EUROPEAN COMMISSION

Brussels, 3.12.2018
C(2018) 8400 final

Malta Communications Authority
(MCA)
Valletta Waterfront - Pinto Wharf
FRN 1913, Valletta
Malta

For the attention of
Mr. Edward Woods
Executive Chairman

Fax: +356 21 336 846

Dear Mr Woods,

Subject: Commission Decision concerning Case MT/2018/2128: Wholesale call termination on individual public telephone networks provided at fixed location in Malta

Comments pursuant to Article 7(3) of Directive 2002/21/EC

1. PROCEDURE

On 13 November 2018, the Commission registered a notification from the Maltese national regulatory authority, Malta Communications Authority (MCA)[1], concerning the review of the markets for wholesale call termination on individual public telephone networks provided at fixed location in Malta[2].

The national consultation[3] ran from 24 September 2018 to 26 October 2018.

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1 Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

2 Corresponding to market 1 in Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

3 In accordance with Article 6 of the Framework Directive.

On 15 November 2018, a request for information[4] was sent to MCA and a response was received on 19 November 2018.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs), the Body of European Regulators for Electronic Communications (BEREC) and the Commission may make comments on notified draft measures to the NRA concerned.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

The market for wholesale call termination on individual public telephone networks provided at fixed location in Malta was previously notified to and assessed by the Commission under cases MT/2015/1796.[5] MCA defined six markets for wholesale call termination services provided by GO, Vodafone Malta, Melita, Ozone, SIS and Vanilla Telecoms on their individual public telephone fixed networks and designated them as operators with significant market power (SMP) on their respective markets.

MCA imposed on all the six operators the obligations of access, transparency, non-discrimination and price control. MCA retained the cost-accounting obligations only on Go and Melita. With regard to price control, MCA set the fixed termination rates (FTRs), on the basis of a pure BU-LRIC model, at 0.0443 eurocent/min. The Commission did not have comments.

2.2. Market definition

MCA defines five markets for wholesale call termination services provided, respectively, by GO, Vodafone Malta, Melita, Ozone, and Vanilla Telecoms on their individual public fixed telephone networks.

2.3. Finding of significant market power

MCA proposes to designate GO, Vodafone Malta, Melita, Vanilla Telecoms and Ozone as operators with significant market power (SMP) on their respective markets. The criteria considered by MCA when assessing SMP are mainly market share and the lack of countervailing buyer power.

2.4. Regulatory remedies

MCA intends to maintain all the obligations currently in place, such as the obligations of access, transparency, non-discrimination and price control on each SMP operator and the obligation of cost accounting only on GO and Melita. With regard to price control, MCA proposes to maintain the current rate of 0.0443 eurocent/min for the next regulatory period. The rate was set on the basis of a pure BU-LRIC model adopted in 2012. In its response to the RFI, MCA explained that

[4] In accordance with Article 5(2) of the Framework Directive.

[5] C(2015) 8661.

revising or updating the 2012 model would not have translated into an improvement of the situation in the relevant market.[6]

The current FTR shall remain in force, meanwhile the MCA intends to closely monitor and participate in the process whereby the EU Commission is expected to implement a common fixed termination rate in Europe (planned for 2020), following the political agreement concerning the European Electronic Communication Code reached on 5th of June 2018.

MCA also specified that it will continue to monitor the situation and will account for any significant changes in subsequent analyses when and if required.

3. COMMENTS

The Commission has examined the notification and the additional information provided by the MCA and has the following comments:[7]

3.1. Efficient level of termination rates

The Commission takes note of MCA's proposal to maintain the current rate of 0.0443 eurocent/min, which was set on the basis of a pure BU-LRIC model adopted in 2012, for the next regulatory period, instead of revising or updating the cost model to calculate new tariffs.

The Commission further takes note of the fact that the Maltese termination rate is the one of the lowest in the Union and of MCA's explanation, as to why it did not revise the old cost model, particularly in view of the upcoming Eurorate.

The Commission acknowledges that in the past, whenever an NRA proposed to set the termination rates at levels which were not reflective of the recent market conditions, the Commission has expressed serious doubts as to the compliance of such measures with the EU Regulatory Framework.[8]

Recently, the negotiations on the EECC have been concluded and the Commission is currently working on a delegated act aimed at setting single maximum union-wide fixed and mobile termination rates (Eurorates), based on a pure BU-LRIC model applicable on all operators. The delegated act will be adopted by 31 December 2020.

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[6] MCA explains that the complete revision of the current BU-LRIC model at this stage would imply extra cost to review the model and also by the time the decision is published, it can create market uncertainty. The MCA also points out that the fixed termination rate in Malta is one of the very lowest in the European Union/EEA.

[7] In accordance with Article 7(3) of the Framework Directive.

[8] See i.a. case RO/2017/2017. In this cases, the Commission opened a phase 2 investigation because ANCOM did not review/update the model. ANCOM withdrew the draft measure and then notified a new draft measure proposing initially a short transition measure where they kept the same rates (case RO/2017/2041) to the time strictly necessary to develop a transitional measure bringing down the level of FTRs. The Commission urged ANCOM to start revising its cost model, so that the (soon to be adopted) transitional rates can be replaced by new cost-efficient rates within the shortest time possible.

Considering the current level of the Maltese tariffs and as the current measure is merely relevant for the interim period, the Commission distinguishes this case from its previous practice.

Indeed, contrary to the situation underlying in case RO/2017/2017-2018, the level of the rates that MCA proposes to maintain is low compared to the EU average[9]. Given the likely general downward trend of the EU average termination rate, the gap between the Maltese termination rate and EU average termination rate would probably decrease. Maintaining one of the lowest rates in the EU by MCA would not have a similar effect as the notified measure in the Romanian case and, hence, does not raise the same serious concerns from the Commission.

Nevertheless, the Commission encourages NRAs – during the transition period to the Eurorate – to continue updating their existing BU LRIC models with the most recent data as they become available (e.g. traffic patterns, volumes of voice and data, financial parameters, etc), to the extent possible with reasonable effort. Such update would, in the Commission's view, not be overly burdensome and may result in more accurate estimate of the termination costs for the relevant review period.

Therefore, the Commission asks MCA, to consider to update the current model with readily available more current input data (i.a. traffic volumes) and to assess the pertinence of the outcomes to the transition to the Eurorate, which shall take into account the weighted average of efficient costs in the Union.

Pursuant to Article 7(7) of the Framework Directive, MCA shall take the utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measure; where it does so, shall communicate it to the Commission.

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

9 In the Romanian case the level of the FTR (0.14 eurocent/min was the highest pure BU-LRIC rate in EU, well above the average rate of 0.086 eurocents/min (considering only EU Member States applying a pure BU-LRIC rate).

Pursuant to Point 15 of Recommendation 2008/850/EC[10] the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission[11] within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.[12] You should give reasons for any such request.

Yours sincerely,

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

For the Commission,
Roberto Viola
Director-General

[10] Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

[11] Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

[12] The Commission may inform the public of the result of its assessment before the end of this three-day period.