



Notification of re-assessment by the MCA of the wholesale fixed broadband access market in Malta

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The MCA is hereby providing notice that it will not pursue further with the notification of a draft decision to the EU Commission on the basis of its market analysis consultation document entitled 'The provision of wholesale fixed broadband access in Malta - Definition, assessment of SMP & regulation of relevant markets'. The mentioned analysis was published on 22nd May 2020 (hereafter referred to as the '2020 WFBA consultation').

The MCA shall be drafting a new consultation document on the relevant market(s), aimed to set the parameters for the respective regulatory approach over the coming years.

Developments since the MCA consultation published in May 2020

This notification of re-assessment takes into account developments that materialized since the publication of its 2020 WFBA consultation.

- The MCA's 2020 WFBA consultation seeks to identify the relevant factors for a successful entry into the relevant market. Based on information available at the time, the consultation did not foresee new market entry within the timeframe of the review. Neither was any imminent market entry apparent on the basis of responses to the consultation that were received or for some time following the closure of the consultation period.

This year, new market entry has occurred in the provision of wholesale fixed broadband access in Malta, by way of Epic launching its own fibre-based network in Mosta on a trial basis and the relevant retail commercial offers for fixed broadband.

The nature and extent of this trial, including the fact that this was accompanied by the launch of a commercial offering, are such as to compel the Authority to pause and review the stance taken in its consultation document.

Thus, the MCA considers that, given this development, it has to re-evaluate the state and potential future development of infrastructure-based competition within the timeframe of a new market analysis. As stated in the 2020 EU Recommendation, '*the possibilities to overcome barriers to entry within the relevant time horizon should also be taken into consideration when identifying the relevant markets for possible ex ante regulation*'.

- In assessing the adequacy of competition and the need for regulatory intervention, the MCA will consider the continued relevance of wholesale access for competitive market outcomes that are sustainable, with special attention to the impact on consumer welfare in terms of price, quality and choice.
- The MCA is cognizant of the time factor involved in the rollout of a national infrastructure in the event that the operator in question makes the decision to go beyond its trial

exercise. A future analysis would have to take this aspect in due consideration, carefully weighing the evolving rights, obligations and relationships of all stakeholders over the relevant timeframe of the review.

- At this point in time, the Authority is not in any position to exclude any possible outcome from a new analysis, including that reached in the analysis being withdrawn.
- The MCA considers that commercial agreements - including agreements on wholesale access, co-investment agreements and/or reciprocal access agreements between operators - which comply with the principles of competition law and are entered on a lasting basis would serve to improve competitive dynamics and may ultimately address current and / or potential competition concerns at the related retail market, as well as weigh on any regulatory remedies that the Authority may deem adequate for the purpose of maximizing consumer welfare. The new European Electronic Communications Code places significant weight to these kind of agreements and provides guidance to NRAs accordingly.
- Also, in this context, the MCA will take utmost account of the most recent EU guidance on the assessment of markets in the course of the new analytical exercise being referred to in this publication. It is of note that, in December 2020, the EU Commission published a new Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation, in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code (hereafter referred to as the '2020 EU Recommendation')¹. This replaces the 2014 EU Recommendation, which is the guiding reference for the MCA's 2020 consultation².

The MCA will take utmost account of national circumstances when defining the market(s) for the new analysis.

¹ Link to the 2020 EU Recommendation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020H2245>

² Link to the 2014 EU Recommendation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014H0710>



Way forward

The MCA remains committed to monitor market developments and to the objective of sustainable competition at retail level.

In the circumstances the MCA is obliged to initiate a new market analysis exercise at the earliest possible.

The findings of the analysis, including proposed regulatory approach, will be published for consultation to allow interested parties and stakeholders to react and submit their responses within a specified time window.