Review of Wholesale Mobile Termination Rates

Response to Consultation and Decision

6th August 2010

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Contents

1 Introduction

In May 2010, the Malta Communications Authority (hereafter 'MCA') published the Consultation and Proposed Decision entitled "Wholesale Mobile Termination Rates Update" (hereafter 'consultation document') where it proposed the new revised wholesale Mobile Termination Rate (hereafter 'MTR') for operators designated as having Significant Market Power (hereafter 'SMP') in the provision of mobile termination services. The MCA also notified its draft decision to the European Commission (hereafter 'the Commission') on the 25th June 2010 and received the response from the Commission on the 23rd July 2010.

The aim of this document is to report on the feedback received from interested parties and from the Commission as well as to lay down the MCA's final decisions in this regard.

The methodology used to calculate the new proposed MTR was based on that prescribed in the decision entitled "Interconnection Strategy for the Electronic Communications Sector in Malta" published on the 17th May 2010 (hereafter 'the Interconnection Strategy').

In accordance with the MCA decision of the 16th November 2009 entitled 'Wholesale Mobile Termination on Individual Mobile Networks', Vodafone Malta Ltd, Mobisle Communications Ltd, and Melita Mobile Ltd, have been designated as having SMP in the provision of mobile termination services.

2 Responses to Consultation

The consultation period ended on the 18th June 2010 with two respondents, Melita Mobile Ltd and Vodafone Malta Ltd, sending their feedback.

The MCA hereby wishes to thank the respondents for their feedback.

3 New Regulated MTR

3.1 Summary of Consultation Issue

In the Interconnection Strategy decision the MCA had decided that as a primary target it will ensure that by December 2012 it will be fully compliant with the Commission Recommendation on the Regulatory treatment of Fixed and Mobile Termination Rates published in May 2009, primarily by doing its utmost to conclude "Pure" LRIC models for both the MTR and FTR respectively by the said date. The Authority had concluded it would 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. In the eventuality that any one of the LRIC models will not be completed by December 2012, the MCA will ensure that the alternative treatment used until completion of the models will be in line with the principles featured in the Recommendation.

The MCA had decided that, as an interim benchmarking methodology, the local wholesale regulated MTR charged by all designated SMP mobile operators will be calculated using benchmarking techniques. The MCA had decided that it will be using the EU Commission 'Progress Report on the single European Electronic Communications Market' (hereafter 'the implementation report') as its preferred source for benchmarking[1]. The proposed MTR was calculated using the average of the lowest 75th percentile of the EU member states' rates as presented in the latest Implementation Report. Such methodology was aimed at excluding any member states having excessive termination rates from the benchmarking calculation so as to eliminate possible outliers from best practice.

Following the publication of the 15th Implementation Report on 25th May 2010 the MCA had proposed that the calculation of the 75th percentile of the absolute average MTR stood at €0.0617 and that such rate is to be applied by all designated SMP mobile operators.

[1] In the eventuality that additional qualitative data related to whether the regulated rate is derived from a LRIC model in line with the Recommendation is available in other official reports, the MCA will base its interim benchmarking methodology on such report(s) on condition that these would represent at least 25% of all the EU member states. This would be done after giving the market a minimum of four months advance notice of such change.

3.2 Summary of responses received

3.2.1 Responses received from local Operators

Whilst welcoming the proposed reduction of 29% on the current MTR, Melita Mobile Ltd (hereafter 'Melita') claimed that such reduction does not go far enough. This was mainly due to the time lag that is inherent in the MCA's decision in using the EU Commission Implementation Report (containing MTR data as at October 2009). It commented that the Implementation Report is not the only source that the MCA could use in its benchmarking calculation and noted that BEREC's MTR snapshot report could instead be used as it contains data as at 1st January 2010. Moreover, Melita noted that the 75th percentile average using the BEREC MTR snapshot report would result in a further 10% reduction from the MCA's proposed MTR calculated by using the Implementation Report as its data source.

Furthermore, Melita proposed in basing the benchmarking methodology using a 25th percentile average where this would only include the six member states with the lowest MTRs.

Melita also claimed that there is no guarantee that the resultant benchmarked MTR will bear any relation to a LRIC-based rate and that the MTR set by means of benchmarking will not necessarily be a cost-based rate. In this respect, Melita mentioned the fact that in the Interconnection Strategy, the MCA noted that it would amend its benchmarking methodology and would base the regulated MTR in Malta on rates set in other EU member states using LRIC models in line with the Commission Recommendation provided that information becomes available in official reports. Melita proposed that the MCA should liase with other NRAs in order to follow developments on LRIC modeling in other member states.

Vodafone Malta Ltd on the other hand commented that the 30% proposed change was a drastic reduction. It also noted that the consultation document makes no reference as to when the new rate would actually come into force. It was further noted that the decision could allow an adequate lead time for operators to adjust their interconnection billing requirements in line with the new mobile termination rate.

3.2.2 Responses 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 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 applying a benchmarking approach in such a way that it takes account of the above mentioned point, which could be achieved by benchmarking with the termination rates of those member states that apply a pure LRIC methodology (referring to the BEREC work on this).

3.3 MCA's Views

At the outset the MCA notes that all the issues raised by Melita were all addressed, either directly in the Interconnection Strategy or with sufficient reasoning in the proposed decision. Nonetheless, the MCA would like to give its feedback on the issues raised by Melita as laid hereunder.

In view of Melita's comments on the fact that the MCA failed to use a more up to date data source for calculating the MTR, the MCA would like to point out that prior to deciding on the most appropriate source for benchmarking, the Authority had considered the BEREC MTR snapshot report as one of the alternatives to the Implementation Report. The MCA's decision to use the latter reflected the fact that at the time of writing the proposed decision, the BEREC snapshot report did not include all member states' MTRs and was considered incomplete, hence posing the risk that at the time of calculating the regulated rate some information would be missing. This was considered as posing risks on the reliability and the consistency of the resulting regulated benchmarked rates.

Despite all of the above, the MCA acknowledges that the BEREC MTR Snapshot Report is a more recent data source which could potentially be used for benchmarking. For this reason, the MCA is currently liaising with the BEREC benchmarking PT so as to obtain further assurances with regards to the timeframes and completeness of the MTR Snapshot Report.

In view of Melita's criticism regarding the MCA's proposed 75th percentile methodology, and its proposed 25th percentile alternative, the MCA notes that it had decided to use the former methodology specifically with the aim of excluding potential outliers with excessive termination rates from the MTR calculation. Furthermore, the MCA does not agree with the 25th percentile method as this would treat the remaining 75% of the distribution as being outliers without any justification or qualification in doing so.

As correctly noted by Melita in its response, in the Interconnection Strategy, the MCA has stated that it would amend its benchmarking methodology and would base the regulated MTR in Malta on rates set in other EU member states using LRIC models in line with the Commission Recommendation provided that information becomes available in official reports. As already noted in the Interconnection Strategy Decision, the MCA has taken a pro-active approach within the BEREC with the aim of ensuring that further qualitative information, such as to whether the country's reported MTR is calculated through the use of a LRIC model in line with the EC Recommendation of May 2009, is included in future versions of this report. Through such information, it would be possible for countries wishing to avail themselves of the alternative approach outlined in the Recommendation. Malta's efforts in this regard were also acknowledged during the 3rd Plenary of the Board of Regulators of BEREC held on 27 / 28 May 2010.

With regard 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 which might have above-cost termination rates from its benchmarking calculation. In fact in taking the decision on the approach to be adopted for the interim period the MCA considered various factors affecting such decision. Consideration was given to the fact that, as already noted above, currently there is no official report containing qualitative data as to what type of model is being used in order to calculate the regulated MTR in EU member states. BEREC should be publishing more detailed qualitative data towards the end of 2010, however the data collection has only been concluded at the end of July 2010 and the BEREC report is not yet finalised and eventually approved.

Moreover, the MCA's rationale for setting the Maltese termination rates based on benchmarks, in the interim period, 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). While it recognises, as observed by the Commission, that four other Member States have already calculated 'pure' LRIC rates, the MCA is wary of basing a glide-path which considers such a reduced data-set.

Notwithstanding the above points, as already noted in the Interconnection Strategy Decision, the MCA will be vigilant to refine its approach to make it more conformant with the principles of the Recommendation and will shift its interim benchmarking methodology to the use of EU member states' MTRs based on a pure LRIC model. As also stated in the Interconnection Strategy, the MCA will shift to this basis once it will have the necessary information from at least 25% of the EU member states' termination rates (i.e. 7 member states) available through official reports.

3.4 MCA's Decision and Way forward

The MCA believes that the proposed reduction in the regulated MTR should not be delayed any further.

Decision 1.

The MCA directs that operators having been designated as having SMP in the provision of mobile termination services shall apply the rate of €0.0617 as their MTR. This rate shall be applicable as from 1st September and shall remain in place until further notice but not less than six calendar months.

Furthermore, the MCA is taking the utmost account of the Commission's comments[2] by giving notice, as foreseen in its Interconnection Strategy, that the BEREC report will be used as the basis for benchmarking in the forthcoming mobile termination rates review.

Following the MCA's interaction with BEREC and after ensuring that the upcoming version of the BEREC Snap Shot Report will contain all the necessary data as well as having a predictable publication date, going forward, the MCA will be in a position to change its data source from the Commission's Implementation report to the BEREC Snap Shot report.

Decision 2.

1. Going forward the MCA will be using the BEREC Snap Shot 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 recalculate the rate using the absolute average after excluding the upper 25th percentile (i.e. using the 75th percentile methodology). The MCA will however use the rates published in the BEREC snapshot report as the data source of this interim benchmark (since these will still comprise 25% of all Member States hence being a representative sample). In this case rates shall remain applicable to a maximum of one year unless Decision 2.2 above comes into force.

This decision shall serve as an advance notice to the market (as per decision 6 found in the Interconnection Strategy) that once an official report, having a representative sample of 25% of EU states using LRIC methodology as prescribed by the Commission

[2] Pursuant to Article 7 of the Framework Directive.

Recommendation, becomes available, the MCA will initiate the process to revise the MTR in line with such benchmarking methodology. This shall also serve as an advance notice that the MCA intends to change its data source and will be using the BEREC Snapshot Report going forward.

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