MALTA COMMUNICATIONS AUTHORITY

# Wholesale voice call termination on individual mobile networks

**Identification and Analysis of Markets, Determination of Market Power and Setting of SMP Conditions**

## Response to Consultation and Final Decision

**16th November 2009**

# Contents

**Executive Summary** ..... 3

**Chapter 01 – Introduction** ..... 5

1.1 The EU Regulatory Framework for Electronic Communications ..... 5
1.2 Market Review Methodology ..... 6
1.3 Consultation Process ..... 7
1.4 Liaison with Competition Authority ..... 7
1.5 Scope and structure of this review ..... 7

**Chapter 02 - Market Definition** ..... 8

2.0 Outline ..... 8
2.1 Background to the Chapter ..... 8
2.2 The Mobile Telephony Sector in Malta ..... 8
2.3 The Market Definition Procedure applied by the MCA ..... 9
2.4 Demand Side Substitution at the Retail Level ..... 9
2.5 Demand Side Substitution at the Wholesale Level ..... 14
2.6 Supply Side Substitution at the Wholesale Level ..... 14
2.7 Further Details to Market Definition ..... 15
2.8 Views of respondents and the MCA replies ..... 17
2.9 Mobile Termination Markets ..... 18

**Chapter 03 - Market Analysis** ..... 19

3.0 Outline ..... 19
3.1 Background to Market Analysis ..... 19
3.2 Assessment of Market Dominance ..... 19
3.3 Views of respondents and the MCA replies ..... 24
3.4 Conclusion on SMP designation ..... 27

**Chapter 04 – Regulatory Implications** ..... 29

4.1 Outline ..... 29
4.2 Selecting Regulatory Obligations & Remedies ..... 29

4.3 Current Regulatory Obligations ........................................................................29
4.4 Factors distorting Competition .........................................................................30
4.5 The MCA's Regulatory Approach .....................................................................30
4.7 Monitoring and reviewing of markets ...............................................................45

**Appendix 1** .......................................................................................................46

# Executive Summary

The MCA is hereby presenting its final decision on the market for wholesale mobile voice call termination, in accordance with the EU regulatory framework of electronic communications networks and services. This decision builds on the second review and decision of the mobile termination markets published by the MCA in October 2009. The consultation period for this decision was held between the 10th March and the 10th April 2009, during which the MCA received two responses. This document includes an assessment of the responses elicited during the national consultation and the comments received from the EU Commission following the notification of the draft decision.

**Background to previous decisions**

The EU Commission refers to wholesale voice call termination on individual mobile networks as a candidate market susceptible for ex ante regulation. Wholesale mobile voice call termination (MCT) is a necessary service for a network operator to terminate calls on other or across networks. These services are indeed necessary for mobile network operators (MNOs) to connect a caller with the intended mobile recipient of a call on a different network.

In the second round market review for mobile termination services the MCA concluded that there was no good substitute for termination services on mobile networks. The MCA's decision published in October 2008 specified that the relevant product market consisted of mobile call termination as supplied by a particular MNO, and that each MNO enjoyed monopoly power in this market. Two separate markets for mobile termination were identified:

- Wholesale voice call termination provided by Vodafone Malta Ltd.
- Wholesale voice call termination provided by MobIsle Communications Ltd.

The MCA designated both Vodafone and Go Mobile with SMP on the wholesale markets for the termination of voice calls on their individual networks.

The MCA identified a number of competition problems that can potentially arise due to these SMP positions. In this regard the MCA imposed on both network operators a number of regulatory obligations including access, non-discrimination, transparency, and accounting separation. The mechanism outlined in that decision for regulating mobile termination rates (MTRs) is a pegging mechanism with the average percentage change in MTRs of the EU 27 countries. This mechanism replaces the glide path.

**Conclusions of this review**

*Identification of Markets*

In relation to wholesale voice call termination on mobile networks the MCA has in this review identified three relevant markets in accordance with competition law principles. These are:

- Wholesale voice call termination provided by Vodafone Malta Ltd.;
- Wholesale voice call termination provided by MobIsle Communications Ltd.; and
- Wholesale voice call termination provided by Melita Mobile Ltd.

The relevant geographic markets for the provision of mobile voice call termination services is national in scope and is limited to the individual networks of the three operators.

Further details on the MCA's market definition exercise can be found in Chapter 2 to this document.

*Assessment of Significant Market Power (SMP)*

After having conducted an analysis of the relevant markets, the MCA designated Mobisle Communications Ltd. ,Vodafone (Malta) Ltd., and Melita Mobile Ltd. as operators having SMP as follows:

- Vodafone (Malta) Ltd. as having SMP in the market for 'Wholesale voice call termination provided by Vodafone Malta Ltd.'; and
- Mobisle Communications Ltd. as having SMP in the market for 'Wholesale voice call termination provided by MobIsle Communications Ltd.
- Melita Mobile Ltd. as having SMP in the market for 'Wholesale voice call termination provided by Melita Mobile Ltd.

In light of market evidence, the MCA took into account a selected number of criteria to justify its designations, namely:

- market shares;
- entry deterrence;
- countervailing buyer power; and
- pricing structure.

Full details of the MCA's assessment of SMP can be found in Chapter 3 of this document.

*Regulatory Implications*

Given the position of dominance held by all operators providing wholesale mobile voice call termination on their respective networks, and the potential competition problems identified, the MCA deems it necessary to impose obligations on all network operators as listed below:

a. Access to/and use of specific facilities;

b. Non-discrimination;

c. Transparency;

d. Accounting separation; and

e. Price control and cost accounting.

The MCA believes that these regulatory obligations are based on the nature of the competition problems it has identified in the relevant market, and that each obligation is proportionate and justified in light of the objectives set out in Article 4 of the Electronic Communications (Regulation) Act.

Full details of the MCA's regulatory measures, are contained in Chapter 4 to this document.

# Chapter 01 – Introduction

## 1.1 The EU Regulatory Framework for Electronic Communications

The EU Regulatory Framework for Electronic Communications (also referred to as the eCommunications framework[1]) sets the ground rules for regulation and aims to ensure legislative stability and harmonisation of the regulatory approach across EU Member States.

The eCommunications Framework comprises of five directives as follows:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services ("the Framework Directive");
- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities ("the Access Directive");
- Directive 2002/20/EC on the authorisation of electronic communications networks and services ("the Authorisation Directive");
- Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services ("the Universal Service Directive"); and
- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector ("the Privacy Directive").

The Framework Directive provides the overall structure for the new regulatory regime and sets out fundamental rules and objectives reading across all the new directives. Article 8 of the Framework Directive sets out three key policy objectives namely promotion of competition, development of the internal market, and the promotion of the interests of the citizens of the European Union.

The Authorisation Directive establishes a new system whereby any person will be generally authorised to provide electronic communications services and/or networks without prior approval. The general authorisation replaces the former licensing regime.

The Universal Service Directive defines a basic set of services that must be provided to end-users. The Access and Interconnection Directive sets out the terms on which providers may access each others' networks and services with a view to providing publicly available electronic communications services.

The above-mentioned directives were transposed into national legislation when the Maltese Parliament enacted the Electronic Communications (Regulation) Act, 2004 (hereinafter referred to "ECRA") and the Electronic Communications Networks and Services (General) Regulations, 2004 (hereinafter referred to "ECNSR"). The fifth Directive on Privacy establishing users' rights with regard to the privacy of their communications was transposed on 10th January 2003 (Legal Notice 16 of 2003 under the Data Protection Act).

[1] Transposed into Maltese legislation on 14th September 2004.

The Directives oblige National Regulatory Authorities (NRAs) such as the MCA to carry out reviews of competition in electronic communications markets to ensure appropriate and proportionate regulation in the light of ongoing changes in market conditions.

Each market review is subdivided into three phases:

- The definition of the relevant market or markets;
- An assessment of competition in each market, in particular whether any companies have Significant Market Power (SMP) in the relevant market; and
- An assessment of remedies to be imposed on undertakings identified as having SMP (NRAs are obliged to impose some form of regulation where there is SMP).

More detailed requirements and guidance concerning the conduct of market reviews are provided in the Directives, the ECRA, and the ECNSR together with other documents issued by the European Commission and the MCA.

### 1.2 Market Review Methodology

The EU Recommendation on relevant product and service markets within the electronic communications sector provides a common approach for NRAs in the identification of telecoms markets for which regulatory intervention is warranted. The Recommendation originally came into force in July 2003 (Rec. 2003/311/EC). After being in force for more than four years, the Recommendation has been up for review and eventually revised. The revised Recommendation was then published in November 2007.

This process brought about some very important developments. Of significant relevance was the proposal to reduce to 7[2] from 18 the number of markets for which the EU Commission recommends regulatory intervention.

Beyond these markets regulators could still intervene. However, NRAs need to present their case with the EU Commission to justify their intervention in markets that have been excluded from the Recommendation.

At the same time, the principles behind the framework and the ground rules for how telecommunications are regulated across the EU have not changed. The revised Recommendation remains set to promote further harmonisation across the European Community by ensuring that the same product and service markets are subject to a market analysis in all Member States.

From a local view point, the MCA's document entitled 'Market Review Methodology' elaborates on the criteria used in assessing competition in Maltese electronic communications markets[3]. In this respect, the Recommendation, the EU Commission guidelines on market analysis ("Market Analysis Guidelines"), and the guidelines on the assessment of SMP (the "SMP Guidelines") assume much relevance to the analysis of a product or service market under investigation (see Regulation 8 of the ECNSR).

Regulation 6 of the ECNSR stipulates that the results of market reviews carried out by the MCA shall be notified to the European Commission and to other NRAs. If the Commission is of the opinion that the market definition or proposals of whether to designate or not an

[2] The revised Recommendation refers to voice call termination on individual mobile networks as Market 7.

[3] Link to MCA market review methodology:
http://www.mca.org.mt/infocentre/openarticle.asp?id=513&pref=1

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 6 of the ECNSR to delay adoption of any proposed measure(s) for a further period of 2 months while the Commission considers its position.

Market reviews are also supported by market data, which is collected from various internal and external sources, including users and providers of electronic communications networks and services, and from regular consumer surveys.

### 1.3 Consultation Process

As required by Article 10 of the ECRA, the MCA is to publish the results of the market reviews and to provide operators the opportunity to comment on the findings prior to adopting the final proposals.

Furthermore, Regulation 6 of the ECNSR establishes that, prior to adopting the draft measures proposed in the market review the MCA is required to notify the Commission with the findings of the market review, the proposed remedies and the outcome of the national consultation process.

The national consultation period was held between the 10th March till the 10th April 2009, during which the MCA received two responses from Vodafone Malta Ltd. and Melita Mobile Ltd.

### 1.4 Liaison with Competition Authority

Under Regulation 10 of the ECNSR, 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 Regulation 10 of the ECRA.

In line with the cooperation agreement signed on the 20th May 2005 between the MCA and the Office of Fair Competition (OFC)[4], the MCA has initiated a two-week consultation process with the OFC. The MCA has forwarded and presented the results of this review to the OFC. The OFC's official position can be found in Appendix 1 to this document

### 1.5 Scope and structure of this review

This review considers the markets for wholesale mobile voice call termination in Malta. The rest of the document is structured as follows:

Chapter 2 outlines the market definition process highlighting evidence for Demand side substitution, supply side substitution, and potential competition.

Chapter 3 presents an analysis of dominance in the market, considering a number of criteria for the assessment of SMP.

Chapter 4 outlines the nature of the potential competition problems identified, and lists obligations on any operators designated as having SMP.

[4] http://www.mca.org.mt/infocentre/openarticle.asp?id=656&pref=9

# Chapter 02 - Market Definition

## 2.0 Outline

This chapter defines the markets for wholesale voice call termination on individual mobile networks in Malta, delineating market boundaries on the basis of a product dimension and a geographic dimension. It starts by investigating the conditions in which MNOs operate through a detailed analysis of demand-side and supply-side substitution both at the retail and the wholesale level.

## 2.1 Background to the Chapter

Regulation 10 of the ECNSR stipulates that prior to the assessment of SMP, an appropriate market definition is to be determined. This approach must tailor for national circumstances whilst taking utmost account of all applicable guidelines and the Recommendation issued by the European Commission.

There are various dimensions related to the market definition procedure. Paragraph 2.1 of the Commission's Recommendation on relevant markets states that *'As the market analysis carried out by the NRAs have to be forward-looking, markets are defined prospectively. Their definitions take account of expected or foreseeable technological or economic developments over a reasonable horizon linked to the timing of the next market review'*. In this regard, the MCA carries out its market analysis on a forward looking basis, and where it is thought possible that market conditions may change significantly during the timeframe of this review, these changes are identified and discussed.

Paragraph 4 of the same Recommendation adds that retail markets shall be examined in a way which is independent of the infrastructure being used, as well as in accordance with the principles of Competition Law. Again this approach is at the heart of the MCA's analysis. The MCA's approach is based on a Competition Law assessment of markets and an assessment of the extent to which switching among services by customers constrains prices, irrespective of the infrastructure used by the providers of those services.

The market definition procedure identifies in a systematic way the competitive constraints that MNOs encounter, thereby also facilitating the subsequent market analysis procedure.

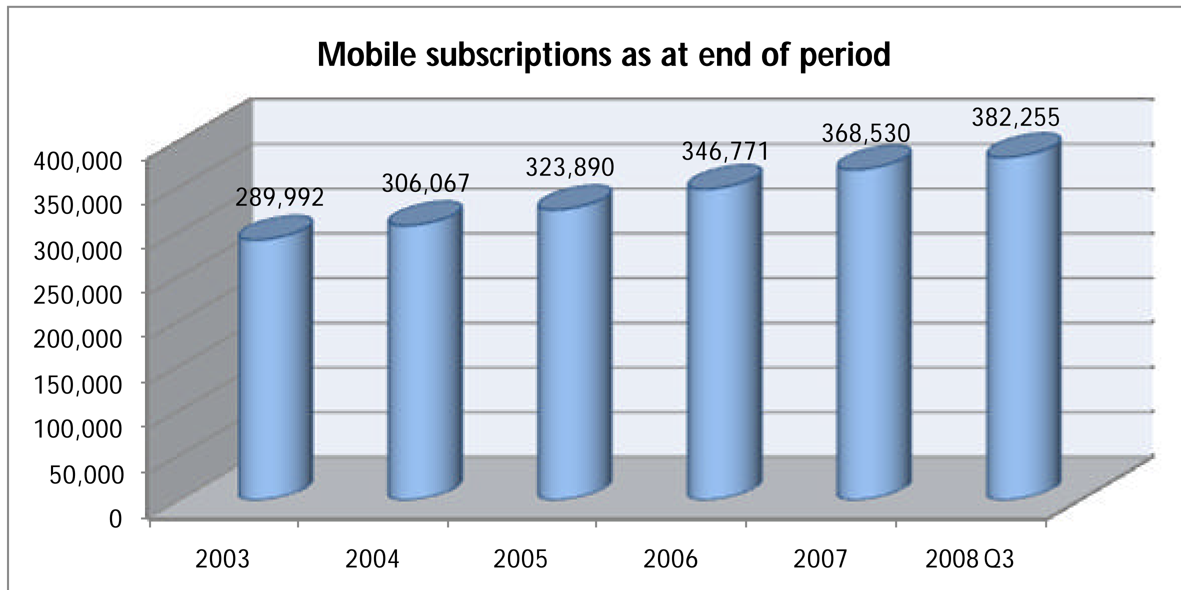
## 2.2 The Mobile Telephony Sector in Malta

For the past years, the mobile telephony sector in Malta has been characterised by two operators, namely Vodafone Malta Ltd. and MobIsle Communications Ltd., operating under the brand name of Vodafone and Go Mobile respectively. Go Mobile launched their services in December 2000 whilst Vodafone started its operations way back in 1990.

In 2007, the third mobile licence has been awarded, this time to M/C Venture Partners, which subsequently announced that it was taking a stake in Melita Cable plc, now Melita plc.. On the 1st February 2009 Melita Mobile Ltd. launched its mobile telephony services, thus becoming the third nationwide 3G mobile network operator in Malta.

During 2008 two mobile virtual network operators (MVNOs) namely Bay Mobile and RedTouch Fone, started operations using Vodafone's infrastructure as service providers.

By the end of September 2008, mobile subscribers stood at 382,255 which equates to a mobile penetration of around 93 per cent of the population[5]. Market share split was 52.3 per cent for Vodafone and 47.7 per cent for Go Mobile.




## 2.3 The Market Definition Procedure applied by the MCA

The MCA's forward-looking approach to market definition is set out according to the EU Commission's Recommendation and Guidelines. In accordance to Recital (7) of the Recommendation, this procedure starts from a characterisation of the retail market over a given time horizon, taking into account the possibilities for demand and supply-side substitution. Substitutability on the demand and supply sides is assessed by first 'looking' at the retail level followed by a similar exercise at a wholesale level.

## 2.4 Demand Side Substitution at the Retail Level

Demand-side substitution represents the most immediate and effective disciplinary force constraining the suppliers of a product or service. In theory, if suppliers increase the price of their goods and services customers could then choose to switch to alternatives, thereby constraining prices back to their 'original' levels.

The relevance of this argument for mobile call termination depends on the degree to which demand side substitution constrains MNOs in pricing this service. Indeed, pressure on MTRs could arise if customers of mobile telephony services value the price of incoming calls so much that it determines their choice of network to make their off-net mobile-to-mobile calls.

This case is however not representative of normal customer behaviour, given that mobile call termination is governed by the 'Calling Party Pays' (CPP) principle. This principle underlines that the originator of the call (the calling party) pays for the whole cost of the call - including termination charges - whilst the recipient of the call incurs no charge for answering an incoming call. Therefore, MNOs have no incentive to maintain low MTRs given that subscribers are not price sensitive to these rates, and most probably not even aware of this cost component in retail tariffs for mobile calls.

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[5] According to the National Statistics Office, the number of Maltese and foreigners residing in Malta reached a total of 410,290 persons in 2008.

An increase in the price of mobile termination could also determine the means of communication employed to reach mobile subscribers. Callers who are price sensitive to mobile termination charges could react to an increase in MTRs by switching to alternatives (substitutes) through which they could adequately terminate the calls on a mobile network to which the called party subscribes.

The following sub sections further evaluate demand side substitution at the retail level and its effects on wholesale mobile voice call termination both from a 'calling party' perspective and a 'called party' perspective.

### 2.4.1 Calling Party Behaviour – Price Awareness

In the latest qualitative survey[6] commissioned by the MCA, the majority of customers say that they have enough information regarding the average prices of mobile voice calls being charged by their network provider. This means that if MNOs change their retail tariffs subscribers would notice such a change and act accordingly. This however does not suggest that customers are aware of the underlying components of the price of a call, such as mobile termination charges. The end-user would only see a global retail tariff including the mobile termination rate and other costs. Consequently, the end-user cannot detect any changes in termination charges and cannot exert pressure on the setting of MTRs.

Under the CPP arrangement end users are insensitive to the pricing of termination on mobile networks. Number portability has made it more difficult for customers to identify the network to which the called party is subscribed and the termination charges that apply.

Overall, the MCA believes that the behaviour of the calling party cannot adequately influence the ability of MNOs to set high MTRs.

### 2.4.2. Calling Party Behaviour – The Use of Alternative Services

Assuming that customers have enough knowledge of MTRs and are sensitive to changes in these rates, a small but non-transitory increase in MTRs could then motivate these customers to switch to the use of alternatives.

In this regard, various demand side alternatives to voice call termination on mobile networks could be considered.

As a start, one could mention options such as the use of multiple internal SIM cards in the same handset or an automatic mechanism to re-route calls. However, such devices and mechanisms are not yet commonly available to the general public.

The following sections will assess other alternatives to determine whether these could have a significant impact on the setting of mobile termination charges and ultimately constrain MTRs.

***A Calls to a Fixed Number***

Calling parties can use fixed telephony as a possible alternative to mobile telephony. Indeed, presupposing that end users know on which network a call is terminated and the costs related to the call, calling parties can circumvent high MTRs when calling on a mobile phone by calling to a fixed number rather than to a mobile number. This is because calls to a fixed number usually involve cheaper (if any) termination charges.

[6] Electronic Communications Market Review Sep–Mar 2007:
http://www.mca.org.mt/infocentre/openarticle.asp?id=1093&pref=13

However, this consideration ignores the fundamental principle that mobile numbers are intrinsically by nature 'mobile' and not set at fixed locations as a fixed line number. Therefore an end user calling someone on a mobile number might not have a real choice to call that person on a fixed line number. This means that calls to a fixed number cannot be considered as a suitable alternative for calls to a mobile number.

### *B Mobile-to-mobile (MTM) Calls as a Substitute to Fixed-to-mobile (FTM) Calls*

A calling party incurs the same termination charges for FTM calls and MTM calls. This is because a call terminated on a mobile network will use the same network elements (and therefore incur the same cost) regardless of the origination network being it fixed or mobile.

In this sense, in terms of termination rates, an end user calling a mobile number would be indifferent to whether the call is originated from a fixed or a mobile network. The MCA therefore believes that substitution from MTM to FTM calls does not impact wholesale MTRs.

### *C On-net MTM Calls as a Substitute to Off-net MTM calls and FTM Calls*

According to the CPP principle, an end user is more concerned on the cost of making a call rather than on what others have to pay in order to terminate a call on the network to which the called party is subscribed. This means that if a mobile operator increases the charges for terminating calls on its network, an end user would have to face higher costs when making off-net mobile calls or calls through a fixed network.

In this regard, where an end user calling a mobile number is aware of the network terminating its call and the respective termination charges, an increase in these charges for off-net MTM calls and FTM calls would incentivise the said customer to choose on-net MTM calls by switching to the mobile network to which the called party is subscribed.

However, end users cannot exactly identify the network they are calling. In these circumstances, their call decisions and subscription preferences are not determined by costs for termination. Therefore, substitution from off-net MTM calls and FTM calls to on-net MTM calls is very unlikely, particularly when on-net and off-net mobile voice call termination charges are the same.

The MCA also notes that only a small share of customers have multiple mobile subscriptions, whilst the option of having to change SIM cards to make a call on different networks from the same mobile handset remains impractical. The more networks are in operation the more SIM cards would need to be changed every time a call has to be made to another network.

Finally, the MCA recognizes that local MNOs do not differentiate between on-net and off-net MTM voice call termination charges. In this sense, end users have no incentive to substitute on-net to off-net MTM calls on the basis of MTRs.

### *D SMS as Alternative to any Type of Call*

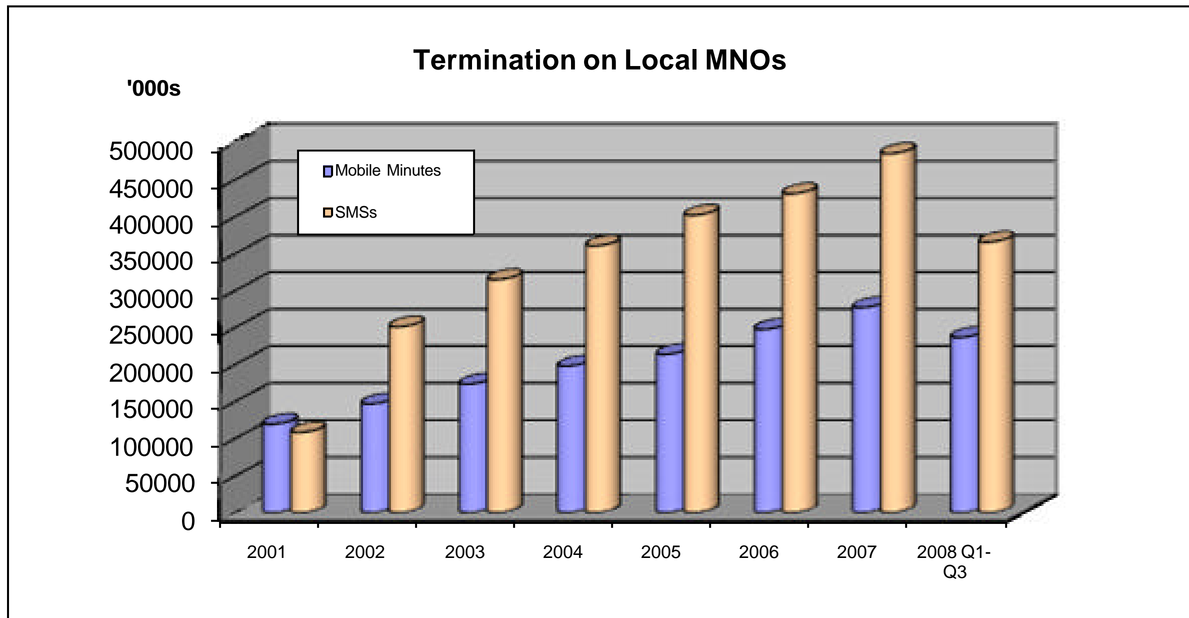
Customers may in some instances consider an SMS as a substitute for mobile voice calls, especially for shorter calls not requiring real time delivery. In fact, the latest mobile perception survey carried out on behalf of the MCA indicates that over 30 per cent of respondents *always* consider SMS to be a good substitute for mobile voice calls. Another 29 per cent *very often* consider SMS to be a good substitute.

At the same time, when asked to rate the price of mobile voice calls, over 60 per cent of respondents replied that it is still *expensive*. This means that with respect to the price

differential between mobile voice calls and SMS, SMS is usually perceived to be a good and cheaper alternative as well.

Nonetheless, the MCA holds the view that SMS is not an adequate substitute to mobile voice calls for a number of reasons, namely:

1. the conveyance of a limited number of characters per message (160 alphanumeric characters); and
2. the transfer of SMS between networks on a 'store and forward basis' explaining the transfer delays in SMS.




Further to the above, the MCA observes that over the last few years both SMS usage and mobile voice call traffic (minutes) increased. No trend was in fact identified in favour of SMSs at the expense of call minutes terminated on mobile networks, even when retail SMS rates declined. Instead, both mobile minutes and SMS usage registered growth suggesting that, in general, end-users do not substitute voice calls with SMSs.

The MCA therefore reiterates that SMSs and voice calls qualify as complementary services rather than substitutes and that SMS usage is not an adequate instrument to constrain MTRs in the absence of regulation.

***E Call-back Solutions***

The MCA holds the view that, in general, call-back services cannot sufficiently constrain MTRs. This is further compounded by the fact that retail voice call charges are very similar or identical when calling on-net or off-net.

Furthermore, the MCA believes that, in the absence of regulation, the level of price sensitivity on the part of the calling party is insufficient to impact MTRs.

***F Voice Over Internet Protocol Calls (VOIP)***

The provision of VOIP calls could, in theory, represent an alternative way to conventional voice call methods of reaching a mobile subscriber. However, by simply switching from conventional voice calls to VOIP calls, end users do not automatically constrain MNOs behaviour with respect to the setting of MTRs. It is indeed the charging arrangement for

VOIP calls that carries most weight in determining whether competitive pressures on termination charges set in.

As a matter of fact, it is possible for commercial operators to offer VOIP calls on the basis of different charging arrangements. For example, some VOIP providers may choose not to charge for calls to other subscribers to the service. Others may opt to charge for a long distance call to a number outside a particular calling area, similar to existing, traditional wire line telephone service. Other providers may even allow a caller to call anywhere at a flat rate for a fixed number of minutes or require the called parties to pay for VOIP calls.

It therefore remains inconclusive for the MCA to determine in what specific manner pricing arrangements for VOIP calls could influence MTRs charged by local MNOs.

### 2.4.3 Called Party Behaviour

The MCA notes that, given the CPP arrangement, the called party is relatively insensitive to the pricing and costs of termination on mobile networks. In reality, customers care most about the prices they have to pay to subscribe and to place calls with a mobile operator rather than what others had to pay in order to contact them. In this sense, the behaviour of the called party is not expected to limit a provider's ability to charge others high prices for its services, such as for mobile termination services.

If, on the other hand, a called party cares about what others have to pay to contact him/her, a small but significant non-transitory increase in mobile termination charges could induce the called party to arrange and have calls terminated via other forms of communication and/or another mobile network. A case in point is the existence of closed user groups referred to below.

#### *A Closed User Groups*

Closed user groups are specifically tailored to keep traffic within the community of family and friends or a business network. Such schemes are targeted to maintain voice calls on a particular network by offering cheaper call rates than the normal rates to numbers pertaining to a group of people.

In Malta, network wide Closed User Groups tariff schemes have been commercially launched. Nonetheless, the MCA does not have sufficient evidence to confirm that mobile users are selecting their service providers based on Closed User Group tariff structures. The MCA also notes that closed user groups are not widespread enough to put sufficient downward pressure on call termination charges.

#### *B GSM Gateways*

GSM gateways have been successfully deployed on the local market to cater for specific customer segments. This facility allows MNOs to limit churn and enables much call traffic originated through a traditional fixed line to a mobile number to be converted to 'on-net' mobile-to-mobile calls. This is achieved by programming a PABX to automatically route calls dialled to mobile numbers to the GSM gateway which then sets-up an 'on-net' MTM call to complete the call. However, this solution can only be implemented in fixed locations and is generally deployed by business customers rather than individual users. Therefore, the MCA is of the view that this option does not have a sufficient constraining effect on mobile voice call termination charges.

End-users could possibly constrain MTRs if they are able to receive their incoming calls on networks other than the one to which they are subscribed by using and switching different SIM cards on the same telephone handset. However this practice is time-

consuming and laborious. Therefore, the MCA believes that this alternative is not a practicable solution to sufficiently constrain mobile voice call termination rates.

***C Bundles***

Bundle offers are becoming quite common with local network operators and end-users. Indeed, various 'multiple-play' offers have been issued on the market with voice, internet and TV services bundled together in different packages. In this respect, end-user preferences are then determined by convenience, quality and overall price of the bundle.

In the past year a number of bundles including mobile services have been launched. The MCA does not believe that the emergence of bundles including mobile services will pose ant constraint on the setting of MTRs. For example, if mobile services form part of a bundle, it would be highly unlikely that end-user preferences are skewed in 'favour' or 'against' the respective bundle because of considerations related to MTRs.

Due to the CPP arrangement, the party receiving the call is insensitive to the price of the incoming call and is therefore not concerned about the exact prices and costs of mobile termination when subscribing to a particular network or choosing a particular bundle. This means that an MNO offering a bundle with mobile services would still have the option of raising mobile voice call termination rates whilst reducing prices for the remaining bundle elements. The MCA is therefore of the opinion that MNOs would not be constrained in raising MTRs through the introduction of new bundle offers.

Overall, the MCA considers that, with the present level of technology, the CPP arrangement, and lack of a sufficient competitive constraint from FTM, MTM, and off-net calls, MNOs have an incentive and are able to set MTRs beyond competitive levels.

## 2.5 Demand Side Substitution at the Wholesale Level

Demand for wholesale call termination is inextricably linked to retail demand for calls. This means that if a subscriber wishes to reach another subscriber either on the same or on another network, the network provider from which the call originates has no choice other than to purchase termination (services) from the network provider to which the called party is subscribed. There are indeed no viable substitutes for termination of calls on the network to which the called party is subscribed.

The MCA holds the view that currently there are no demand side substitutes for wholesale voice call termination which could sufficiently constrain MTRs.

## 2.6 Supply Side Substitution at the Wholesale Level

If in the short term a product market exhibits a small but permanent increase in the price of a relevant product, firms may alter their plans and start supplying that product. This must happen fast enough in order to prevent the price rise of the product from being profitable for the firm that implemented it.

In this sense, a small but significant increase in the price of MTRs could lead firms to consider providing mobile termination services in competition to those provided by existent MNOs.

However, the MCA holds the view that no provider could readily substitute call termination on a network other than the network to which the called party is subscribed. Calls to a particular user can 'only' be terminated on the network chosen by the called party. The MCA concludes that, in the current circumstances, supply-side substitution for mobile termination services is not possible.

## 2.7 Further Details to Market Definition

The following sections shall briefly describe three particular issues that further distinguish mobile telephony markets. These include third generation networks, mobile virtual network operators (MVNOs), and the geographic scope of the market.

### 2.7.1 Third Generation Mobile Networks (3G networks)

Malta's first 3G licences were awarded in August 2005 to Vodafone (Malta) Ltd and MobIsle Communications Ltd, after a call for applications was issued for entities interested to obtain right of use of this spectrum band. Vodafone Malta launched its 3G services in August 2006 and in December of the same year launched 3.5G services. Go Mobile launched its 3.5G network services in early 2007. The third 3G licence was issued to 3G Communications Ltd in August 2007 which was later acquired by Melita plc.. Melita Mobile Ltd. launched their 3G mobile service on the 1st February 2009.

2G and 3G mobile handsets support similar basic services such as voice call services and SMSs over their respective networks. In this regard, an end-user with a 2G handset could make mobile voice calls to an end-user with a 3G handset and vice-versa. This also means that the choice of equipment over which a mobile voice call is terminated does not differentiate the product.

In practice, a mobile user is not aware of whether a call would be terminated over 2G or 3G equipment. As a result, the end user pays the same tariff for originating a voice call terminated over a 2G or 3G network.

The MCA holds the view that, based on the principle of technology neutrality, voice call termination on a 3G network is no different to voice call termination on a 2G network.

In addition, the MCA notes that the current voice call traffic patterns and user profiles have not changed significantly following the introduction of 3G networks, although it envisages further growth in voice call traffic patterns within the timeframe of this review. On the other hand, market outcomes with respect to data services and additional 3G mobile services remain uncertain.

The MCA concludes that from a technology and functional point of view, voice calls terminating over 2G and 3G networks will not be different and that both 2G and 3G voice call termination shall therefore be included in the same market.

Furthermore, the incentive for MNOs to set high MTRs for 2G networks still applies for 3G networks since both technologies operate under the CPP arrangement. Indeed, termination services over a 3G network can only be provided by the operator owning the network. Similarly, customers calling a particular number on a 3G network cannot terminate that particular call over a different network, other than the network to which the called party subscribes.

### 2.7.2 Mobile Virtual Network Operators (MVNOs)

MVNOs are virtual operators which can provide mobile voice and data services but do not own a licensed spectrum. MVNOs can be classified in various ways. One could differentiate between MVNOs owning a mobile switching centre against those lacking this infrastructure or even between MVNOs adhering to different business models.

For example, MVNOs could enter into business agreements with providers owning network infrastructure and a licensed spectrum - usually MNOs - in order to sell mobile services under a brand name different from that of the respective MNO. Indeed, these MVNOs (sometimes also referred to as 'service re-sellers') buy minutes of use from the licensed MNO and then resell minutes of usage to their customers.

There are also other types of MVNOs which can provide additional services other than re-selling voice call minutes. These are usually referred to as 'enhanced service providers' which, as a general rule, do not own a mobile switching centre.

From the viewpoint of mobile termination, both 'service re-sellers' and 'enhanced service providers' are however constrained to use the same MTRs being charged by the MNOs selling network capacity.

On the other side of the spectrum, one also finds MVNOs owning a mobile switching centre, referred to as 'full' MVNOs. These MVNOs have enough technical facilities to design their own service packages and tariffs, such that they are able to differentiate their products from that of existing MNOs. 'Full' MVNOs could then set their own charges for mobile voice call termination.

However, 'full' MVNOs do not constrain MTRs charged by MNOs because these entities still operate under the CPP arrangement. The MCA also believes that a 'full' MVNO would still fall within the remit of this market definition given that it can set up its own network from which to provide call origination and termination services to its subscribers.

### 2.7.3 Mobile call origination and termination as a single market

The MCA has also analysed whether the mobile termination services form part of a wider market encapsulating a number of other services such as access and origination services. More specifically the issue of whether termination, access, and origination rates face the same economic constraints need to be assessed.

Based on the assessment carried out above the MCA does not believe that MTRs should form part of a wider market that includes a number of other services. The MCA believes that if MNOs compete for subscribers on the basis of a bundle of mobile services, it would be highly unlikely for these MNOs to influence their subscribers by the price they set for wholesale voice call termination on their own network. Under a CPP arrangement, mobile subscribers of the terminating operator are not concerned about the costs of incoming calls. On the other hand, it is the subscriber of the originating operator which carries the cost of higher MTRs charged by the terminating operator. This means that the user or party which chooses the terminating operator, (i.e. the operator providing mobile call termination services) cannot impose a constraint on termination charges as it could on mobile access and call origination. Ultimately, this suggests that mobile call termination does not form part of a wider market including access services, call origination and call termination. So far evidence suggests that MTRs face different constraints than other related mobile services.

The MCA also notes that the European Commission has included the wholesale market for voice call termination on individual mobile networks as a (separate) relevant market susceptible for ex ante regulation in its revised Recommendation on relevant markets of December 2007. This further indicates that at a European level the Commission did not find evidence that suggests a wider market definition for MTRs.

The MCA therefore concludes that access, call origination and call termination services are not sufficiently interchangeable or substitutable to be defined as one relevant product market. These services not only differ in terms of their characteristics, pricing or intended use, but also in terms of competition dynamics, and/or the structure of supply and demand for the relevant products.

### 2.7.4 Competitive pressures on the setting of MTRs

The MCA has assessed whether MTRs face competitive pressures from fixed calls, fixed termination rates, a/symmetric termination rates for off-net and on-net calls, and from SMS.

The MCA acknowledges that MNOs apply the same termination charges for calls originated from a fixed or mobile network. The MCA is aware that a call terminated on a mobile network uses the same network elements, and therefore incurs the same cost, regardless of the origination network being either fixed or mobile. In this sense, the MCA holds the view that a fixed operator would not be in a position to constrain MNOs in the setting of their MTRs since it remains a price taker for the purpose of mobile termination services.

In the case of off-net and on-net calls the MCA believes that MNOs have an incentive to increase termination rates since such increases would boost revenue from off-net calls thereby increasing the costs of users subscribed to competing operators. Although in this case reciprocity in termination charges might affect their price setting behaviour of MNOs with respect to MTRs, the MCA emphasises that reciprocity does not sufficiently encourage MNOs to set low MTM termination rates and that, in the absence of regulation, MNOs would still have no incentive to set MTRs at effectively competitive levels in a way that maximises consumer surplus.

Even in the case of closed user groups, the MCA believes that these cannot effectively constrain MTRs. MNOs have indeed managed to neutralize any pressure on MTRs exerted by mobile subscribers in closed user groups by deploying GSM gateways. GSM gateways have actually provided MNOs with an opportunity to convert fixed voice calls into on-net mobile traffic. The MCA also notes that even though closed user groups schemes have been launched in Malta, their take up remains limited to business clients.

After having examined all the possibilities for substitution to making mobile voice calls, the MCA found no service that could arguably put some pressure on MTRs. Within this context, SMS cannot be considered a sufficiently good substitute for voice calls from a demand side perspective. The MCA maintains its view that SMSs and voice calls qualify as complementary services rather than substitutes and that SMS usage is not an adequate instrument to constrain MTRs in the absence of regulation.

### 2.7.5 Relevant Geographic Market

A relevant geographical market comprises the area in which the undertakings concerned are involved in the supply and demand of 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.

On the basis of this definition, the MCA takes the view that the relevant geographic market for the provision of mobile voice call termination services by individual MNOs is national in scope.

Each MNO is considered to be a separate relevant product market for the provision of mobile voice call termination services. The geographic scope of the market then reflects the extent of physical coverage that characterises each MNO. The MCA finally notes that each MNO is licensed on a national basis and offers geographically uniform MTRs.

## 2.8 Views of respondents and the MCA replies

One respondent argued that due to more competitors in the market the incidence of off-net calls has increased. Consequently, customers are concerned with the price of off-net calls, as the probability of making an off-net call has increased. Therefore MNOs cannot increase MTRs unilaterally. The same respondent also mentions that since the introduction of MVNOs, these MVNOs have been also lobbying for cheaper MTRs, so that they can compete more at retail level.

The MCA agrees with the respondent that customers are concerned with the retail charges of outgoing calls, being on-net or off-net. Nevertheless, the fact that a high MTR is going to be paid by the customers of another network operator, makes the users of that particular network indifferent to an increase in MTR. With the CPP principle in place customers are unaware of the cost component of MTRs therefore they cannot exert pressure on MTRs.

With respect to MVNOs, the MCA believes that since the MVNOs present in Malta are only service providers, and are therefore hosted on an MNO, these MVNOs are dependent on the host's network for termination services. Consequently, these service providers are price takers and do not have the ability to influence the price behaviour of the MNO.

Another respondent argued that whilst it agrees with the MCA market definition, the MCA ought to have assessed the possibility of a wider market definition, potentially including fixed and mobile termination services or a market comprising wholesale call origination and termination services.

The MCA believes that the mobile and fixed markets are distinct markets and each individual market has its own characteristics which determine the price setting behaviour of operators. With respect to a market including wholesale call origination and termination services on mobile networks, the MCA believes that the two services are not substitutes but complements, such that they form part of a different market. Furthermore, the MCA believes that the price of wholesale access can be competed away in the market, as it is a service which is not network dependent. On the contrary, due to technological barriers, termination services are network dependent and cannot be provided by another network. Consequently, the two services face different constraints that lead to the conclusion that they fall in separate markets.

## 2.9 Mobile Termination Markets

In respect of the analysis presented above, and in accordance with competition law principles, the MCA identifies wholesale voice call termination on individual mobile networks as relevant for the purposes of ex ante regulation.

**Decision 1 – Wholesale Markets**

The MCA identifies three wholesale mobile termination markets in Malta, namely:

1. Wholesale mobile voice call termination provided by Vodafone Malta ltd.;
2. Wholesale mobile voice call termination provided by MobIsle Communications Ltd; and
3. Wholesale mobile voice call termination provided by Melita Mobile Ltd..

# Chapter 03 - Market Analysis

## 3.0 Outline

Chapter 3 presents an analysis of SMP in the market. To this end, this chapter considers a number of criteria for the assessment of SMP, namely market shares, barriers to entry and potential competition, countervailing buyer power, and pricing structure.

## 3.1 Background to Market Analysis

According to the ECRA, SMP is defined as follows:

*"A position equivalent to dominance enjoyed by an undertaking either individually or jointly with others that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately customers."*

This follows the definition under Article 14(2) of the Framework Directive and the definition that the Court of Justice case law ascribes to the concept of dominant position in Art. 82 of the Treaty.

Article 8(4) of the ECRA introduces the concept of leveraging of market power and states that:

*"Where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking".*

In a relevant market, one or more undertakings may be designated as having SMP where that undertaking, or undertakings, enjoys a position of dominance.

In assessing whether an undertaking has SMP, this review takes the utmost account of the Commission's SMP Guidelines as well as the MCA's equivalent guidelines.

## 3.2 Assessment of Market Dominance

Chapter 2 underlines that in mobile termination markets each individual operator is the only provider in that particular market. This results in a 100 per cent market share of the given operator in that market. Although the MCA does not rebut the link between market shares and a finding of dominance, it believes that the existence of market dominance must be assessed against various criteria and not just on the basis of market shares.

The SMP guidelines provide a long list of criteria for assessing market dominance. However, the MCA is of the opinion that, in light of market evidence and the principle of proportionality, this exercise must carefully take into account a select number of criteria, namely:

- market shares
- entry deterrence
- countervailing buyer power

- pricing structure

### 3.2.1 Market Shares

An important criterion in the assessment of single dominance is market share. However, as in the case of any other criterion being considered, an analysis of market shares it is not conclusive on its own, especially when it comes to decide whether an undertaking enjoys SMP in a market.

The MCA notes that high market shares are not in themselves decisive as to whether an undertaking enjoys SMP in a market. Nonetheless, market shares that exceed the 50 per cent threshold would generally raise the presumption of SMP. This is in line to the EU Commission Guidelines. Paragraph 75 of these guidelines states that, *"according to established case-law, very large market shares – in excess of 50 per cent - are in themselves, save in exceptional circumstances, evidence of the existence of dominant position."*

The area covered by each MNO is considered to constitute a separate wholesale termination market given that termination on a particular network cannot be substituted by termination on another network. This implies that termination of voice calls over a particular network will have to be terminated on the network of the respective mobile operator.

Hence, every MNO has a 100 per cent market share in terminating calls on its network, in terms of both volumes and revenues of mobile termination minutes.

### 3.2.2 Entry Deterrence

The MCA recognises that an SMP operator has a strong incentive to foreclose markets and to behave in such a way that makes market entry inefficient and difficult at the very least.

Termination of voice calls is governed by the CPP arrangement which eliminates any opportunity for supply side substitutability. It is in fact not possible for existent market players and new market entrants, including 3G operators, to terminate a call other than on the network to which the called party is subscribed.

Given the current level of technological developments and the forward looking nature of this document, this market condition is set to prevail within the timeframe of this market review.

### 3.2.3 Countervailing Buyer Power (CBP)

Countervailing buyer power assumes particular relevance when assessing SMP in wholesale voice call termination on mobile networks, considering that each MNO holds SMP over calls terminated on its own individual network. The presence of effective CBP would tend to restrict the ability of suppliers to exercise market power and to act independently of their customers.

Indeed, when customers served in a given market have a certain weight to exert pressure on a supplier of a good or service, they stand to gain a sufficiently strong bargaining power to effectively stop an attempt by the supplier to increase prices. The extent of countervailing buyer power depends on whether customers could in the first place choose to discontinue purchasing the service or product from that particular supplier or even switch to alternatives.

The MCA maintains that, since the CPP principle is in force, the called parties do not sufficiently care about the costs that other parties incur when calling them. This means

that customers do not have sufficient countervailing buyer power to impact on MTRs set by their mobile service providers.

Another important step in the assessment of the CPB criterion is to evaluate the possibility for providers purchasing network services to exert pressure on other providers selling these services. In this respect, one needs to look at the share of mobile termination minutes being purchased by fixed or MNOs. These shares are depicted in the table below.

| Termination on Mobile Networks (%) | 2004 | 2005 | 2006 | 2007 | 2008 Q1-Q3 |
|---|---|---|---|---|---|
| Fixed to Mobile | 25.61 | 23.18 | 20.06 | 18.99 | 21.72 |
| Mobile to Mobile (off-net) | 23.99 | 26.04 | 24.28 | 23.55 | 21.15 |
| Mobile to Mobile (on-net) | 35.37 | 37.14 | 43.61 | 46.54 | 43.83 |
| International to Mobile | 15.03 | 13.64 | 12.05 | 10.92 | 13.30 |

***A Fixed-to-Mobile* (FTM)**

Fixed network operators (FNOs) are important buyers of mobile call termination services (MCT). In this sense, local FNOs such as GO and Melita Cable could have a relatively strong weight as purchasers of mobile call termination services. This could put enough pressure on a provider and constrain its ability to set high termination charges.

A hypothetical way of how FNOs could exercise CBP is to threaten not to interconnect unless the price of mobile termination services is considered acceptable or reasonable. However, it is very difficult for this scenario to materialise given that all operators require interconnection with each other to permit call traffic between their customers and those subscribed to other networks.

Furthermore, GO is also designated with a universal service obligation in accordance with Article 30 of the ECNSR. GO is therefore obliged to terminate all calls in order to ensure end-to-end connectivity. As a result, any countervailing buyer power that GO might have through its large market share in the fixed calls market is not sufficient to constrain MTRs.

The MCA therefore believes that FTM countervailing buyer power is not sufficient to ensure competitive MTRs.

***B Mobile-to-Mobile (MTM - off-net)***

Mobile operators themselves purchase termination services from each other. The share of off-net termination minutes has remained relatively stable during the past three years at around 25%.

Due to the CPP principle, if operator A had to increase its termination rate, the retail price of calling a number owned by operator A would increase for a customer of other operators. Given that customers are mainly concerned with the cost of making an outgoing call and not of receiving a call, the customers of operator A would not particularly mind such a price increase.

This price increase would therefore be detrimental for customers of the competing operators. On their part other operators would then have an incentive to react and in so doing increase their termination rate, knowing beforehand that this would not affect their own customers. In the end, this strategy results in customers paying higher retail charges to make off-net mobile-to-mobile calls.

In the light of the CPP principle, MNOs do not face any constraints from their own customers if they increase MTRs. The lack of retail pressures on MTRs would therefore not induce a wholesale provider to offer low MTRs, given that a hypothetical price increase would only be translated into higher charges for the customers of competing networks.

***C Mobile-to-Mobile (MTM - on-net)***

As of 2006 the two existing MNOs at the time had launched lower retail tariffs for on-net MTM calls. As depicted in the table above the share of on-net terminated minutes (on-net traffic) has thereafter seen a steady increase.

Although MNOs still incur costs in terminating a voice call over their own network, it is logically more beneficial for them to maintain or even increase traffic volumes on their network. By offering lower tariffs for on-net calls they are also enticing more users to their network, since calling a friend or relative on the same network would be cheaper.

With the emergence of lower on-net call tariffs, there could be an argument that due to the benefits of increasing on-net traffic MNOs could have an incentive to push down MTRs so as to lower the cost of on-net calls even further. Nevertheless, the MCA believes that operators tend to compensate potentially lower revenue streams from on-net calls with higher revenues from off-net calls. This in itself is an incentive for MNOs to keep high MTRs so as to generate more revenues from off-net calls.

The MCA therefore concludes that although MNOs tend to offer lower retail call rates for on-net calls, this in itself does not guarantee that MTRs will be set at a competitive level.

***D International-to-Mobile***

MNOs also terminate international calls on their network. However, the share of international minutes terminated on mobile networks has been declining over the past years and only accounts for the smallest share of total call minutes terminated on mobile networks.

Overall, the MCA concludes that there is no particular influence from international calls that would induce local operators to reduce their charges with respect to mobile termination. It is also worthwhile to point out that there is no international wholesale operator or group of operators that can effectively constrain MTRs to a level commensurate with a competitive outcome at local level.

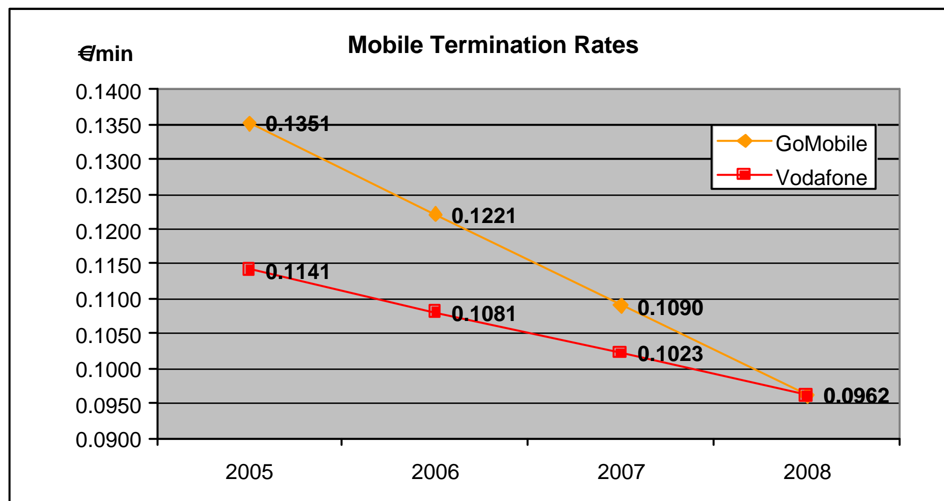
### 3.2.4 Pricing structure

Prices provide useful information on the degree of competition in the market. If high prices are set irrespective of costs, profits are expected to be persistently and significantly above the competitive level.

In mobile termination markets, MNOs do not face competition from other operators or services. This allows MNOs to exercise market power and to set high MTRs. Regulatory intervention would therefore be necessary to ensure that termination charges are set close to the competitive level as much as possible.

The MCA's regulatory intervention in the price setting behaviour of mobile termination rates has, for the last few years, taken the form of a glide path[7]. MTRs were adjusted to reach symmetry as of January 2008 as depicted below.

[7] Decisions on termination rates: http://www.mca.org.mt/infocentre/openarticle.asp?id=748&pref=2




The MCA believes that factors such as countervailing bargaining power or self-interest did not contribute to the decline in MTRs. Indeed, without the glide path obligation, termination rates would have probably remained well above the existing rates.

The MCA believes that, in the absence of regulatory intervention, MNOs would have no incentive to reduce MTRs and to lower interconnection rates.

### 3.2.5 Retail constraints on wholesale termination rates

In the market definition the MCA assessed whether MTRs are part of a wider market including access, call origination and other retail services. The evidence showed that MTRs do not face similar constraints to any of these complementary services. Consequently, MTRs have been defined as a market on their own and geographically constrained to each network operator providing such service.

Based on this market definition it is clear that no constraints from downstream markets can pose a credible downward pressure on MTRs. Due to the CPP principle, high termination rates will not impact the subscribers of the MNO in question but the subscribers of other MNOs. As a result MNOs do not have an incentive to decrease termination rates since the benefits of such a decrease will be mainly noticed by the subscribers of other MNOs. The only scenario where a decrease in MTRs would lead to the benefit all subscribers would be a collective reduction of MTRs by all the MNOs present in the market. In this way the subscribers of all MNOs would be experiencing a decrease in the wholesale cost of making a call. However to date such an exercise has never been adopted by local MNOs on a voluntary basis, and it was only through the regulatory glide path imposed by the MCA that MTRs have decreased in the past years across the board.

Furthermore, the MCA believes that even in the event of a decrease in MTRs customers may still not benefit from such a reduction. For customers to benefit from a decrease in MTRs, the MNOs need to pass on to the retail level such a reduction. Since the retail mobile market in Malta is not regulated this transfer depends entirely on the discretion of MNOs. Whilst the MCA acknowledges that, from an overall perspective, retail prices in the past two years have been adjusted downwards, retail price levels for mobile originated calls remain very high. In fact, retail charges range in between three to four times the MTR. This large margin between the wholesale rates and retail charges suggests that there is very little, if any, link between them. This further confirms that retail market conditions have very little impact on the setting of MTRs.

Pressures from FTM calls on the price setting of MTM calls may be possible. However the MCA believes that if FTM calls are cheaper than MTM calls, MNOs are likely to adjust the

retail price of MTM rather than the wholesale rate. In reality, since each MNO has one MTR which is applied to all calls terminated on its network, the MNO has no incentive to decrease the MTR as this would decrease the costs for fixed operators to terminate a call on that particular MNO. This would leave a bigger margin for the fixed operator which may in turn consider passing on that reduction in price to its end users, thus making the FTM even cheaper. Consequently, the MCA considers that FTM calls do not pose a constraint on the setting of MTRs.

## 3.3 Views of respondents and the MCA replies

The two respondents both agree that all MNOs have 100% market share and that no other operator can provide voice call termination on any individual mobile network. However, whilst one respondent accepts the conclusion that all MNOs have SMP on their network, the other respondent believes that Vodafone and GO Mobile have SMP and Melita Mobile does not enjoy SMP. The respondent argues that 100% market share does not automatically imply SMP. The same respondent also stated that the MTR set by Vodafone and Go Mobile face no competitive pressures and have only been reduced following intervention through glide paths imposed by the MCA.

The MCA agrees with respondents that all networks enjoy 100% market share in the provision of termination services over their networks. This market share is the result of the way termination is provided exclusively on each individual network. By definition since there are no alternatives to the provision of termination services over a particular network, each MNO is a monopolist on its own network. Hence, the resulting market share of 100%. The MCA therefore fails to understand how one respondent admits that it enjoys 100% market share and that no other network operator can provide termination services on its network (i.e. it is a monopolist), but at the same time argues that it does not enjoy SMP in the provision of termination services on its own network. The MCA also agrees with the statement that all three MNOs have no competitive pressures in setting MTRs since, absent regulation, all MNOs face the same identical 'monopolist conditions' for the setting of their own MTRs. It is only through regulation of MTRs that these monopolist conditions can be constrained.

### 3.3.1 Pricing structure

One respondent did not agree with the MCA's assessment that if MNOs charge high MTRs they would be making persistently higher profits. The respondent argues that if the MNO charges singularly a high MTR, its customers may decide to switch to another MNO particularly new entrants, since new entrants would make it attractive to join their network.

The MCA believes that this situation would be plausible if customers attached more weight to the cost of receiving calls than for making calls. As discussed in the market definition section, and as is widely acknowledged, mobile users are more concerned with the cost of making calls rather than the cost that other users incur when calling them. Consequently, if a particular MNO had to increase its MTRs the customers of that MNO would not even realise of the price increase. In fact the pricing structure published by MNOs does not even specify the cost of receiving a call. This is obviously logical since there is no cost attached for receiving a call. Consequently, the MCA does not believe that following an increase in MTR a MNO would see its customers switching to other networks, especially if the on-net rates are not increased to reflect the higher MTR.

### 3.3.2 Countervailing buyer power

One respondent did not agree with the MCA assessment of CBP. According to the respondent the MCA failed to take into account the recent developments in the

negotiations of the MTR of Melita Mobile with the other two MNOs. The respondent quotes the MCA in saying that hypothetically, CBP can be exerted by an operator by threatening not to interconnect. However due to the interconnection obligation this cannot realistically happen. The respondent concludes that if the above reasoning holds than CBP is not a material factor and therefore, Melita Mobile would have been able to set a higher MTR than the regulated one. The respondent further argues that if CBP was immaterial, Melita Mobile would not have been forced to accept to charge the regulated MTR but would have set a higher one. According to the respondent since Melita Mobile was in a hurry to conclude interconnection it was not in a position to negotiate with incumbent operators as the latter would have delayed interconnection. The respondent concludes that since Melita Mobile had to abandon commercial negotiations and accept the regulated MTR, indicates the existence of CBP on the part of incumbents MNOs.

In order to substantiate its reasoning the respondent refers to the Irish case involving an appeal logged by Hutchinson 3G Ireland (H3GI) against the Irish regulator (Comreg), contesting a regulatory decision published in 2005 that found H3GI enjoying SMP n the mobile termination market. The appeal was won by H3GI and the decision of Comreg was overturned.

The appeal logged by H3GI built a case on a study conducted by Binmore and Harbord's. In direct reference to this study, the respondents argues that even where existing operators have the obligation to interconnect, an incumbent operator operating in a saturated market would have no particular incentive to reach agreement with the new entrant, given that any delay would not result to any commercial loss to it. On the other hand the new entrant would be under pressure to conclude interconnection quickly. Consequently, absent regulation, the bargaining process would leads to a situation where the termination rate of the new entrant would never exceed, or could even be less, than the rate of the incumbent.

According to the respondent this case fits perfectly the situation that Melita Mobile faced with incumbent MNOs and fixed operators. In fact the respondent states that Melita Mobile:

- was obliged to negotiate separate agreements with GO for its fixed and mobile services,
- all existing mobile and fixed incumbents used delaying tactics during negotiations;
- with mobile penetration rate at 93% the market is saturated and so there was no incentive for existing incumbents to interconnect quickly;
- Melita Mobile was a new entrant and required urgent interconnection; and
- Despite wishing to set a higher MTR than the prevailing one, Melita Mobile was forced to accept an MTR which was identical to that being charged by the existing MNOs.

The respondent concludes that, given these circumstances, it is clear the Melita Mobile's bargaining power fits the H3GI case perfectly. It also proposes that the MCA reconsiders its SMP designation on Melita Mobile, as such designation would be subject to challenge.

The MCA does not agree with the reasoning outlined by this respondent. For a start the MCA never implied or stated that CBP is not a material factor in the analysis of SMP in termination markets. If the MCA felt that CBP was immaterial it would not have chosen CBP as one of the characteristics to analyse for the determination of SMP. Secondly, the respondent quotes part of the consultation document out of its original context. The sentence quoted by the respondent was extracted from the section where the MCA analysed the CBP that fixed telephony operators could potentially exert on MNOs in setting

of MTRs. Since fixed incumbents purchase more than 20% of all mobile termination minutes, it would be sensible to analyse whether these operators can use CBP to constrain MTRs. The analysis of the MCA concluded that fixed operators, despite having the hypothetical option of not interconnecting with MNOs, still do not have sufficient CBP to counteract increases in MTRs. This is because fixed operators need to interconnect with MNOs to offer an end-to-end telephony service to their customers. Moreover, at law there is the obligation to interconnect with all networks requesting such access. These two factors therefore nullify the CBP that fixed operators could have to constrain MTRs.

The fact that fixed operators, and mobile operators alike, do not have sufficient CBP to constrain each other from setting high MTR, absent regulation, is a result of the intrinsic problem that termination services on a particular network are subject to monopoly pricing. As every network operator requires interconnection to provide end-to-end services, all operators are price takers when purchasing termination services from each other. At the same time, all network operators are monopolist for the setting of their own termination rate since only they can offer such a service. Consequently, no operator holds enough CBP to constrain another operator from increasing its termination rate.

Turning to the H3GI case and its applicability to the case of Melita Mobile, the MCA believes that there are valid reasons why the reasoning of the respondent does not hold. The main condition under which the proposition of Binmore and Harbord is made is that the negotiations between parties occur in a Greenfield scenario, i.e. absent any regulation in the market. The MCA notes that Melita Mobile 'negotiations' with other MNOs where not taking place absent regulation but within a strictly regulated environment.

Through the imposition of the price control obligation by the MCA, Vodafone and GO Mobile are obliged to charge a symmetric termination rate of €0.0962 per minute. Therefore Vodafone and GO Mobile were clearly not in a position to 'negotiate' their termination rate with Melita Mobile. Similarly, GO as a fixed incumbent has its fixed termination rate regulated and cannot negotiate on its rate. Therefore when Melita Mobile was 'negotiating' with Vodafone and GO (fixed and mobile), the 'negotiation' process was only applicable to Melita Mobile. The fact that strict regulation was in place at the time of Melita Mobile's entry in the market has inhibited negotiations between parties. The presence of regulation also poses serious doubts as to whether the proposition of Binmore and Harbord is relevant to this case.

Assuming a hypothetical scenario where there is no regulation on any operator (satisfying the condition set before), that is, where all MNOs can freely set their own MTR, it would be logical to assume that all MNOs would request a high MTR from other each other. Since all MNOs would be requesting their desired high MTR, the likelihood is that either no agreement is reached, or else that the agreed MTR would be set at a high but symmetric level. As all MNOs are monopolist on their own network, there is no reason why any particular MNO would be able to charge other networks a higher MTR. Such a scenario indicates that in absence of regulation MTRs would be set at the highest possible price by MNOs at the detriment of retail customers.

The fact that even in the presence of regulation on Vodafone and GO Mobile, Melita Mobile wanted to impose a higher termination rate than the one set by regulation, indicates that Melita Mobile holds SMP and in absence of regulation has an incentive to set a monopolistic MTR.

Even though Melita Mobile was a new entrant and had the urgency to interconnect, it decided to start negotiations asking a higher rate than the efficient MTR. This indicates that Melita Mobile has the same desire of an 'incumbent' MNO to charge high MTRs. Given that all network operators have an obligation at law to interconnect Melita Mobile could have pressed for interconnection with other operators at the desired rate. With respect to the allegations made by the respondent that other network operators engaged in delaying tactics the MCA notes that, Melita Mobile could have referred the matter to the MCA in

order to investigate. The fact that Melita Mobile in the end concluded interconnection agreements with a symmetric MTR does not automatically imply that Melita Mobile has no power in setting its own MTR i.e. no SMP, but rather that it choose not to press on to apply monopoly pricing. Vodafone and GO (fixed and mobile) have no power to dictate the price Melita Mobile sets for its MTR.

In fact if the MCA had to hypothetically agree that Melita Mobile does not have SMP, the MCA would expect that the termination rate of Melita Mobile would remain the same or even lower of that of SMP MNOs, since it does not have the ability to set its own higher MTRs. However in reality, should the MCA accept this conclusion, Melita Mobile would simply seek to impose its desired MTR in the near future, as stated by the respondent itself. This action is in consonance with the actions of an SMP MNO.

If Melita Mobile does not have SMP, and is therefore not able to set its desired MTR, it is questionable why Melita Mobile asked in the first instance to charge a higher MTR.

Furthermore, if the respondent agrees with the MCA in that in the absence of regulation Vodafone and GO Mobile as SMP operators have no incentive to reduce their MTRs to the detriment of retail customers[8], it is questionable why Melita Mobile is seeking to set an even higher MTR than the two existing MNOs resulting in greater harm to the consumer. The MCA believes that a MTR higher than that of an efficient operator is a direct result of SMP and is detrimental to retail customers. This reasoning holds, independently of whether the rate is charged by an incumbent or a new entrant. Indeed, the MCA believes that if such a situation happens, regulatory intervention is warranted.

Incidentally, the same respondent agrees with the conclusion of the MCA when it states on page 14 of its response that, *"retail charges faced by mobile customers (of which MTRs comprise a not insignificant input) in Malta remain high and that, for all parties except the two mobile incumbents, MTRs represent a significant cost. While it is important to ensure that the incumbents are adequately remunerated for all efficiently incurred costs relating to the provision of wholesale voice call termination services, it is equally important to ensure that they are not over-compensated in this area either."* The respondent further elaborates on this argument when it states *"It is also the case that while the major losers from a significant reduction in MTRs would be the two mobile incumbent (as it is them who terminate the vast majority of call on mobile numbers within Malta), such a move would provide significant benefits to end-users in terms of reductions in retail rates for calls to mobile."*

The MCA completely agrees with the argumentation of the respondent in that high MTRs contribute to higher profits for MNOs and keep retail charges high to the detriment of customers. Consequently, reductions in MTRs are desirable. The MCA however does not understand why the respondent believes that this reasoning only applies to Vodafone and Go Mobile, but does not hold for Melita Mobile. If the MTR of any MNO, whether it is an incumbent or a new entrant, is set above the efficiency level it is inevitable that the consumer in the end is bound to pay for that inefficiency. Consequently, the MCA cannot accept the argument that MTRs are not to be set at the level of an efficient operator. In doing so the MCA would be going against its very fundamental principles of addressing market failures and fostering competition in a way that promotes the interest of end users as stipulated in Article 4 of the Electronic Communications (Regulation) Act.

## 3.4 Conclusion on SMP designation

Based on the findings above the MCA concludes that there are no sufficient or credible constraints that would induce all three MNOs to set MTRs at a competitive level. The MCA

[8] Page 11, Section 3.5 of the response

therefore considers that in the absence of regulation all MNOs will charge high MTRs to the detriment of end users.

Based on the analysis above the MCA concludes that:

- each MNO holds a 100 per cent market share on termination over their network;
- there is no sufficient countervailing buyer power with respect to voice call termination;
- there are absolute barriers to entry for potential competitors providing wholesale MTR services over a particular network; and
- the calling party pays (CPP) principle predominates, which does not pose any constraints or incentives on MNOs to reduce MTRs.

**Decision 2 – SMP operators**

The MCA considers that the following mobile operators hold significant market power in these markets:

1. Vodafone Malta Ltd. - Wholesale mobile voice call termination provided by Vodafone Malta ltd.
2. MobIsle Communications Ltd. -Wholesale mobile voice call termination provided by MobIsle Communications Ltd.
3. Melita Mobile Ltd. -Wholesale mobile voice call termination provided by Melita Mobile Ltd.

# Chapter 04 – Regulatory Implications

## 4.1 Outline

This chapter outlines the nature of the potential competition problems identified, given that Vodafone, Go Mobile and Melita Mobile have been designated as having SMP. This chapter also sets forth the regulatory obligations being proposed by the MCA to mitigate these problems.

In accordance with Regulation 10(4) of the ECNSR, where an operator is designated as having SMP on a relevant market in accordance with Regulation 8 of the same ECNSR the MCA is obliged to impose on such operator such appropriate specific regulatory obligations referred to in sub regulation (2) of Regulation 10 of the ECNSR or to maintain or amend such obligations where they already exist.

## 4.2 Selecting Regulatory Obligations & Remedies

In accordance with regulation 37(2) of the ECNSR, the MCA is obliged to ensure that any obligations imposed under sub regulation (1) of the same Regulation 37 shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in Article 4 of the ECRA.

The MCA has established that the relevant markets for voice call termination services on individual mobile networks are not effectively competitive. In this respect, this review finds that market forces are insufficient to impact MTRs in the absence of regulation, whilst acknowledging that regulatory intervention is necessary to enhance competition.

In selecting regulatory obligations, the MCA has based its decisions on the principle of proportionality, whilst employing the most necessary and the least burdensome remedy or set of remedies.

## 4.3 Current Regulatory Obligations

In the second review of the mobile termination markets published in October 2008 the MCA found that Vodafone and Go Mobile enjoyed SMP in the provision of wholesale termination service over their individual network. The MCA identified three main factors that could distort competition, excessive pricing, price discrimination, and denial to interconnect.

Based on the nature of these competition problems, the MCA established that Vodafone and Go Mobile had to comply with the following set of obligations:

- meet reasonable requests for access to/and use of their specific network facilities with respect to interconnection services;
- not show undue preference or undue discrimination in the provision of interconnection services;
- ensure transparency in accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices;
- reduce their individual MTRs with the percentage reduction in the EU 27 average MTR; and
- implement accounting separation.

## 4.4 Factors distorting Competition

The MCA believes that the wholesale market for voice call termination on an individual mobile network is not competitive. The evidence from the market analysis suggests that Vodafone, Go Mobile, and Melita Mobile enjoy SMP for termination services over their own individual network and this is not expected to change in the period until the next market review.

The MCA has identified three potential risks to competition in the market, namely excessive pricing, price discrimination, and interconnection at unreasonable terms. More detail on these is presented below.

### 4.4.1 Excessive Pricing

The MCA holds the view that MNOs have an interest in charging excessive MTRs because this increases the inflow of revenues from interconnection with other fixed or mobile network operators.

Excessive pricing for mobile termination services would make FTM calls and off-net mobile calls more expensive, thus leading to an increase in prices for these types of calls. Given the CPP principle end-users would not have any option but to incur higher costs for making mobile calls.

Excessive pricing would also open up an opportunity for a particular MNO to discriminate in favour of on-net calls. It could also be detrimental to market expansion in the retail mobile market.

### 4.4.2 Price Discrimination

An operator could charge 'itself' or its subsidiary a lower termination than it charges to other fixed or mobile operators. Through these price discrimination practices an operator could indeed foreclose the retail market from its competitors.

For example, an operator could set high termination charges on other operators so as to cross subsidise very low on-net MTM calls. In this sense, other operators would find it more difficult to compete in the retail market given that these are faced by much higher costs for off-net MTM calls.

### 4.4.3 Interconnection at Unreasonable Terms

Although it is common practice for network operators to negotiate interconnection agreements, the approach to such agreements could vary significantly from one case to another to such an extent that it could even result in a potential competition problem.

In a market where operators are competing for customers of the same service, some operators might find it to their advantage to delay, refuse, or even impede interconnection. This could happen in various ways such as by charging high interconnection rates to foreclose markets from existent or potential competitors for the same pool of retail customers.

Network operators have every incentive to maximise profits and would therefore be keen to maintain high interconnection charges.

## 4.5 The MCA's Regulatory Approach

After having identified potential competition problems with respect to the wholesale markets for mobile voice call termination, the MCA is required to impose obligations on MNOs to ensure that these problems do not materialise.

The MCA holds the view that any regulatory proposals shall be based on the nature of the competition problems it has identified in the relevant market, and that each proposal is proportionate and justified in light of the objectives set out in Article 4 of the Electronic Communications (Regulation) Act.

The following sections will discuss those obligations which the MCA believes must be imposed on local MNOs (each designated with SMP) to ensure that competitive practices prevail in the markets identified.

### 4.5.1 Access Obligation

*A. Proposed Decision*

The MCA has the function, under Regulation 15 of the ECNSR, to ensure that electronic communications services provide end-to-end connectivity through the appropriate granting of access to, or interconnection with, other networks, without prejudice to an SMP designation. It is therefore authorised to impose obligations on undertakings that control access to end-users in order to ensure end-to-end connectivity where this is not already the case.

The access obligation ensures that SMP operators provide access to their infrastructure for the purpose of providing voice call termination and interoperability of network services (through interconnection). The access obligation provides greater certainty in the market given that it obliges dominant undertakings to provide access to termination services on their own network, whether under the form of interconnection, or access to associated facilities, or services for the purposes of interconnection. Indeed, the access obligation requires MNOs to meet reasonable requests for access to and the use of their infrastructure for the purposes of providing voice call termination (interconnection) services in a fair and timely manner.

In the consultation document the MCA reconfirmed that Vodafone and Go Mobile have SMP in the market for voice call termination on their individual mobile network, and was therefore of the opinion that the access obligation shall be maintained, in accordance with Regulation 21 of the ECNSR.

In addition, the consultation document also determined that Melita Mobile enjoys SMP in the market for voice call termination on its individual mobile network. Consequently the MCA proposed that Melita Mobile should comply with the access obligation, in accordance with Regulation 21 of the ECNSR.

In all instances, the MCA reserved the right to specify the precise information to be made available, the level of detail required, and the manner of publication of the RIO published by any SMP operator.

All MNOs were required to have interconnection agreements for the termination of voice calls on their respective networks and to have similar interconnection agreements with all other operators. All MNOs shall therefore negotiate in good faith with undertakings making new requests for interconnection services. All requests for access and interconnection should be reasonable requests (Regulation 21(2) of the ECNSR).

Where commercial negotiations between the two parties fail, the provision (or lack of) interconnection services shall be subject to scrutiny by the MCA in accordance with its powers at law, and the reasonableness or otherwise of the request shall be evaluated on the basis of those factors listed in Regulation 21(4) of the ECNSR.

Moreover, in accordance with Regulation 21(2), the MCA proposed to intervene where necessary in order to ensure that no interconnection services are withdrawn unfairly and at the same time that no obligations are imposed unduly on existent operators.

Interconnection services shall be provided together with any services, facilities or arrangements which are necessary for the provision of such services. Furthermore, in accordance with its powers under Regulation 21(3) of the ECNSR, the MCA proposed to impose the obligation on MNOs to ensure that all reasonable requests for interconnection services are expedited in a fair, reasonable, and timely manner.

*B. Views of respondents and MCA's response*

One respondent argued that it is providing interconnect services on a fair and equitable basis and will continue to do so regardless of whether or not an obligation exists. The respondent further stated that with respect to amendments and adjustments to current interconnection agreements no clear procedure and timeframes exist. The respondent suggested that the MCA designs a process, in consultation with all stakeholders, and takes the lead to ensure that these amendments are concluded expeditiously.

The MCA welcomes the commitment of the respondent that it will conclude access agreements as required at law. The MCA believes that the obligation imposed in this proposed decision supplements the general obligation at law to provide access to all reasonable requests for interconnection.

The MCA has taken note of the proposal of the respondent to set out a more clear procedure with respect to amendments and adjustments to existing interconnection agreements. The MCA is aware that currently there are no specific time-frames for conclusion and amendments to interconnect agreements. The MCA is actively working on a consultation on processes and timeframes which should be applicable for both originating and terminating operators when the MCA allocates new numbers or additional numbers. The various processes and timeframes would be included in revamped Numbering Conventions. Although not specifically targeted for interconnection agreements, the outcome of these new conventions should result in the same benefits, since the timeframes mentioned in the conventions would be binding.

***Decision 3 - The access obligation***

In accordance with Regulation 21 of the ECNSR, the MCA directs Vodafone and Go Mobile to maintain the current access obligation for the provision of termination services on their respective networks, not to withdraw access to facilities already granted, and to interconnect networks or network facilities.

Melita Cable is also required to abide by the said access obligations in accordance with Regulation 21 of the ECNSR and this decision.

All operators must negotiate in good faith with undertakings requesting access for termination. Access to the network for termination services should be provided together with any services, facilities, or arrangements which are necessary for the provision of such access. The said MNOs shall ensure that all reasonable requests for access for the purpose of termination services are expedited in a fair, reasonable, and timely manner.

### 4.5.2 Non-Discrimination Obligation

*A. Proposed Decision*

This obligation ensures that MNOs enjoying SMP do not provide wholesale services on terms and conditions that discriminate in favour of a particular undertaking. More specifically, the imposition of this obligation is intended to avoid a situation whereby an SMP operator would have the ability to exploit its market power in order to discriminate

between termination services supplied to itself and those supplied to other fixed or mobile operators.

In the consultation document, the MCA identified four non-exhaustive types of potential discriminatory behaviour as follows:

Type A – MNOs discriminating between other MNOs & FNOs

Type B – MNOs discriminating between FNOs

Type C – MNOs discriminating between other MNOs; or

Type D – MNOs discriminating between themselves and other MNOs &/or FNOs

In this context, the obligation of non-discrimination is not limited to just one particular form of discrimination or a particular behaviour but incorporates all forms of discrimination as set out in Regulation 19 of the ECNSR.

Indeed, besides tackling price-related discriminatory behaviour, the obligation also targets non-price parameters such as withholding of information, delaying tactics, undue requirements, low or discriminatory quality, strategic design of products, and discriminatory use of information.

The MCA proposed that the non-discrimination obligation shall be imposed on Vodafone, Go mobile, and Melita Mobile. This is to ensure that all SMP operators do not exercise any discriminatory behaviour in relation to wholesale termination services within the timeframe of this review.

***Decision 4 - The non-discrimination obligation***

In accordance with Regulation 19 of the ECNSR, the MCA directs Vodafone, Go Mobile and Melita Mobile to apply equivalent conditions in similar circumstances to other undertakings seeking access for termination services and providing equivalent services. Any differences in treatment must be justified by reference to objective considerations.

### 4.5.3 Transparency Obligation

*A. Proposed Decision*

Regulation 18 of the ECNSR authorises the MCA to impose transparency obligations on undertakings holding SMP in relation to interconnection and, or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.

In accordance with Article 18 of the ECNSR, the MCA proposed to mandate on Vodafone, Go Mobile and Melita Mobile the transparency obligation. This obligation requires operators to make public information regarding call termination rates, network and technical specifications, terms and conditions for supply and use, and accounting information as required by the MCA.

The imposition of the transparency obligation on MNOs aims to ensure that the obligations of access and non-discrimination are observed. The transparency obligation also requires MNOs to deliver services of equivalent quality to all operators and to provide sufficient information on relevant matters including the processes that alternative operators would not otherwise have access to. This would assist their entry into the market and directly targets the nature of such problems.

Moreover, to supplement the access obligation in accordance with Regulation 18(2) of the ECNSR and as specified in Section 4.5.1 above, the MCA is obliging all the SMP operators to publish a reference interconnection offer (RIO). The RIO shall be sufficiently unbundled as to ensure that undertakings are not required to pay for facilities which are not necessary for the services requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices.

Where required, the MCA may impose changes to RIOs to give effect to the obligations imposed under the ECNSR. The MCA may also specify the precise information to be made available, the level of detail required, and the manner of publication.

The MCA believes that the imposition of the transparency obligation instils confidence in the market and ensures that services are not provided on a discriminatory basis. It also helps avoid any possible disputes and accelerates negotiations between existing and potential operators.

*B. Views of respondents and MCA's response*

One respondent argued that the transparency obligation proposed by the MCA contains provisions - in particular the requirement to publish a reference interconnection offer (RIO) - which would add to the regulatory burden on MNOs. The said respondent suggested that a transparency obligation is not necessary in case a price control remedy is mandated, adding that it does not contribute by itself or in combination with other remedies to addressing the perceived competition problems in the market. The proposed transparency obligation is merely considered as an extension to existing obligations with the same respondent claiming that it imposes costs without providing commensurate consumer benefits. The respondent also asks the MCA to exclude the transparency obligation from its regulatory proposals

Regulation 18 of the ECNSR authorises the MCA to impose the obligation of transparency on SMP operators. The MCA believes that it is justified to mandate this obligation to ensure that MNOs deliver services of equivalent quality to other operators. Contrary to what respondents claim, the transparency obligation will not impose an undue burden on operators but would rather serve various purposes, including that of supporting other regulatory remedies such as the obligation of non-discrimination.

The MCA considers the transparency obligation as a way to ensure visibility with respect to the terms and conditions of services being offered by MNOs. The imposition of the transparency obligation would ensure that operators have sufficient information and clear processes to which they would not otherwise have access. For example, the transparency obligation would assist market entry by helping MNOs comply with elements of the obligation of non-discrimination and in so doing speed up negotiation.

The said obligation would also require operators to prepare and publish specified information, such as accounting information, technical specifications, network characteristics and prices. This would deter anticompetitive behaviour from SMP operators by ensuring that they do not discriminate with other operators and their users.

The MCA notes that the RIO provision suggested herein, will neither extend the application of the transparency obligation nor oblige operators to provide information exceeding the current level of detail being provided. This notwithstanding, the MCA maintains the right to establish or alter the degree of the obligation relative to publication of information in the reference offer.

Overall, the MCA considers the transparency obligation as a necessary measure to monitor any anti-competitive behaviour and to ensure that MNOs comply with elements of the obligation of non-discrimination.

**_Decision 5 - The transparency obligation_**

In accordance with Regulation 18 of the ECNSR, the MCA directs Vodafone, Go Mobile and Melita Mobile to publish a reference interconnection offer (RIO), which shall be sufficiently unbundled such as to ensure that alternative operators are not required to pay for facilities which are not necessary for the services requested, giving a description of the relevant offerings broken down into components according to market needs.

Moreover, the reference offer shall include pricing, and standard terms and conditions as directed by the MCA. In so doing, the MCA reserves the right to specify further the precise information to be made available, the level of detail required, and the manner of publication of this information.

With respect to the publication of the RIO, Melita Mobile is to notify the MCA within 30 days from the publication of this decision with a draft RIO. Following the approval of the MCA, Melita Mobile is to publish the approved RIO.

The MCA also reiterates that the RIO of all operators is to be made available on their respective websites and should be accessible to anyone without the need to get any prior authorization from the said operators. Furthermore, the said operators shall notify the MCA with the exact location (link) on the Internet page where the RIO is published on their respective websites within 30 days from publication of this decision.

All SMP operators are also directed to make available any accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices as required by the MCA.

### 4.5.4 Accounting Separation

*A. Proposed Decision*

In the consultation document the MCA stated that effective monitoring of the transparency and non-discrimination obligations relies on the existence of accounting separation information. In this regard, accounting separation facilitates the verification of compliance in respect of services that the MNOs provide to other operators.

Separated accounts help disclose possible market failures and provide evidence in relevant markets of the presence, or absence, of discrimination. Amongst its other uses, accounting separation supports the imposition of transparency as it makes visible the wholesale prices and internal transfer prices of the operators' products and services. Accounting separation can also support, both directly and indirectly, the price control obligation so as to ensure that wholesale prices are set in an effective manner.

The MCA, in accordance with Regulation 20 of the ECNSR proposed to maintain the existing Accounting Separation on Vodafone and Go Mobile. Given that Melita Mobile has also been designated as having SMP in the provision of termination services, this MNO shall also be subject to the obligation of Accounting Separation.

The MCA has recently issued a decision entitled "*Accounting Separation and Publication of Financial Information by Undertakings having SMP in the ECS*"[9] providing guidelines on how this obligation shall be implemented. This decision updates the guidelines issued in 2002.

[9] http://www.mca.org.mt/infocentre/openarticle.asp?id=1336&pref=13

This notwithstanding, the MCA reserves the right to amend the current obligation in accordance with its powers at law, in particular Regulation 20 of the ECNSR, and in line with the principles of reasonableness and proportionality.

The MCA proposed that Vodafone and Go Mobile shall continue to maintain the accounting separation obligation for the timeframe of the review and provide regulatory account in accordance with the above mentioned decision.

With respect to Melita Mobile, in the consultation document, the MCA had stated that it would wait till the EU Recommendation on termination rates was published before it would specify the details of how and when Melita Mobile would provide the separated accounts. Nevertheless, the MCA had made it clear that Melita Mobile would still be subject to provide separated accounts like the other SMP operators.

*B. Views of respondents and MCA's response*

In its response to consultation, one of the respondents argues that, in the presence of price control, the obligation of accounting separation is unnecessary because the prices of termination services alone are enough to determine whether non-discrimination obligations are being upheld. The said respondent underlines that accounting separation amounts to an over specification of the regulatory requirements on operators, without any tangible benefits to any stakeholder. In addition, the respondent does not believe that accounting separation is required to support other remedies proposed by the MCA.

The MCA disagrees with the views expressed above by the respondent. The obligation of accounting separation ensures that operators with SMP keep separate accounts to reflect, as closely as possible, the performance of separate business activities that they operate. In this way, the MCA would ensure that the costs allocated by an operator to an individual mobile service are the actual costs being incurred to provide the respective service.

The MCA is aware that MNOs with SMP are able to cross-subsidise between services through an internal transfer pricing mechanism which is distorted in favour of their own retail operations to the detriment of existing or potential competitors, and to the disadvantage of end users purchasing other services. This is more so since all MNOs identified as having SMP are at least triple-play providers. In this scenario, accounting separation would preclude cross-subsidisation and would thereby avoid any inefficient pricing strategies that favour discriminatory behaviour. Accounting separation ultimately provides improved transparency in the accounting arrangements of operators and therefore encourages non-discrimination.

Consequently, the MCA believes that the obligation of accounting separation is required and justified. Furthermore, accounting separation together with a price control measure ensures that wholesale prices are set in an efficient, transparent and non-discriminatory manner.

One respondent supports the MCA conclusion that as all three MNOs have SMP all should keep separated accounts. Another respondent requested the MCA to clarify as to how accounting separation is to be implemented by Melita Mobile.

The MCA identified the same competition problems for all of the MNOs enjoying SMP. Consequently, the MCA imposed the same set of remedies on all operators in order to mitigate the said competition problems.

With respect to the accounting separation obligation of Melita Mobile, the MCA clarifies that that Melita Mobile (similar to Vodafone and Go Mobile) needs to maintain an accounting separation system as stipulated by the MCA. What the consultation document

(March 2009) did not specify was the methodology and timing that Melita Mobile has to use for the separated accounts.

At the time the consultation document was published, the MCA was still awaiting the publication of the EU Recommendation on the setting of termination rates. Since this Recommendation could have had an impact on the imposition (or otherwise), and the methodology to be applied for the accounting separation system, the MCA did not want to specify a methodology for Melita Mobile that would need to be changed after a few months. Consequently, the MCA stated that when the EU Recommendation would be published the MCA would be in a position to set the methodology to be applied for Melita Mobile, and also to confirm or amend the methodology to be used by Vodafone and Go Mobile.

Following the publication of the said Recommendation on the 7th May 2009, the MCA is now in a position to set out clearly the methodology to be used by all three MNOs designated with SMP. Since the MCA is for the time being using a pegging mechanism as the price control methodology, and given that next year the MCA will be embarking on a consultation process[10] on the future forms of MTRs regulatory mechanisms, the most economical and, from a regulatory standpoint, sensible methodology to apply to accounting separation is to maintain the existing setup based on FAC methodology. The methodology on how to implement the accounting separation obligation has already been set out in other MCA decisions[11]. This notwithstanding, the MCA reserves the right to establish or alter the details of the obligation of separated accounts, following appropriate consultation with all stakeholders.

***Decision 6 - The Accounting Separation obligation***

The MCA directs Vodafone and Go Mobile to continue to abide by their accounting separation obligation as outlined in the MCA decision entitled *"Accounting Separation and Publication of Financial Information by Undertakings having SMP in the ECS"*[12].

Melita Mobile is also to start maintaining separated regulatory accounts in accordance with the methodology stated in the abovementioned decision. Melita Mobile is required to furnish the MCA with an interim unaudited set of regulatory accounts for the first accounting year ending on or after 1st January 2010 within the timeframes established in the above mentioned decision on accounting separation. The first full set of audited regulatory accounts will cover the accounting period ending on or after 1st January 2011 and should also be submitted to the MCA within the set timeframe in the accounting separation decision. For the first set of unaudited regulatory accounts, comparative information will not be available and will therefore not be required.

The MCA reserves the right to amend the current obligation on all SMP operators in accordance with its powers at law, in particular Regulation 20 of the ECNSR, and the principles of reasonableness and proportionality.

### 4.5.5 Price Control

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[10] The MCA will shortly be publishing an Interconnection Strategy document which will put to consultation a number of alternative mechanisms to regulate interconnection rates.

[11] http://www.mca.org.mt/infocentre/openarticle.asp?id=1336&pref=13

[12] Ibid.

*A. Proposed Decision*

Regulation 22 of the ECNSR, authorises the imposition by the MCA of obligations relating to cost recovery and price control, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and, or access.

The MCA considers the imposition of price control and cost accounting obligations as essential tools to ensure efficient MTRs, because otherwise MNOs have no incentive to lower termination charges through self initiative.

In the consultation document, after having analysed the nature of competition problems identified, the MCA proposed to impose the price control obligation on Vodafone, Go Mobile and Melita Mobile, in accordance with Regulation 22 of the ECNSR.

As explained earlier on in this document, the price control obligation introduced in 2005 took the form of a 3 year glide path with MTRs declining on a yearly basis and reaching a symmetric level by January 2008. At present all MNOs in Malta are charging a symmetric termination rate of €0.0962. In selecting the new price control mechanism the MCA has considered a number of options which are analysed below.

*i. Cost Models*

In principle the MCA is of the opinion that a cost oriented MTR should be based on a cost model designed on the specifications of an efficient mobile operator.

The MCA however notes that, in the present circumstances, this option cannot be implemented for a number of reasons. First, developing a cost model requires extensive technical and financial information, which may at present not be fully available.

Secondly, since two of the existing MNOs are utilising 2.5G and 3G networks in parallel, whilst the new mobile network operator is only using a 3G network, the establishment of a cost oriented rate via a cost model adds further complexity to an already demanding exercise.

Given these considerations the MCA is of the opinion that for the time being the development of a new cost model based on an efficient operator is not practical and financially feasible to undertake. Furthermore, whilst the existing top-down cost models of individual MNOs are essential for transparency reasons and to monitor the evolution of costs, extracting a cost oriented rate from these models is still not fully in line with Long-run Incremental Costs (LRIC) methodology.

The MCA therefore believes that the use of a model-based price control regime is not the most appropriate at this point in time. This conclusion is further supported by the fact the MCA will be analysing the potential move towards a model-based regime for setting MTRs as one of the options in a future consultation on the Interconnection Strategy.

*ii. Glide Path*

Another option which has been considered extensively was the extension of the glide path for a further two years, following the positive outcome in reducing local MTRs for the past three years through this method. However, the MCA noted that the continuation of the glide path method would require a 'target' rate to be achieved in two years time. The target rate would have to be established and based on the cost oriented rate of an efficient MNO. Given the unavailability of such a cost model, the MCA cannot select the glide path option without a target-rate at its disposal.

*iii. Efficient Rate based on EU reference Rates*

The final option which was considered by the MCA was the pegging of the local MTR with European benchmarks. The MCA evaluated a number of potential benchmarks to adopt, including:

a. a simple index of MTRs adopted in the EU27 countries;

b. a distilled EU27 index of MTRs excluding 'outliers';

c. an index of MTRs adopted in EU countries having a form of cost model; and

d. an EU27 index of the lowest MTRs applicable in each EU country.

After considering all the options at its disposal the MCA believes that, in the current circumstances and given the level of available information, the best option for the implementation of the price control obligation shall take the form of a pegging mechanism linked to a simple index of the MTRs adopted in the EU 27 countries. The MCA believes that by adopting this option it will effectively bridge the gap between the costs and risks of developing a cost model in the present transitory period, and reducing local MTRs in a consistent manner and according to an efficient benchmark.

Consequently, the MCA proposed that unless otherwise directed, the MTR for Vodafone, Go Mobile and Melita Mobile for the years 2009 and 2010, will be set according to the average yearly percentage change in the MTRs of the EU 27 countries. The EU 27 average rate is to be determined from official data (backdated by one year) published yearly by the EU Commission.

A maximum and minimum cap of +/-10% variation in the local termination rate should apply to limit any significant unexpected shocks in the average yearly percentage change in the EU27 MTR. This implies that if the EU average MTR were to increase or decrease in excess of the 10% margin, local MNOs would only be requested to adjust their termination rate by 10% over the existing local termination rate. This mechanism ensures stability in MTRs being charged locally.

On the 15th May 2009 the MCA issued a decision[13] outlining the MTRs to be set by MNOs enjoying SMP. The decision stated that in line with reductions in the EU 27 average MTR the Maltese MTR is to be set at €0.0866 starting as from 15th June 2009 till the 15th June 2010. This rate will be revised again next year. This rate is applicable to all MNOs designated as having SMP.

During 2010 the MCA reserved the right to carry out a fresh review or revise the remedies outlined in this decision for mobile termination markets.

The MCA's decision on the price control is to be implemented without prejudice to developments that may occur during the two year timeframe of this review, such as the development of a cost model by the MCA. The MCA reserved the right to change and/or amend the current obligation at any time in accordance with its powers at law.

*B. Views of respondents and MCA's response*

One respondent agreed with the price control obligation as imposed by the MCA, however this respondent stated that the recent EU efforts to reduce MTRs to around €0.02 within the next three years are worrying. The respondent states that this significant decrease requires some assessment in terms of the principle of subsidiarity, namely at national level and not as an EU wide exercise.

[13] http://www.mca.org.mt/newsroom/openarticle.asp?id=734

Although the EU Commission mentioned a target MTR of €0.02, it does not advocate a one rate-fits-all scenario, in view of specific national circumstances. The main concern to the EU Commission is that the disparities that can be observed at present in MTRs cannot be wholly attributable to national specificities, hence its proposed harmonisation approach to MTRs.

Another respondent did not agree that the price control obligation as proposed by the MCA should be applied to Melita Mobile. The respondent states that the proposal that Melita Mobile's MTR should be set on a symmetric basis with the two existing mobile incumbents, is unfair and does not take account of the additional costs facing Melita Mobile as a new mobile entrant. To substantiate this argument the respondent provides three main reasons why Melita Mobile should charge a high MTR, namely:

i. Melita Mobile's entry cost are higher than those incurred by existing MNOs;

ii. at EU level asymmetric MTRs are the norm; and

iii. in Malta GO Mobile for many years was allowed to charge a higher MTR than Vodafone.

For each of the above reasons the respondent provides a detailed discussion, which will be tackled below together with the MCA response.

*i. Higher entry cost*

The respondent mentions four cost justifications why a higher MTR should be set for new entrants compared to incumbents, namely:

- *Economies of scale* - due to low traffic on its network a new entrant faces higher unit costs than an incumbent;
- *Contributions to fixed and common costs* – a new entrant with a small customer base, needs to spread these costs over a smaller traffic volume resulting in higher unit cost;
- *Lower contribution to fixed and common costs from retail revenues* – a new entrant needs lower retail prices to attract customers, therefore the margin earned is small. Therefore for a new entrant a larger contribution to costs needs to come from MTRs;
- *Higher cost of capital* – new entrants face a higher cost of capital due to higher risks.

The MCA does not believe that these cost justifications are sufficient to justify a higher MTR than that of an efficient operator. With respect to economies of scale the MCA acknowledges that new entrants have lower volumes of traffic due to a smaller subscriber base, however this does not mean that the lack of economies of scale has to be compensated through the charging of higher wholesale prices to other operators. For a start the new entrant can feature these costs in its retail prices. Since a new entrant would not benefit from charging higher retail rates than those of the existing MNOs in order to attract customers, the new entrant needs to be as efficient as possible to minimise its costs. In fact for a new market entrant, to be successful, it needs to be at least as efficient (if not more) than existing MNOs. If a new entrant charges a high MTR, it means that it can recoup any inefficiencies through higher wholesale charges to the detriment of other operators and their customers.

The MCA also believes that if a new entrant chooses to recoup any higher unit costs at wholesale level rather than from the retail market, it shows that the operator is trying to leverage its market power from the wholesale to the retail market. Since the MNO has SMP

in setting its termination rate, the MNO chooses to subsidise the retail market through higher revenues from wholesale termination rates charged to customers of other MNOs. The MCA believes that this is not in the interest of end-users and therefore it cannot allow such leveraging to happen.

In respect of the contribution to fixed and common costs the MCA does not agree that a higher contribution should be allowed from a high MTR. Similar to the argument just discussed, the MCA does not believe that it is economically efficient to let an MNO charge a high MTR, to recoup its costs, at the expense of customers of other networks. If charging high retail prices to the customers of the new entrant is not desirable, neither does it benefit the consumer of other networks to incur a higher cost.

Another argument to consider in the recovery of fixed and common cost from MTRs is the methodology adopted to set the MTR. In the Recommendation on the setting of termination rates, the EU Commission suggested adopting a revised version of the LRIC cost methodology currently used. The main difference being a move from a traditional LRIC approach to a 'pure' LRIC form which affectively includes only third party termination traffic in the definition of the 'increment'. In other words, this suggested methodology effectively results in recovering elements of common costs not from termination, but from the competitive retail side of the mobile market. The impact of such an approach would be to reduce MTRs significantly. As the MCA is currently setting local MTRs based on a pegging mechanism with the EU average, local MTRs will ultimately be based on this methodology.

As regards the higher cost of capital of a new entrant, the MCA does not agree that a new entrant faces higher risks of investment than that of incumbents. The only type of risk that should feature in the calculation of the cost of capital is risk that cannot be diversified away by holding a portfolio of assets offered in the financial market. This type of risk is not associated with market entry. The MCA holds that only a monopolist can set its own desired rate of return. In fact to counteract this risk, the MCA has regulated the rate of return as from the earliest forms of price control models imposed on SMP operators. The MCA therefore believes that in a competitive market the rate of return is set equal to the market efficient rate of return. Any attempt to increase the rate of return beyond the efficient level is a direct result of SMP in the market.

*ii. Evidence of asymmetry in the EU*

The respondent states that in 22 out of the 27 EU Member States, asymmetric mobile interconnection rates are in place between mobile operators. The respondent argues that this practice is the norm within the EU and that there has been little evidence that MTRs are moving towards symmetry. The respondent states that like other new entrants in the EU, Melita Mobile should *"be entitled to charge a higher rate for mobile termination than that levied by the two long-established incumbents."* The respondent than proceeds to say that *"should a concerted move towards symmetric rates get underway across the EU, any such higher rate might only stay in place for a limited period of time but, in the meantime, Melita should be afforded the same right that all other new entrant MNOs across the EU 27 have been granted…"*.

At the outset the MCA does not believe that asymmetric MTRs are to be applicable to Malta. To this effect both the EU Recommendation on the setting of termination rates and the ERG Common position on termination rates acknowledge that termination rates should normally be symmetric and that asymmetry requires an adequate justification.

Within this context it is also interesting to note that both the EU Commission and the ERG have engaged in a process whereby the MTRs across the EU are to be made symmetrical as soon as possible and based on a common pricing methodology that will reduce MTRs to an efficient level. The fact that there is an EU wide understanding and commitment towards achieving symmetric rates proves that symmetry is the desirable norm. The MCA

has always favoured the concept of the application of symmetric MTRs based on an efficient operator. To this end, in 2005 the MCA started a process through which in 2008 MTRs have been set at a symmetric rate. The MCA does not see any reason why it should move from the application of symmetric to asymmetric MTRs, simply because in the EU there still countries working to achieve that goal.

The MCA concludes that the presence of asymmetries in other countries, does not give the 'right' to any MNO in Malta to charge an MTR higher than that of an efficient operator as set by regulation.

*iii. Evidence of asymmetry in Malta*

The respondent argues that in Malta Go Mobile was allowed to set a higher MTR than Vodafone for a number of years until 2008. The respondent provides a graph illustrating the asymmetry between the MTR of Vodafone and Go Mobile. According to the respondent this asymmetry has helped Go Mobile to attain a strong market position.

The MCA agrees with the respondent that for a number of years Go Mobile had a higher MTR than that of Vodafone. Nevertheless, the context under which these rates were temporarily allowed was different to that prevailing today.

The regulation of termination rates prior to 2005 fell under the old regime of regulations and therefore the setting of obligations was different to that of today. At the time, the MCA's target and priority was to establish an acceptable cost oriented rate of an efficient operator. Consequently, in between 2003 and 2005 the MCA efforts were concentrated on adjusting the operators' individual cost models to reflect this. Following the entry in force of the new regulatory regime, the MCA published its first market review in December 2005 outlining the strategy for the setting of MTRs. In the 2005 decision the MCA established that Vodafone and Go Mobile both enjoyed SMP in the setting of MTRs. The MCA imposed a glide-path with the intention to reduce MTRs to an efficient level and also to achieve symmetry. This course of events shows that the MCA has always upheld the principle of symmetric MTRs and it was always consistent in the long-term target of achieving symmetry. This goal was reached as of January 2008, when Vodafone and Go Mobile both achieved the established target symmetric rate.

Another fact which the respondent did not mention is that the glide-path was not imposed as a result of the new entrant, or to reduce the MTR of the new entrant to the level of the existing MNO, but was targeted at both MNOs simultaneously. The MTRs of both MNOs were moving downwards to the target rate established by the MCA, with Go Mobile's MTR being reduced in a larger magnitude each year compared to the MTR of Vodafone.

The MCA underlines, that whilst it is true that for a number of years the MTR of Go Mobile was higher than that of Vodafone, symmetric rates was always the target of the MCA. Whilst in the EU glide-paths are being set now to achieve symmetry, the MCA had long started this process and today this goal has been achieved ahead of other EU states.

In conclusion, the MCA believes that there are no justifiable reasons why any MNO enjoying SMP should be allowed to set a higher MTR than that of an efficient operator. Allowing such a practice to happen would implicitly mean that the MNO setting a high MTR would have exercised its SMP powers to charge an inefficient rate at the detriment of customers.

*C. Views of the EU Commission and MCA's response*

In its comments letter sent on the 26th June 2009 the EU Commission stated that the MCA should adopt a more aggressive benchmarking methodology for reducing MTRs to a cost oriented level. The EU Commission, whilst stating that it does not exclude the use of benchmarks as a price control mechanism, argues that the benchmarking methodology

used by the MCA does not promote efficient cost-based estimates. Furthermore, the EU Commission states that the 10% cap adopted by the MCA would further limit the reduction in local MTRs with the consequence that the Maltese MTR would move from below to above the EU average MTR. Consequently, the EU Commission invites the MCA to adopt a benchmarking methodology that would result in steeper reductions in termination rates. To this end, the EU Commission proposes that the benchmarking methodology adopted by the MCA would be based on the absolute level of member states applying a cost model for the setting of MTRs, and that the 10% cap be removed. The EU Commission states that in accordance with the Recommendation on the setting of termination rates, the MTRs of all MNOs should be set at the efficient level by the end of 2012.

The MCA takes note of the EU Commission comments and would like to assure the Commission that the MCA will meet the objectives of the Recommendation on termination rates by the set deadline of 31st December 2012.

With respect to the proposed benchmarking methodology outlined in the EU Commission's comments letter, the MCA believes that such a methodology is difficult to adopt at present. Firstly, the MCA notes that robust and official information on which countries are adopting a cost model, including the type of model they are using, is not readily available. Secondly, the MCA notes that many of the countries that have a cost model might not be using the efficient rate estimated by the model, but are rather using a glide path to achieve that rate over a period of time. Information on the actual modelled rate, as opposed to that being currently deployed (which might be on a glide path at present) is also unavailable. This makes it more difficult for the MCA to benchmark against the efficient rate. Thirdly, the MCA notes that at present many countries are building or revising their existing cost models to become in line with the new methodology outlined in the Recommendation on termination rates. This means that the rates from the existing cost models are still not in line with the principles of the Recommendation. Consequently, the MCA believes that present methodology adopted by the MCA, which proposed way back in early 2008 (when there was no visibility of the Recommendation on termination rates), remains the most appropriate for the time being.

Nevertheless, the MCA understands that given the new framework proposed by the Recommendation, the present methodology may not achieve the desired efficient MTR by the end of 2012. Consequently the MCA will be embarking on a consultative process leading to the determination of a new strategy for the setting of all termination rates in accordance with the objectives of the Recommendation. The results of this exercise will be published shortly for consultation. The MCA believes that through this exercise it will be considering all the options available to achieve the efficient termination rates in line with the Recommendation and will also be taking into account the local peculiarities. The new approach for the setting of MTRs will be adopted as from June 2010 following the Interconnection Strategy consultation.

Within the context and timeframes set above, the MCA considers that it will be reasonable to keep the present methodology for the setting of MTRs until June 2010 as stated in the decision published in June 2009[14] for Vodafone and Go Mobile. The MCA maintains that changing the methodology at this point in time will be very disruptive to the market. The MCA also notes that the difference between the MTR in Malta of €0.0866 and the EU average MTR of €0.0855 is negligible. The MCA believes that this difference is manageable and can be in the future adjusted through the new MTR mechanism.

The MCA will in the first half of 2010 publish a new methodology for the setting of MTRs which will take into account the EU Commission's comments, the objectives of the Recommendation and also the results of the Interconnection Strategy consultation process.

[14] http://www.mca.org.mt/newsroom/openarticle.asp?id=734

**Decision 7 – The Price Control Mechanism.**

In accordance with Regulation 22 of the ECNSR, the MCA is mandating the price control obligation on Vodafone, Go Mobile and Melita Mobile.

The MTR for all operators until the 15th June 2010 shall be set against the reduction in the average MTR for the EU27 countries. The MCA is also setting a maximum and minimum cap of +/-10% variation in the local termination rate to limit any significant unexpected shocks in the average yearly percentage change in the EU27 MTR.

In accordance with the Notice on Wholesale mobile termination rates published by the MCA on the 15th June 2009, Vodafone and Go Mobile shall continue to charge the MTR as set out by the said notice or as updated by the MCA.

Melita Mobile is also to adopt the same MTR as stated by the said Notice. An update to this notice highlighting Melita Mobile's obligation is being published in conjunction with this decision.

The MCA will amend the controls described above in accordance with its powers at law and after consulting with all interested parties on the proposed changes, which will be effective for setting the mobile termination rates after the 15th June 2010.

### 4.5.6 Cost accounting

In accordance with Regulation 22 of the ECNSR, the MCA underlines that a cost accounting obligation is being mandated on Vodafone, Go Mobile and Melita Mobile in order to monitor, on an ongoing basis, costs incurred by operators in relation to the termination charges being applied.

The cost accounting data represents valuable information on the allocation of costs onto different services. This can also prove valuable in the eventuality of the development of a new cost model, even if this were to be based on a bottom-up methodology as, in practice, cost accounting models are hybrid systems which still make use of top-down data.

The methodology to be employed by MNOs for the cost accounting obligation shall follow the MCA decision on this obligation which has been in place since 2002[15]. Nevertheless, the MCA may amend the methodology in accordance with its powers at law and in line with EU obligations and recommendations, following appropriate consultation with all interested parties.

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[15] Implementation of Cost Based Accounting Systems for the Telecommunications Sector - Report on Consultation and Decision - July 2002 - http://www.mca.org.mt/infocentre/openarticle.asp?id=132&pref=2

Guidance on Accounting Methodologies for Regulatory Accounting Purposes, March 2003 - http://www.mca.org.mt/infocentre/openarticle.asp?id=245&pref=1

Implementation of Cost Based Accounting Systems and Accounting Separation, MobIsle Communications, April 2004. - http://www.mca.org.mt/infocentre/openarticle.asp?id=583&pref=2

## 4.7 Monitoring and reviewing of markets

The MCA considers that it is sensible to keep a close watch on the progress of the wholesale mobile termination markets. To this end, the MCA intends to analyse market trends and developments on an ongoing basis, and remains committed to update any of these findings in response to a significant change in market conditions.

The MCA, in accordance with its powers at law, is also reserving the right to change any of the above mentioned regulatory obligations as it deems necessary and following appropriate consultation with interested parties.

# Appendix 1

MINISTERU TAL-FINANZI, L-EKONOMIJA U INVESTIMENT

MALTA

MINISTRY OF FINANCE, THE ECONOMY AND INVESTMENT

DIVIŻJONI TAL-KONSUMATUR U TAL-KOMPETIZZJONI

CONSUMER AND COMPETITION DIVISION

Ufficcju tad-Direttur Generali

Office of the Director General

20 October 2009

The Chairman
Malta Communications Authority
Valletta Waterfront
Pinto Wharf
Floriana

Dear Chairman,

The Office for Fair Competition (OFC) has been asked to provide its opinion in respect of the Malta Communications Authority's (MCA) consultation document concerning wholesale voice call termination on individual mobile networks.

The OFC contends that the market assessment as conducted by the MCA follows standards that are in line with best practices normally used when defining relevant markets in competition analysis. The OFC considers that it is reasonable to accept for the period under review the MCA's identification and analysis of the wholesale voice call termination on individual mobile networks markets in Malta. Nonetheless, MCA should continue to monitor market developments in this regard. The OFC also urges MCA, with respect to the setting of termination rates, to continue working so as to align its decision with the Commission's Recommendation of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU.

We would like to point out that our views are being submitted in the context of the specific provisions of the SMP guidelines relating to the relationship between markets defined for the purpose of ex-ante regulation vis-à-vis competition law enforcement. The OFC reserves the right to re-examine any or all of the issues underlying these MCA recommendations in the light of facts and evidence that may arise in specific future cases before it.

Yours sincerely,

Dr Mireille Vella
Director General

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