decision%20201211.pdf

As a result, the RUO is organised around the following services offered to ISPs:

- metallic path full unbundling
- metallic path shared access
- metallic path sub-loop full unbundling
- metallic path sub-loop shared access
- co-location and related facilities.

3.2 Summary of the definition of the wholesale unbundled infrastructure access market

As underlined by the Commission, "*the relevant product/service market comprises all those products or services that are sufficiently interchangeable or substitutable, not only in terms of their objective characteristics, by virtue of which they are particularly suitable for satisfying the constant needs of consumers, their prices or their intended use, but also in terms of the conditions of competition and/or the structure of supply and demand on the market in question*"[8].

The definition of the relevant product market is based on an analysis of demand and supply-side substitutability between different products and services which could potentially form part of the market under investigation.

In light of the above, the definition of the relevant product market was arrived at by examining whether:

1. unbundled access (including shared access) and wholesale broadband access services are substitutable
2. unbundled copper access to the local loop and unbundled copper access to sub-loop services are substitutable
3. unbundled copper access and unbundled cable access services are substitutable
4. unbundled copper access and unbundled fibre access services are substitutable.

3.2.1 Unbundled access and wholesale broadband access

Whilst there is no difference in the end retail broadband product that can be provided based on either the wholesale unbundled access or the wholesale broadband access products, there are however fundamental differences between the two services in terms of their functionality at a wholesale level:

- First, with unbundled access, access seekers have full control over the services they offer as opposed to wholesale broadband access which limits the ISPs control

[8] Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C165/03), §44.

of the end product. Wholesale unbundled access permits alternative operators to deploy their own DSL equivalent and have full control of the technology being used, and enables them to provide innovative services that are not limited by the incumbent's own technology. Unbundled access requires significant upfront investment from an ISP, but then offers the possibility of significant economies of scale: the recurring monthly costs are significantly lower with unbundled access than with wholesale broadband access. ISPs using wholesale unbundled access would therefore not switch to wholesale broadband access in case of a SSNIP of unbundled access.

- Secondly, that in the case of a hypothetical increase in the price of wholesale broadband access, it would be highly unlikely that an access seeker would consider taking up an unbundled access offer in the short term given the significant costs involved.

The MCA also considered whether existing or new undertakings would be able to easily enter the wholesale unbundled access market at no significant high costs and in the short term, following a price increase of the wholesale unbundled access offer by a hypothetical monopolist. Given the significant cost involved no credible market entry is foreseen.

Therefore wholesale broadband access and wholesale unbundled access (including shared access) are not substitutable from either a demand-side or supply-side perspective.

3.2.2 Unbundled access to the copper local loop and sub-loop

In its 2007 Recommendation[9], the Commission considers that unbundled access to the copper local loop and to the copper sub-loop is substitutable since the relevant market is defined as the "*wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location*".

In its analysis the MCA concluded that unbundled copper access to both the local loop and the sub-loop provides similar services and speeds. However, unbundled access to the sub-loop allows for higher speeds to be available to a greater number of users because the sub-loop is shorter than the local loop. In any case, both types of unbundled access allow an alternative operator to offer broadband and voices services to end users.

In case of a SSNIP by a hypothetical monopolist supplier on unbundled access to the sub-loop, a new entrant could move to use unbundled access to the local loop, but

9 Commission Recommendation of 17 December 2007 on relevant product and service markets 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 communications networks and services (notified under document number C(2007) 5406) (2007/879/EC). Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:344:0065:0069:en:PDF

the opposite would not be possible because of the high investment needed to achieve unbundled access to the sub-loop. For this reason, unbundled copper access to the local loop and to the sub-loop are substitutable from a demand-side perspective only in one direction.

Unbundled access to the sub-loop is a technological evolution of unbundled access to the local loop and network elements are similar. Therefore, an operator offering unbundled access to the local loop could also offer unbundled access to the sub-loop.

Moreover, at present, the same operator, i.e. GO, offers unbundled access to both the local loop and the sub-loop.

In light of the above, the MCA concludes that unbundled access to the local loop and to the sub-loop are therefore substitutable.

3.2.3 Unbundled copper access and unbundled cable access

In the Explanatory Memorandum to the 2007 Recommendation, the Commission notes that "*the unbundling of cable networks (…) does not appear technologically possible, or economically viable, so that an equivalent service to local loop unbundling cannot be provided over cable networks*."[10]

The analysis of the MCA concluded that the shared nature of cable access means that a potential physical unbundling of cable is impossible, as unbundling a single line would imply unbundling a whole cluster of lines on the same optical node or coaxial amplifier. Indeed, whereas each customer line is dedicated between the central exchange and the end-user in the case of copper/DSL networks, all users on the same optical node / coaxial amplifier use the same physical cable.

As argued in the ERG common position on Bitstream Access paper, a theoretical option for opening cable network would be to use spectrum unbundling[11]. This option consists in allowing an ISP to install its own CMTS and router in the cable operator's head-end and be allocated upstream and downstream channels within the cable RF spectrum. However, this option would not only have operational issues (such as availability of floor space in head-ends), but would also lead to inefficient use of scarce RF spectrum on the coaxial cable medium which would in turn severely hamper the cable operator. This impact of spectrum unbundling on the cable operator has no equivalent in the DSL world, as the service provided by a DSL OAO to an end user based on LLU has no impact on the offer provided by the incumbent to its own end

10 Explanatory Memorandum to Commission Recommendation of 17 December 2007 on relevant product and service markets 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 communications networks and services - C(2007) 5406, p.31

11 http://erg.eu.int/doc/whatsnew/erg_03_33rev2_bitstream_access_final_plus_cable_adopted.pdf

users. This explains why this theoretical option has never been implemented by any cable operator in the world and is deemed impractical and unreasonable.

In addition, even if a wholesale cable network infrastructure access product existed, and in the event of a SSNIP of wholesale unbundled copper access, an ISP would not switch to an equivalent cable offer since the cable operator cannot offer a dedicated line on which the ISP would be able to install the equipment of its choice. This is only possible with unbundled copper access.

Based on the above, the MCA concludes that wholesale unbundled access cannot be provided over the cable network. Therefore, the MCA considers that unbundled copper access and unbundled cable access do not fall within the same market.

3.2.4 Unbundled copper access and unbundled fibre access

The definition of Market 4 given by the Commission in its 2007 Recommendation is not limited to metallic loops and sub-loops and includes all the relevant active and passive infrastructures on the basis of the principle of technological neutrality. Market 4 is defined as "*wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location*". In addition, in its NGA Recommendation,[12] the Commission highlights that the review of Market 4 and Market 5 should take account of next-generation access (networks).

Fibre is currently being deployed in Malta and is likely to replace the copper network in the future. From an economic point of view, it will be difficult to duplicate this infrastructure, similarly to the fact that the unbundled copper network cannot currently be duplicated.

Similar competitive constraints exist between unbundled copper access and unbundled fibre access since the two access networks will be capable of offering these unbundling services.

The MCA considers that where the two products co-exist, there will be one-way substitutability: in case of a SSNIP by a hypothetical monopolist of unbundled copper access, a competitive operator will seek unbundled fibre access, but probably not the other way round.

The MCA considers that unbundled fibre access and unbundled copper access services form part of the same relevant product market when the two products co-exist. This is because fibre access is a technological evolution of local unbundled access, similarly to the evolution from unbundled access to the local loop to unbundled access to the sub-loop.

12 Commission Recommendation of 20 September 2010 on regulated access to NGA (2010/572/EU), article 5. Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:251:0035:0048:EN:PDF.

This is in line with the experience and practice in other EU countries since the publication of the Commission's NGA Recommendation.

3.2.5 Relevant geographical market

The Commission guidelines on market analysis and the assessment of SMP[13] (SMP Guidelines) set out that a relevant geographical market comprises the area in which the undertakings concerned are involved in the supply of, and demand for, products and/or services, in relation to which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different to those areas.

According to the SMP Guidelines, the definition of the geographical scope of the relevant market in the electronic communications sector is generally determined with reference to the area covered by a network and to the existence of legal and other regulatory instruments.[14]

The existing conditions of competition are homogeneous in Market 4 at a national level. GO is the only operator in Malta that provides unbundling access services; its copper network covers the whole country; the characteristics of its prices and products are homogeneous at the national level; and the regulatory remedies are imposed at the national level.

In light of the above, the MCA considers that the geographical market for the relevant product and service markets under consideration is national in scope.

3.3 Decision on the market definition

From the analysis outlined above, and in line with the Commission's recommendations, the MCA concludes that Market 4 is national in scope:

- includes all unbundled access (including shared access) products and services provided via the existing copper network (including access to the sub-loop)
- includes unbundled access services over fibre
- excludes wholesale services provided over cable.
- excludes wholesale broadband access services

13 Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03), paragraph 56. Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:165:0006:0031:EN:PDF.

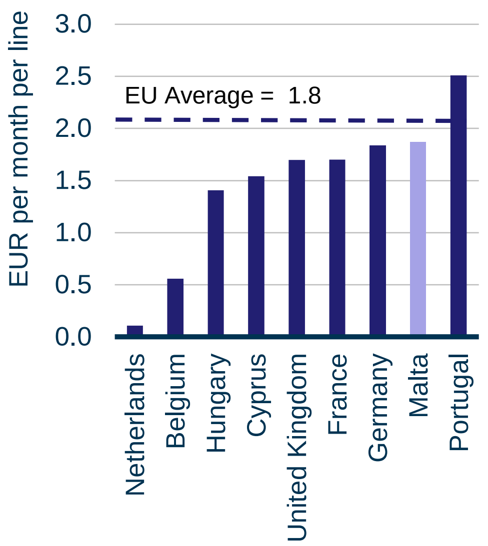
14 *Ibid.*, paragraph 59.

4. Analysis of the wholesale unbundled infrastructure access market

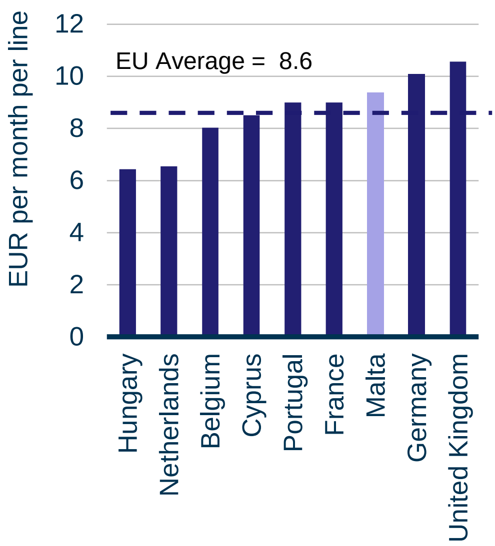
4.1 Background to the unbundled infrastructure access market

GO is the sole provider of wholesale unbundled access in Malta. However, to date, no unbundled lines are in operation due to a lack of interest from market players. In early 2011, Vodafone entered into negotiations with GO regarding the operational conditions for LLU, and eventually signed an agreement on the unbundling of a number of exchanges. However at the end of 2011 Vodafone abandoned the project as GO was migrating to fibre to the cabinet (FTTC) and Vodafone's plans did not include the deployment of SLU.

The prices for full unbundling and shared access in Malta have remained stable since 2006 at EUR9.37 and EUR1.87 per month per line for full unbundling and shared access, respectively. When compared with the European average, the prices in Malta are close to the European average as shown below.



Shared access prices in benchmark countries, Oct 2011 [Source: MCA, EU Commission]



Full unbundling prices in benchmark countries, Oct 2011 [Source: MCA, EU Commission]

4.2 Summary of the analysis of the wholesale unbundled infrastructure access market

Given that GO is the sole provider of wholesale unbundled access in Malta, it implies that GO enjoys SMP in the provision of such services, even though no unbundled lines are currently in operation.

Even if GO's self-supplied lines are included in the MCA's definition of the relevant market, this would imply that GO has 100% market share in the wholesale market for unbundled access, which would also suggest that GO has SMP in this market.

4.2.1 Other factors effecting competition

To substantiate further the conclusion that GO holds a position of SMP, the MCA analysed a number of other factors that have an impact on competition in this wholesale market.

Economies of scale and scope

Given the ubiquity and the high density of its network, GO enjoys economies of scale in the provision of wholesale unbundling services. GO owns all the copper pair connections in Malta and therefore it is likely that the unit cost of providing the wholesale input for this service would be lower than that of a new entrant.

The same infrastructure used for the provision of unbundled access can be utilised for the provision of other services such as retail or wholesale telephony. This is especially the case as GO has a ubiquitous network and is in turn present in a number of markets such as the market for retail access to the public telephone network provided at a fixed location. Thus, the MCA considers economies of scope contribute to GO's ability to provide wholesale unbundled access at significantly lower costs than any other new alternative provider.

Sunk costs and infrastructure not easily replicable

Replicating GO's fixed access network involves significant sunk costs that make such a venture impossible with the timeframe of this review. These costs are principally related to digging trenches or building poles to lay cable in or above the ground.

To date, no operator in Malta has deployed any unbundled lines. For this reason, it is unlikely to be economically feasible for any new entrant to replicate GO's network infrastructure for the provision of wholesale unbundled lines.

Vertical and horizontal integration

GO's strong position in this market is further accentuated by the fact that GO operates in a number of other fixed markets and provides a wide range of services over its infrastructure. As a result, a new entrant would find it difficult to enter the market for unbundled access and erode GO's strong position in this market within the time frame of this review.

Barriers to switching

The competitive advantage of the incumbent operator may be reduced when customers have the option to switch to another supplier. As noted earlier, it would be very difficult for a new entrant to replicate GO's infrastructure due to the economies of scale and scope that GO enjoys, as well as the significant sunk costs the new operator would have to incur. This presents a barrier for customers to switching from GO to another service provider at the wholesale level. As a result, GO faces no competitive threat from alternative operators in Malta in terms of customer switching.

Countervailing buyer power

GO is the sole provider of LLU in Malta. This implies that any large company making use of wholesale unbundled lines and which also purchases a suite of other wholesale services from GO could not exert sufficient countervailing buyer power to pose a serious price constraint on the price of wholesale products in the absence of regulation. In the absence of a feasible alternative, GO would not face any countervailing buyer power from its customers.

4.2.2 Prospective analysis

The MCA considers that the following points may have an impact on the market within the timeframe of the current market review:

- GO's roll-out of FTTC/H
- the Maltese government's FTTH initiative.

GO's roll-out of FTTC/H

At the time the consultation document was published in June 2012, GO had an extensive deployment of FTTC but had not started any FTTH deployment.

This FTTC deployment has a significant impact on the market for unbundled lines in Malta, as access to the local loop from the local exchange may no longer be available as exchanges are closed down. This means that the access to the sub-loop is likely to become the main unbundling product offered in Malta. This is the main rationale underpinning the amendments proposed by the MCA in its notification submitted to the Commission on 2 November 2011 concerning the remedies to be imposed on Market 4 in Malta.

A further development happened in October 2012, when GO announced the launch of its FTTH network in Malta under the brand name '*rapido*'[15]. As at the date of publication of this decision, GO has confirmed that they have deployed FTTH in Tal-

[15] http://www.go.com.mt/Default.aspx?ID=2234

Mirakli area in Lija, which covers a very small geographic area with less than 300 residential units. GO has also deployed FTTH in some other upmarket multi-dwelling developments which in total account for around 1000 connections passed.

In this final decision especially the remedies section, the MCA is taking into account this new development, whilst at the same time confirming the analysis and conclusions put forward in the consultation document.

The Maltese government's FTTH initiative

The Maltese government is promoting the roll-out of a country-wide open-access FTTH network, based on co-investment and government subsidies. If several market players, including GO, take part in this initiative, this may have a significant impact on the analysis of Market 4. Indeed, "*depending on the characteristics of the arrangement between the co-investors, the scheme can result in situations that are close to a monopoly or situations that are close to competition if the agreement can ensure efficient competition and grant partners sufficient independence*",[16] according to the BEREC.

The MCA will therefore monitor the forthcoming developments and the impact they may have on the market for unbundled access closely.

4.3 Decision on the assessment of SMP

Based on the analysis and evidence above, the MCA considers that GO enjoys SMP in the market for wholesale unbundled infrastructure access services.

This conclusion is supported by a number of factors including GO's position as sole provider in the market, its vertical and horizontal integration, its economies of scale and scope, and the lack of countervailing buyer power.

16 Draft BEREC report on co-investment and SMP in NGA networks, 8 December 2011

5. Regulation

In accordance with Regulation 5(4) of the ECNSR, where an operator is designated as having significant market power in a relevant market, either individually or jointly with others, the MCA is obliged to impose on such operator appropriate regulatory obligations, referred to in sub-regulation (2) of Regulation 5 of the ECNSR, or to maintain or amend such obligations where they already exist.

Following the market analysis, the MCA concluded that GO holds SMP and therefore regulatory obligations need to be imposed to address any market failures that may arise in the market.

In accordance with Regulation 11(4) of the ECNSR and Article 8.4 of the Access Directive, the remedies set out below are based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 4 of the ECRA.

5.1 Potential competition problems

The MCA identified that as a result of the SMP position held by GO in the market there is a risk that GO may engage in discriminatory practices and/or exercise either vertical or horizontal leveraging.

If unregulated GO may engage in both price and non-price discrimination that would effectively foreclose market entry. The MCA believes that non-price leveraging strategies such as denial of access, the discriminatory use or withholding of information, delaying tactics, quality discrimination and the imposition of undue requirements on, and with respect to, potential alternative service providers at the downstream level, may contribute significantly to the creation of a non-competitive environment.

Without proper regulation, GO may resort to pricing strategies that give rise to a margin squeeze. GO is also able to access economies of scale and scope that are not so readily available to other operators competing on the downstream market, and therefore GO may exercise additional pressure on the margins of these operators. GO may also use other price-leveraging strategies such as price discrimination and cross-subsidisation.

The MCA considers that horizontal leveraging applies when the dominant undertaking uses its position in one market to exert undue influence on other markets at the same level in the value chain. This form of leveraging can be exercised by GO as it operates in a number of horizontal wholesale markets and can potentially leverage its power from one market to another.

5.2 Summary of remedies proposed at consultation stage

In the June 2012 consultation document, the MCA proposed to maintain all existing obligations incumbent on GO in relation to LLU and SLU, namely:

- access for LLU and SLU and co-location services
- transparency
- non-discrimination
- price control and cost accounting; and
- accounting separation.

In order to facilitate further the deployment of SLU and LLU, the MCA proposed to supplement these existing remedies with an obligation to provide access to backhaul facilities specifically for unbundling purposes, which includes access to Ethernet connections, dark fibre, and duct access. GO is required to negotiate in good faith and on a commercial basis with access seekers requesting such backhaul services. The MCA will intervene to set terms and conditions (including prices) only in the case these commercial negotiations fail.

Given that fibre is included in the market, the MCA also proposed a set of new remedies that are to be applicable to fibre. These remedies included:

- access for fibre unbundling in case of point-to-point deployment, or VULA in case of PON deployment
- access to backhaul facilities for unbundling purposes, including Ethernet connections, dark fibre, duct access
- transparency
- non-discrimination; and
- price control based on principle of cost orientation.

5.3 Responses to Consultation and the MCA's replies regarding remedies

In their submissions, Melita and Vodafone requested the MCA to define additional remedies on fibre access, such as more-specific access obligations, and more details about which obligations would be imposed, and when. In particular, Melita and Vodafone both suggested that additional remedies should be imposed on fibre access, such as virtual unbundling local access (VULA or VUA), cost accounting and accounting separation. Melita also put forward the requirement for GO to transparently publish detailed and periodic updates about its network upgrades.

On the other hand, GO argued (through Plum Consulting's report) that cost orientation should not be imposed on fibre access for the following reasons:

- cost orientation is in practice difficult to apply to fibre access given the low and uncertain demand
- cost orientation would limit the scope for service-price differentiation of wholesale fibre access, which is good for the market
- absence of cost orientation would reduce incentives to retain a high retail market share through greater return at wholesale level, and
- the recently announced Commission policy position has changed with regard to cost orientation on fibre.

At the time of the national consultation and the notification to the Commission, no FTTH network had been rolled out in Malta. In particular, the technical architectures for FTTH deployment (e.g. GPON FTTH or point-to-point FTTH) were not known. It was therefore premature to impose specific access obligations – which typically may take the form of fibre unbundling or VULA, depending on the technical architectures deployed.

In addition, the MCA argued that whilst there should not be any "regulatory holiday" with regard to fibre access given GO's SMP position in Market 4, it would have been unjustified and disproportionate to impose a significant number of burdensome obligations at that stage. Nevertheless, the MCA believes that a stable and predictable regulatory framework is beneficial for the entire market.

Given that FTTH deployment has now materialised, albeit on a very limited scale, the MCA is now in a position to provide further clarity on the remedies that will be imposed on fibre. Nevertheless, the MCA still believes that the best way of defining effective fibre access obligations would be via ongoing discussions with all interested stakeholders and the carrying out of separate detailed consultations on the remedies in question. These obligations and way forward are being discussed in the next sections.

Vodafone also argued that all the components for local loop unbundling (LLU) and sub-loop unbundling (including access to dark fibre, to ducts, and to cabinets) should be available at cost-oriented prices.

As outlined in the consultation document, it is part of the proposed MCA obligations that access to such backhaul remedies and other ancillary remedies should in principle be based on costs. However, in the current context where no operator purchases local loop unbundling from GO, it would appear disproportionate to require GO to publish the detail for access to ducts and direct fibre in the RUO. The MCA favours commercially negotiated agreements, and only if negotiations fail does the MCA plan to intervene on a case-by-case basis. The MCA does, however, reaffirm its commitment to working hand in hand with any undertaking that is interested in deploying LLU in Malta.

Melita and Vodafone both commented on the fact that the price of full LLU and shared access has remained stable for the last six years, and called upon the MCA to review these rates downwards.

Even though at present there are no active LLU operators in Malta, the MCA has continuously kept under review the prices of unbundled local loop and sub-loop. From the information available to the MCA it is clear that these prices are justified and are in line with prices charged in other EU member states as indicated above.

Given that at present no alternative operator is making use of unbundling products, the MCA believes that there is no need to revise the prices of such products. This view is also supported by the EU Commission in that it does not advocate a substantial reduction in the prices of LLU in the current context of NGA roll-out[17].

In addition, the MCA has finalised its LRIC model for both the core and access network of an efficient fixed operator, through which it can oversee the prices of access products. The results of the model reveal that the prices of unbundled local loop or sub-loop are in line with that of an efficient operator and therefore do not need to be revised for the time being.

In its contribution, Vodafone predicted that GO may roll out DSL vectoring techniques in an attempt to increase DSL speeds further to compete with Melita. Vodafone pointed out that the roll-out of DSL vectoring would make sub-loop unbundling impossible from a technical perspective, thus further foreclosing the market to new entrants. As a conclusion, Vodafone urged the MCA to consider putting forward specific remedies in order to safeguard the regulatory remedies within the wholesale unbundled market.

The MCA notes Vodafone's worries and confirms that there has been a debate at European level on the technical compatibilities (or lack thereof) in relation to DSL vectoring and SLU[18]. However, in Malta, GO has made no announcement and disclosed no plan to roll out DSL vectoring. Furthermore, no operator is currently using LLU and/or planning to use sub-loop unbundling to the knowledge of the Authority. The MCA will therefore monitor developments closely and in the case that DSL vectoring is announced, the MCA will assess whether any action will be required to safeguard market entry, taking into account the current state of European regulatory practice regarding DSL vectoring and the extent of (or interest in) the roll-out of sub-loop unbundling in Malta.

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17 "[…] given the significant competitive relationship between copper and NGA networks, we are not convinced that a phased decrease in copper prices would spur NGA investment", *Enhancing the broadband investment environment – policy statement* by Vice President Kroes, 12 July 2012.

18 *Policy orientations to reach the European Digital Agenda targets*, pp. 17 and 18, Analysys Mason expert report for Telefónica and Telecom Italia, available at http://www.rcysostenibilidad.telefonica.com/blogs/wp-content/uploads/2012/06/Policy-orientations-to-reach-the-European-Digital-Agenda.pdf

5.4 The EU Commission's Comments Letter and the MCA's replies

On the 15th November 2012 the EU Commission closed its Phase 1 investigation into the case MT/2012/1374 with a number of comments. In its letter the EU Commission:

1. invites the MCA to revise the proposed fibre access obligation, and to make it immediately applicable to access seekers
2. in order to ensure transparency, a reference offer should also be provided by the SMP operator in relation to fibre access
3. invites MCA to impose a virtual access product on the SMP operator's FTTC infrastructures that would be maintained even after the migration period, should SLU obligation not prove sufficient to address competition problems
4. invites MCA to review its costing methodology for the setting of copper access prices, also in the light of the forthcoming Recommendation on Non-discrimination and access pricing; and
5. suggested that the MCA could consider lifting the cost orientation obligation of fibre as soon as the following safeguards are met:
    - Equivalence of Inputs (EoI)
    - Transparency based on KPIs and external audits
    - Replicability of fibre based retail products
    - Accounting separation covering fibre products
    - Proper price constraints coming from cost-oriented copper prices or significant competitive constraints from alternative infrastructures.

The MCA has taken full account of all the EU Commission comments and shall deal with each comment in turn prior to setting its final decision on the remedies applicable on GO.

With respect to the first two points raised by the Commission, the MCA agrees that once GO has launched its FTTH network it will be in the best interest of the market to clearly set the fibre access obligations immediately when this decision comes into force. Such an approach was also put forward by the MCA in the consultation document in order to ensure continuity in the provision of unbundled infrastructure access should fibre be deployed.

According to the information provided by GO, the current FTTH deployment is based on a PON configuration. Consequently, as stated in the consultation document, the MCA is imposing an obligation on GO to negotiate in good faith and provide virtual unbundling access (VULA) to any access seeker making a request for fibre access[19]. To complement this decision the MCA shall also start working immediately, in consultation with GO, on the development of a reference offer for fibre access. Details on the implementation of these remedies will be provided in the next section.

The MCA has also considered in detail the EU Commission's comment in relation to the imposition of a permanent rather than a temporary virtual access solution (TVA) on GO's FTTC network. As part of the ongoing revision of the RUO, the MCA felt the need to impose the TVA solution in order ensure a smooth transition during the migration to an FTTC network. Once the transition to FTTC is completed, the scope of this remedy becomes redundant as the wholesale access product that would be required by an access seeker is sub-loop unbundling – a product which is already offered by GO. Consequently, the MCA does not consider the extension of the current TVA to a permanent basis as being a justified and proportionate remedy. Furthermore, the MCA believes that going forward, and in line with the ladder of investment principle, an access seeker should be opting for VULA/fibre unbundling given that GO has started rolling out the FTTH network. The MCA believes that fibre is the future and consequently any new access seeker (also noting that at present there are no LLU/SLU operators) would find the VULA/fibre unbundling as more attractive than the TVA. The MCA will therefore continue to impose the TVA solution in its current form for those cabinets which are still to be upgraded to FTTC.

In relation to the comment on the revision of the costing methodology for the setting of copper access prices, the MCA has again assessed whether such a change would be justified and lead to any significant benefits in the market. As stated earlier the LLU and SLU prices in Malta are within the EU average and in some instances such as for the shared access prices are significantly lower than the EU average. Therefore in terms of absolute level of pricing the MCA does not see any urgent need to change this methodology. Furthermore, the MCA has also recently completed its LRIC model for the fixed access network and the copper access prices have been confirmed by the model. This suggests that the current prices reflect those of an efficient operator. The MCA therefore does not believe that the changing of the costing methodology is justified at this time.

Finally the MCA has taken note of the EU Commission's invitation to consider lifting the cost orientation when the conditions listed above are met. At the outset, the MCA considers that most of these conditions are not met at present and it is unlikely that this situation will change with the timeframe of this review. Furthermore, considering the fact that FTTH coverage is still negligible and that the full implementation of EoI involves significant time and effort by both the incumbent and the regulator, the lifting of cost orientation at this stage would be highly premature. The MCA shall

[19] In areas where GO decides to deploy a point to point fibre network, the MCA reserves the right to impose fibre unbundling obligations. The details of such obligation would be set out on a case by case basis and will be set by the MCA in due course and following appropriate consultation.

therefore assess what the forthcoming Recommendation on non-discrimination and costing methodologies will propose in relation to EoI and access pricing, and will re-evaluate its position should market realties require. Nevertheless, although at present the MCA shall be using the cost orientation principle to set access prices, the MCA may consider using alternative pricing methodologies should it see that these are justified and lead to a positive market outcome.

5.5 Decision on the imposition of remedies

The MCA has concluded that GO holds SMP in the market for wholesale unbundled infrastructure access and shall therefore comply with the following obligations.

5.5.1 Access for copper products and services

In accordance with Article 15 of the ECNSR, GO shall:

- continue to offer wholesale unbundled access to the local loop and sub loop (including shared access) and associated facilities, and accommodate reasonable requests for access to service variants
- give OAOs access to specified network elements and/or associated facilities, where such access is required for the purpose of the provision of wholesale unbundled access to the local loop or sub loop
- provide co-location or other forms of facility and site sharing, where applicable for the purpose of unbundled local loop and sub loop services.
- provide access to backhaul services for the purpose of unbundling of the local loop and sub loop, including Ethernet services, dark fibre and duct access.

GO is therefore required to negotiate in good faith with undertakings requesting any of these access services.

The MCA believes that GO should provide the necessary information relevant to the access obligation to OAOs. As a consequence, GO shall provide access to technical interfaces, protocols or other key technologies that are necessary for the interoperability of services, and the operational support systems or similar software that is necessary to ensure fair competition in the provision of unbundled local loop services.

In particular, GO is to offer service level agreements (SLAs) to access seekers with respect to the provision of access to the local loop. This provides alternative operators with certainty as to the supply and repair of the wholesale input and hence allows them to compete in the downstream market.

GO must provide all the aforementioned access-related remedies in a fair, timely and reasonable fashion and in conformity with the appropriate provisions of its RUO.

5.5.2 Access for fibre (FTTH) products and services

GO has started to deploy an FTTH network based on a PON configuration. In accordance with Article 15 of the ECNSR the MCA is therefore directing GO to offer a virtual unbundling local access (VULA) product where the FTTH network has been deployed[20].

GO is required to negotiate in good faith with access seekers making a reasonable request for VULA access services. Where negotiations fail, the MCA shall intervene to determine whether such a request was reasonable or otherwise. In case of a dispute between the parties, when assessing the reasonableness or otherwise of a request for VULA access, the MCA shall take into consideration the technical and commercial terms under which the request is being made, as well as the access seeker's necessity for such a wholesale input. The MCA shall consider each request on a case by case basis.

The obligation to negotiate a VULA access offer shall come into effect from the date of publication of this decision.

Given the very recent announcement of the FTTH deployment, and the fact that a VULA offer will take some time to be compiled by GO and approved by the MCA, the MCA is directing GO to engage into commercial negotiations with access seekers until such time that a regulated VULA offer is completed. If during this period a commercial agreement is reached between GO and an access seeker, the MCA will consider taking this agreement as a basis for the VULA offer, subject that this is also provided to other access seekers on a transparent and non-discriminatory basis. The MCA maintains the right to revise, amend and effect changes to this offer should such course of action be required.

Following the publication of this decision the MCA shall immediately start a consultative process with GO in order to establish the technical aspects and terms and conditions of the VULA offer.

5.5.3 Non-discrimination

In accordance with Regulation 13 of the ECNSR, GO, as a vertically integrated provider, is obliged to:

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

[20] Or fibre unbundling should GO decide to deploy a point to point FTTH network.

- provide services and information to access seekers under the same conditions (including timescales) and of the same quality as it provides for its own downstream provider.

The obligation of non-discrimination covers both price parameters as well as non-price parameters. This obligation ensures that GO does not withhold information, employ delaying tactics, impose undue requirements, provide low or discriminatory quality, engage in strategic design of products, and make discriminatory use of information which would put competing providers, and in turn consumers, at a disadvantage.

This obligation shall apply equally to copper based access products as well as fibre based products.

5.5.4 Transparency for copper products and services

In accordance with Regulation 12 of the ECNSR GO is required to:

- continue to maintain and publish a reference unbundling offer (RUO) for unbundled local loops and sub loops and associated facilities

- give a detailed description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices

- comply with its obligation to provide the minimum list of items to be included in a reference offer as set out in the Third Schedule to the ECNSR

- continue to provide and publish appropriate descriptions, order forms and processes for unbundling services, the details of which are to be determined on a case-by-case basis

- continue to be compliant with the MCA's decision related to local loop unbundling and GO's RUO, in particular as regards the provision of information related to its main distribution frames (MDFs) and co-location facilities, SLAs, timelines and determination of charges not established *a priori*.

The MCA reserves the right to specify the precise information to be included in the RUO, the level of detail required and the manner of publication.

In relation to access to ducts and dark fibre specifically serving as backhaul to local loop and sub-loop unbundling, GO is not required to publish in the RUO the detailed conditions for access to these services. The technical conditions and pricing related to duct access and dark fibre are subject to commercial negotiations and the MCA may intervene on a case-by-case basis in the event of failed negotiations. This is without prejudice to any other general obligations at law that may be applicable to the sharing of passive infrastructure.

In respect of Ethernet capacity for the purpose of backhaul services, GO is directed to follow all the conditions set in the decision entitled '*MCA decision on the definition, assessment of competition and regulation of leased line markets'.*[21] In relation to the pricing for Ethernet connections GO shall use the regulated pricing structure as set by the MCA. The proposed prices are currently under consultation - '*Local Dedicated Capacity: Pricing of Leased Lines and Ethernet Connections'.*[22]

5.5.5 Transparency for fibre products and services

The MCA has already taken steps to ensure that GO's RUO reflects the migration to FTTC. GO's RUO shall continue to be compliant with the MCA's decision of November 2011 that sets out the rules that regulate GO's ongoing migration to FTTC, in particular the obligation by GO to inform OAOs in advance of any exchange decommissioning. GO shall also continue to comply with the TVA obligation in the current form.

Regarding the VULA obligation, as stated earlier on the MCA shall immediately start working with GO in order to develop a VULA reference offer covering its FTTH network. The MCA is directing GO to provide a VULA reference offer to the MCA by no later than 31st December 2013. The MCA shall during this period consult with GO on the exact details that need to be set in this reference offer.

As stated earlier on, in the case that GO and any access seeker conclude a commercial agreement for VULA access the MCA will consider adopting such agreement as the reference offer. In the case that during this period no access is requested or no agreement is reached, GO shall provide the MCA with its VULA offer by the 31st December 2013.

In addition to the above, GO is also obliged to continue to provide detailed quarterly updates to the MCA on its network upgrade in particular on any extensions of the rollout of FTTH. Whilst, the MCA has already informed GO on the type of information that it needs to provide, the MCA reserves the right to make further changes to such requests.

5.5.6 Price control and cost accounting

In light of the risk that GO may charge excessive prices for wholesale access, the MCA shall continue to impose the obligation of cost orientation on GO for the setting of prices for local loop and sub loop access services. In setting these copper access prices the MCA shall continue using the same costing methodology as currently applied.

21 http://www.mca.org.mt/service-providers/decisions/mca-decision-definition-assessment-competition-and-regulation-leased

22 http://www.mca.org.mt/service-providers/consultations/local-dedicated-capacity-pricing-leased-lines-and-ethernet

As stated earlier, GO has the obligation to negotiate in good faith all reasonable requests for access in relation to duct access and dark fibre for the purposes of backhaul services. The MCA believes that access to these facilities should be granted on commercial terms. Consequently, GO is not obliged to publish in its RUO the prices of the duct access and dark fibre products. Nevertheless, in the event that commercial negotiations fail the MCA shall uphold the principle of cost orientation to set the prices for duct access and dark fibre products used for backhaul on a case by case basis.

The MCA shall also uphold the principle of cost orientation when setting the price of VULA access as set forth in the Commission's NGA Recommendation[23]. However, in the event that a VULA offer is concluded on commercial terms the MCA will consider adopting that agreement including the prices set therein, as a basis for the reference VULA offer. In addition, where deemed necessary and justified, the MCA may decide to adopt other forms of price control for the setting of VULA prices - such as through the use of economic replicability tests - should this be in the interest of consumers. Any such changes to the price control obligation will be duly consulted upon with all stakeholders prior to coming into effect.

In case that the MCA will have to set the price for VULA, in accordance with Regulation 16 of the ECSNR, and in order to encourage FTTH investments by GO, the MCA shall be taking into account the provisions on profitability as stated in the NGA Recommendation.

In order to supplement the cost orientation obligation, GO shall continue to apply a cost accounting system which will provide the MCA with detailed information regarding GO's product costs and ensure that fair, objective and transparent methodologies are followed by the operator in allocating costs to the identified regulated products. GO shall continue to support such a system by virtue of the MCA decisions on the implementation of cost-based accounting systems[24]. These decisions will remain in force until such time as the MCA issues new guidelines. The cost accounting obligation shall also be applicable to fibre based products.

5.5.7 Accounting separation

In accordance with Regulation 14 of the ECNSR, GO shall continue to apply the present accounting separation system for copper access services. In this regard, GO

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23 Commission recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA), (2010/572/EU), §25

24 Implementation of Cost Based Accounting Systems for the Telecommunications Sector – Report on Consultation and Decision – July 2002; Notice n°173 appearing in Government Gazette on 20th February 2004

shall continue to be subject to the accounting separation obligation described in the MCA decision on Accounting Separation[25].

Given that the FTTH deployment and take-up are still negligible, the MCA believes that it is not proportionate to extend the accounting separation to cover fibre access products at this very early stage of deployment. The MCA believes that such a burden would be disproportionate at this stage, as the costs would outweigh the practical benefits resulting from implementation of this remedy. Nonetheless, the MCA reserves the right to impose the accounting separation obligation should it consider that the market has developed enough to warrant such a change.

The MCA will continue to monitor the market, in particular the deployment of FTTH by GO, to ensure that the remedies set above remain justified and proportionate. The MCA reserves the right to revise any of these obligations at any time in line with changing market realities.

25 Accounting Separation and Publication of Financial Information by Undertakings having Significant Market Power in the Electronic Communications Sector - – Report on Consultation and Decision of July 2009