Retail Public Telephone Call Services provided at a Fixed Location

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

Response to consultation and final decision

25th March 2009

Malta Communications Authority
Valletta Waterfront, Pinto Wharf, Valletta FRN 1913
Tel: (+356) 21336 840
Fax: (+356) 21336 846

Contents

Executive summary

The MCA is hereby presenting its decision on the markets for retail public telephone services provided at a fixed location (the retail calls markets), in accordance with the EU regulatory framework of electronic communications networks and services. This document builds on a consultation exercise carried out by the MCA between the 5th of December 2008 and the 16th of January 2009.

The MCA received two responses, from:

- Go plc.; and
- Sky Telecom Ltd.

The MCA has taken into account all the submissions presented during consultation. The views of respondents and the corresponding reactions of the MCA are found at the end of each chapter.

The MCA also consulted the Office for Fair Competition (OFC) on the findings of this market review. From its investigations, the OFC agreed with the findings of the MCA and its official position is available to the general public[1].

Following a thorough consideration of all submissions, the MCA has notified its decision to the EU Commission and other NRAs. The Commission has sent its no comments letter on the 13th of March 2009[2].

Background

This document sets forth a thorough examination of factors influencing the behaviour of service providers and end-users in the aforementioned retail calls markets.

The previous market reviews

The current review follows on two earlier documents, namely the MCA market review 'National telephone services provided at a fixed location' carried out in 2006, and the MCA market review 'International telephone services provided at a fixed location' carried out in 2007.

In its previous reviews the MCA had concluded that Go plc., formerly known as Maltacom plc., held a position of SMP in all of the four relevant retail calls markets (Markets 3 to 6) as follows:

Market 3, which defines residential telephone services provided at a fixed location;

Market 4, which defines non-residential telephone services provided at a fixed location;

Market 5, which defines residential international telephone services provided at a fixed location; and

Market 6, which defines non-residential international telephone services provided at a fixed location.

---

[1] OFC reply is found in Appendix to this document.

[2] Link to EU Commission No Comments Letter: http://www.mca.org.mt/infocentre/openarticle.asp?WsAppId=590&id=1288&pin=podfk5465g4v6e5r4g6

The finding of SMP was based on an analysis of a number of criteria namely market shares, vertical integration, economies of scale and scope, and countervailing buyer power.

Given the finding of SMP, the MCA imposed regulatory remedies on the SMP operator, namely obligations on access to wholesale inputs, in conjunction with obligations at a retail level such as cost orientation, non-discrimination, transparency, cost accounting and accounting separation, and measures to counter the unreasonable bundling of services.

The current market review

The current review defines two retail calls markets in accordance with competition law principles, namely:

1. National telephone call services provided at a fixed location; and
2. International telephone call services provided at a fixed location.

The MCA concludes that both markets include fixed-to-fixed as well as fixed-to-mobile calls but exclude voice over broadband (VoB) calls, and unmanaged IP-based calls. The MCA also maintains the view that calls originated from a mobile phone fall within a separate market.

Furthermore, the MCA is discontinuing the former distinction made between the residential and non-residential calls markets because it has found no clear and consistent method in distinguishing residential and non-residential users in the provision of national and international telephone call services. Market evidence also suggests that, from a demand-side and supply-side perspective, call services provided to residential and non-residential customers are practically identical.

Finally, the MCA reiterates that the relevant geographic market for the provision of retail calls services from a fixed location in Malta is national in scope. In fact, all authorised operators providing retail calls services are doing so on a national level, without actually differentiating - in terms of pricing and availability - on the basis of geographic location.

Further details to the market definition exercise are contained in Chapter 2.

The MCA also notes that the revised EU Recommendation states that 'the retail calls markets are no longer considered susceptible to *ex ante* regulation on an EU-wide basis' even though it allows National Regulatory Authorities (NRAs) to determine otherwise if 'national circumstances require a different conclusion'.

In this respect, the MCA carried out a three criteria test and determined that:

- the retail calls markets are not subject to the presence of high and non-transitory barriers to entry, these being either of a structural, legal, or regulatory nature;
- competition is already evident in these markets and that it is expected to remain present within the timeframe of this review; and that
- competition law by itself is adequate to address any potential market failure(s) in the provision of national and international telephone call services from a fixed location.

Regulatory implications

The MCA did not find any conclusive evidence to suggest that the identified retail calls markets feature any operator enjoying SMP. This means that the existent regulatory regime in the identified markets is no longer warranted.

The MCA is therefore withdrawing all existing retail regulations as established under the MCA decisions entitled 'National telephone services provided at a fixed location' published in 2006, and 'International telephone services provided at a fixed location' published in 2007. This is being done without prejudice to any other general obligations of undertakings at law.

In order to have a smooth transition from a full regulated market to a non-regulated market, the MCA notes that, in accordance with Regulation 10(3) of the ECNSR, the existing obligations should be withdrawn 30 days following the publication of this decision.

The MCA believes that the 30-day notice period is justified and sufficient to allow for all stakeholders to make necessary arrangements for the new regulatory approach to the identified market.

More detail on the MCA's regulatory approach to the retail calls markets is contained in Chapter 4 to this document.

Market monitoring

The MCA shall keep a very close watch on the progress of the retail calls markets. The MCA remains committed to issue a new market analysis at any point in time in response to any deterioration in the competitive level of the market. The MCA is also determined to take emergency remedial action, in accordance with its powers at law, should a significant problem in the market occur as a result of the removal of any of the present obligations, in order to safeguard competition and protect the interest of end-users.

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[3]) 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 the promotion of competition, the 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 as the "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).

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

The Directives oblige 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(s); and
- An assessment of whether and what type of regulatory intervention is necessary in the market.

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 those telecom markets for which regulatory intervention is warranted. The Recommendation originally came into force in July 2003 (Rec. 2003/311/EC). After having been in force for more than four years, the Recommendation came up for review and was eventually revised. The revised Recommendation[4] was then published in December 2007.

This process brought about some very important developments. Of significant relevance was the proposal to reduce, from 18 to 7[5], the number of markets for which the EU Commission recommends regulatory intervention.

Beyond these markets regulators could still intervene. However, NRAs would need to present the 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 national view point, the MCA's document entitled 'Market Review Methodology' elaborates on the criteria used in assessing competition in Maltese electronic communications markets[6]. 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).

[4] On 17 December 2007, the European Commission adopted the Recommendation 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 and services. This replaces the earlier 2003 European Commission Recommendation.

[5] The revised Recommendation takes the view that the retail calls markets should no longer remain susceptible to ex-ante regulation.

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

Regulation 6 of the ECNSR stipulates that the results and conclusions 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 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 these draft measures for a further period of 2 months while the Commission considers its position.

The 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 The national consultation exercise

As required by Article 10 of the ECRA, the MCA published the findings of this market review, providing operators the opportunity to comment on these findings prior to adopting the final decision.

Furthermore, in accordance with Regulation 6 of the ECNSR, the MCA notified the EU Commission with the findings of this market review, and the outcome of the national consultation process.

National consultation was carried out between the 5th of December 2008 and the 16th of January 2009. Two operators presented their submissions to the MCA.

1.4 Liaison with the National Competition Authority (OFC)

The MCA notes that, in accordance with Regulation 10 of the ECNSR, this analysis has been undertaken on agreement with the National Competition Authority (NCA).

In line with the cooperation agreement signed on the 20th May 2005 between the MCA and the Office of Fair Competition (OFC)[7], the MCA has initiated a two week consultation process with the OFC. The OFC's official position is found in the Appendix to this document.

1.5 Scope of this Review

As indicated further above, this review considers public telephone services provided at a fixed location in Malta, including national telephone call services, and international telephone call services.

1.6 Structure of the Document

The document comprises three more chapters as follows:

Chapter 02 defines the markets for public telephone call services provided at a fixed location in Malta, also referred to as the retail calls markets. Conclusions are substantiated by a demand-side and supply-side substitutability analysis.

[7] Link to Memorandum of Understanding between MCA and OFC: http://www.mca.org.mt/infocentre/openarticle.asp?id=656&pref=9

Chapter 03 outlines the analysis of the retail calls markets. A forward-looking assessment is presented on the basis of a three criteria test, taking into account a prospective two-year timeframe.

Chapter 04 highlights on existing regulation mandated in the retail calls markets and discusses the withdrawal of such regulation.

Chapter 02 – Market Definition

2.0 Outline

This chapter delineates the retail calls markets in Malta for the purpose of assessing competition in the relevant markets, and the purpose of sector-specific regulation. The exercise takes into account the extent to which switching among services by consumers constrains prices, irrespective of the infrastructure deployed by service providers.

The exercise is forward looking in nature and, where it is thought possible that market conditions may change significantly during the timeframe of this review, these changes are identified and discussed.

The conditions in which undertakings are operating in the market are investigated through a demand-side and supply-side substitutability analysis.

Markets are delineated on the basis of a combination of a product and geographic dimension.

2.1 Background to the Chapter

Regulation 10 of the ECNSR stipulates a market definition tailored for national circumstances, taking utmost account of all applicable guidelines and the revised EU 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 notes that it 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 consumers constrains prices, irrespective of the infrastructure used by the providers of those services.

The purpose of the market definition procedure is to identify in a systematic way the competitive constraints that service providers encounter, thereby also facilitating the subsequent market analysis procedure.

2.2 Fixed Line Telephony in Malta

The liberalisation of fixed line telephony in Malta has accelerated market entry over the last decade, also allowing for new products and services to be launched on the market.

Local fixed line telephony is characterised by the incumbent PSTN[8] operator, Go plc.[9], the incumbent cable operator, Melita plc.[10], and two other operators namely Vodafone (Malta) Ltd. and Sky Telecom Ltd. A number of ISPs are also offering international VOIP call services, though their market presence is negligible.

Fixed line telephony subscribers reached 235,468 by the end of Q2 2008. Most of these, i.e. 188,671 were subscribed with the PSTN incumbent. 43,632 were subscribed with Melita, 2,739 were subscribed with Sky Telecom Ltd. and around 426 were subscribed with Vodafone (Malta) Ltd.

Go enjoys the largest market share in terms of subscribers, at approximately 80 per cent of the total. This however represents a 5.3 per cent decline when compared to the corresponding period in 2007. On the other hand, Melita has managed to grow its market share to 18.5 per cent since its entry in the market. The remaining 1.5 per cent of registered subscribers are accounted for by Sky Telecom and Vodafone.

In terms of traffic volumes, fixed line originating traffic registered notable declines over the last few years. A more detailed account of developments in local fixed line traffic will feature in Chapter 3 to this document.

2.3 Delineation of the retail calls markets

The delineation exercise takes into account the possibilities for demand-side and supply-side substitution in the markets under consideration. In this way, the MCA would be able to identify the different products and services which potentially fall within the scope of this market review.

2.4 Fixed line access

The analysis of a specific market implies the consideration of the whole value chain, including adjacent retail services. In this respect, the MCA has to determine whether fixed line access falls within the scope of this market review.

The MCA is cognisant of the fact that fixed line access and retail calls are usually bundled together in one package of access and usage. In reality however the provision of retail call services depends on the availability of retail fixed line 'narrowband' access. This means that rather than being substitutable, access and call services are more complimentary in nature.

The MCA notes that access to the public fixed telephone network is characterised by different demand and supply conditions applying to retail calls. This conclusion is underlined by the fact that access and retail calls are functionally different, with customers making calls over the fixed network dependent on or only if they have access to the public fixed telephone network. Besides, customers are not bound to buy access and calls as a cluster of services from the same operator. For example, the existence of

[8] The PSTN incumbent Go plc., formerly known as Maltacom plc., has upgraded its circuit-switched network to a packet-switched alternative in 2007. The soft-switch solution adopted by Go plc. changed the circuit-switched core network to a multi-service network capable of carrying voice, enhanced services and packet-based broadband traffic.

[9] Following a rebranding exercise carried out in 2007, Maltacom Group has been renamed Go. Maltacom plc. remained the registered company name until Friday 16 November 2007, when this has been changed to Go plc. during an Extraordinary General Meeting.

[10] Melita plc. has been formerly known as Melita Cable plc.

Carrier-Select (CS) and Carrier Pre-Select (CPS) operators allows customers to purchase calls from one operator while buying access from another.

Pricing structures applicable on access and retail calls are also different, with the cost of access and the cost for calls listed separately in the bill received by the customer.

From a supply-side perspective, it is not actually clear whether undertakings providing outgoing calls would systematically enter the access market in response to a small but significant non-transitory increase in the price of access. However, the MCA considers that it is highly unlikely for any CS or CPS operator (which offers call services only) to enter the access market during the timeframe of this review, if a hypothetical monopolist of access lines imposes a small but significant non-transitory increase in the price of access lines. Given the economies of scale and sunk costs involved in the construction of access networks, the MCA considers that there is no realistic possibility of supply-side substitution between access and retail calls during the timeframe of this review.

Conclusion

Based on the above, the MCA considers fixed line access to fall in a separate market to that for retail fixed line calls.

2.5 Mobile originated calls and fixed line originated calls

As part of its market delineation exercise the MCA has asked the question of whether mobile originated calls can be considered in the same market for fixed line originated calls.

The MCA first of all notes that the choice of whether to make a fixed line originating call or a mobile originating call depends on two main factors, namely functionality and price.

If within reach of his/her fixed line connection, a person who has a mobile subscription can choose between either making a fixed line call, or else making a mobile phone call. However, if the same person is located outside the reach of a fixed line connection, there is no option other than to make a mobile phone call.

Price differences between a fixed line originating call and a mobile originating call could also have a determining effect in these circumstances.

The forthcoming demand-side and supply-side analysis provides more detail to the above considerations.

Demand-side analysis

The MCA considers a call originating from a mobile phone as functionally different to a call originating from a fixed line. The main contrast between the two is that an individual can only make a fixed line call from a fixed access point whilst a mobile call can be originated independently of location.

In the former case a user can substitute a mobile phone call with a fixed line call, but in the latter case the user has no other option than to use a mobile phone. This suggests that substitution between a mobile call and a retail fixed line call is limited in that substitution can only happen in one direction, with a user substituting a fixed line originated call to a mobile originated call and not vice versa.

Linked to the functionality factor is consumer behaviour and market developments. The mobile subscriber base widened considerably, with local call patterns changing accordingly. By the end of Q2 2008, local mobile network operators reported 374,507 subscribers, a rather substantial increase of 58,868 subscriptions when compared to Q2 2005. In line with higher mobile penetration rates, mobile originating traffic increased from 39,226,997 minutes in Q2 2005 to 60,959,169 minutes in Q2 2008.

Correspondingly, fixed line originating traffic declined from 221,918,496 minutes in Q2 2005 to 158,200,862 minutes in Q2 2008, and this irrespective of the increase registered in fixed line telephone subscriptions.

Chart 1

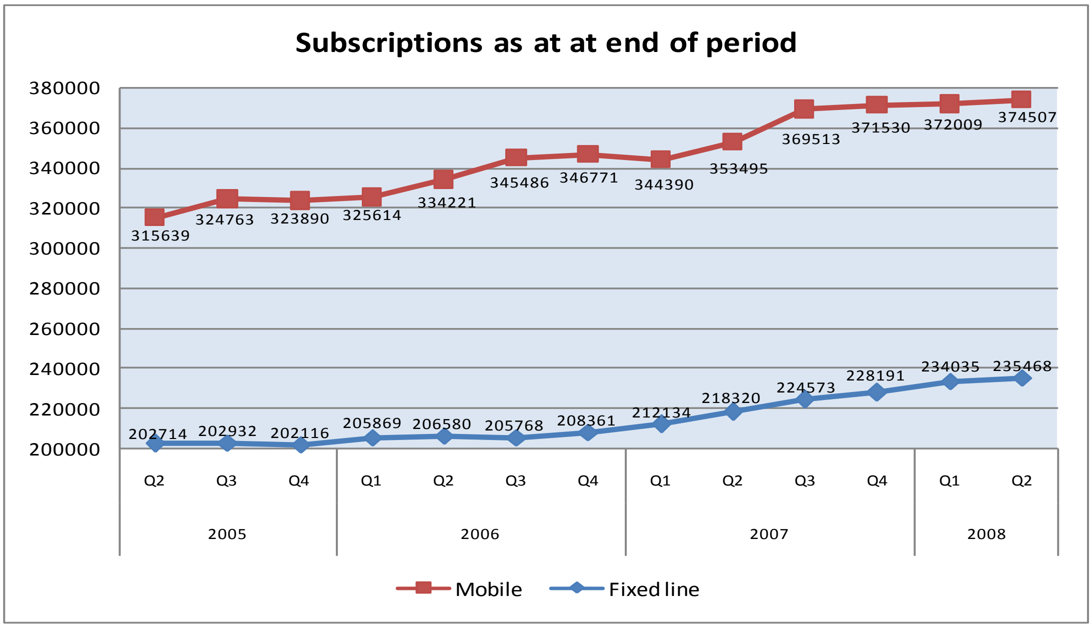
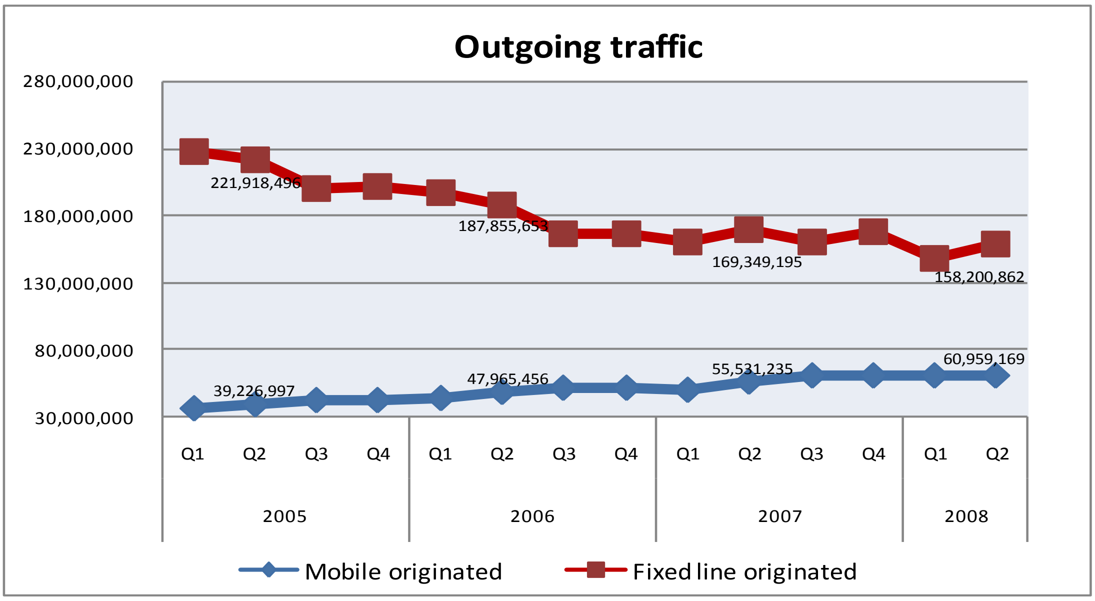


Chart 2



The figures above suggest that the majority of those residing in Malta who own a mobile phone with a valid subscription can also access a fixed line connection. This makes it possible for calling parties to choose whether to make a mobile originated call or a fixed line originated call on a 'call-by-call' basis. In this sense, the MCA recognises that substitution between a mobile originating call and a fixed line originating call is possible.

The MCA suggested earlier on that there is only one-way substitution from fixed line originated calls to mobile originated calls. Chart 2 supports this argument in that it clearly indicates that fixed line originating traffic is declining as opposed to increases registered for mobile originating traffic. Chart 2 shows that between Q2 2005 and Q2 2008 fixed line originating traffic declined by over 63.5 million minutes compared to an increase of 21.7 million minutes in mobile originating traffic.

Nevertheless, the MCA notes that the decline in fixed line originating minutes has not been completely compensated for by the increase in mobile originating minutes. This result still shows that consumers are more inclined to use their fixed line telephone set, given that they consider fixed line calls as being relatively cheaper compared to mobile originated calls.

Chart 3 below shows that approximately 78 per cent of mobile terminating traffic is mobile originated. Furthermore, whilst mobile-to-mobile traffic has been increasing substantially throughout the years, fixed-to-mobile traffic has not seen any significant changes. Chart 3 therefore confirms that consumers are not likely to substitute a mobile-to-mobile call with a fixed-to-mobile call.

Chart 3

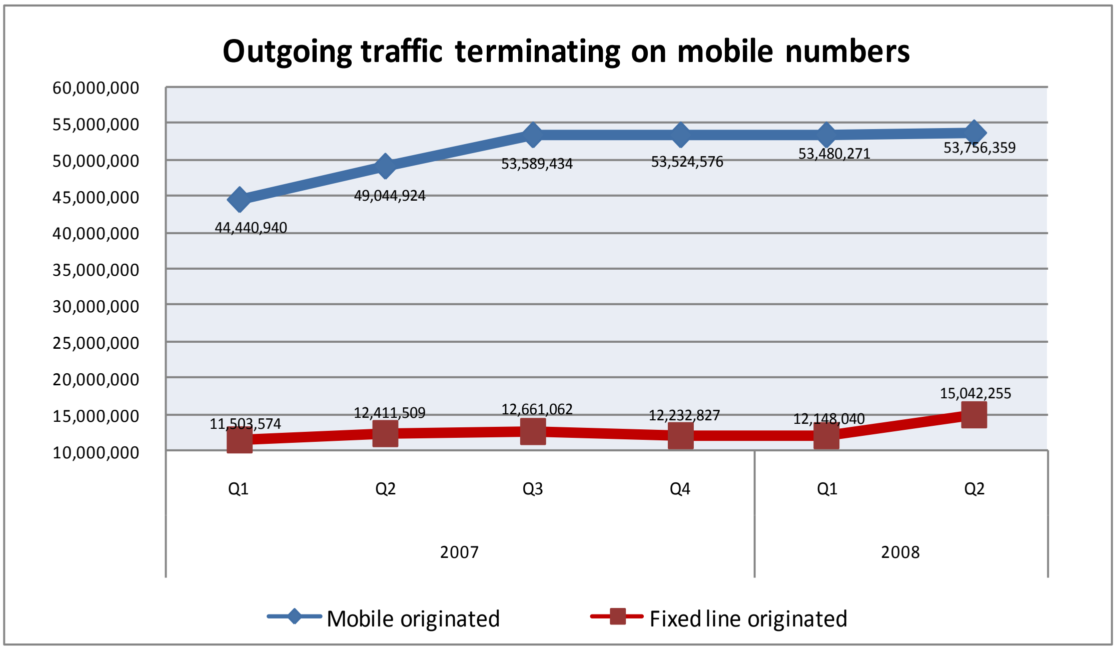
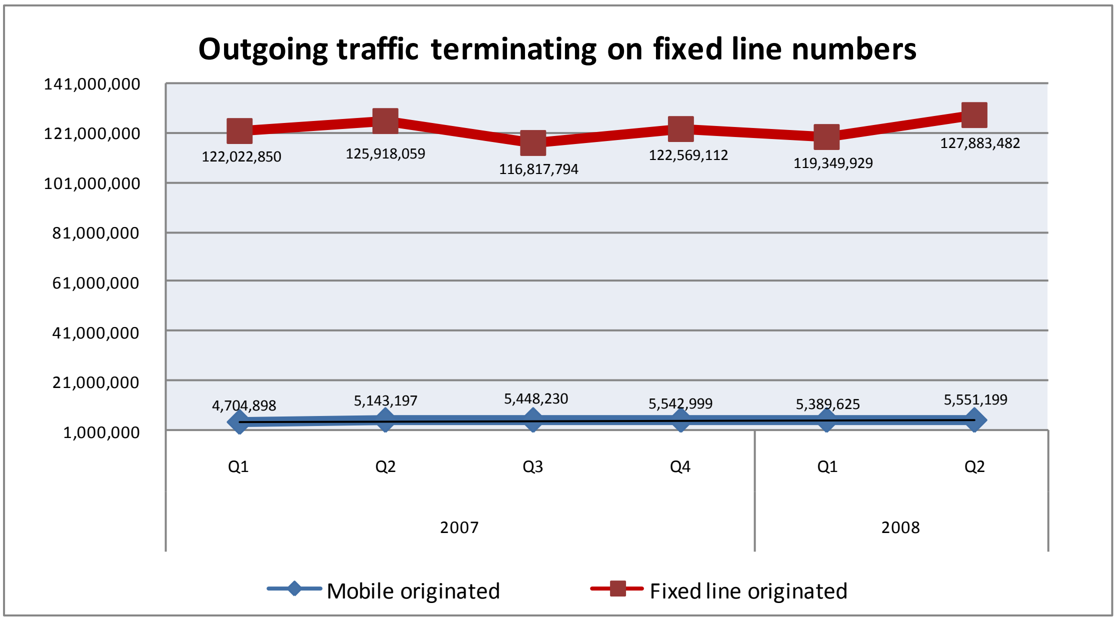


Chart 4



On the other hand, consumers are more likely to use their fixed line handset to make longer calls and fixed-to-fixed calls. Chart 4 indicates that traffic originating from mobile handsets and terminating on fixed lines has not seen any significant quarter-on-quarter changes during the period under review.

Chart 4 also suggests that consumers who are currently using their mobile handset to make a mobile-to-fixed call are not likely to substitute such a call with a fixed-to-fixed call. At the same time, given that average call rates for mobile-to-fixed calls are much higher than those for fixed-to-fixed calls, the MCA does not expect mobile-to-fixed traffic to increase by much.

More detail on prices (or call rates) is also warranted at this stage given that pricing has a determining effect on whether a person chooses to reach a third party by using his/her mobile handset or else a fixed line handset. The MCA however notes that due to a number of structural differences, it is not always easy to compare mobile tariff plans with fixed line tariffs. Nonetheless, such price comparisons are necessary to determine which products and services delineate the market.

Despite differences in prepaid and postpaid tariff plans, mobile subscribers will normally consider the billed cost of the call as being the cost associated with that particular call, and therefore one can actually compare the perceived cost of originating a call from a mobile phone with a call originating from a fixed line. The price differential between a fixed call and a mobile phone call also depends on the user, and the type of call being undertaken as shown in Table 1 below.

Table 1

Average call rates during peak hours	**One minute duration €**	**Three minute duration €**
Mobile originating call (prepaid plans)		
Mobile-to-mobile (on-net)	0.317	0.903
Mobile-to-mobile (off-net)	0.358	1.046
Mobile-to-fixed	0.358	1.046
Mobile originating call (postpaid plans)		
Mobile-to-mobile (on-net)	0.179	0.537
Mobile-to-mobile (off-net)	0.222	0.665
Mobile-to-fixed	0.166	0.497
Mobile-to-fixed (outside bundle offers)	0.157	0.471
Mobile-to-fixed (inside bundle offers)	0.172	0.516
Fixed line originating call		
Fixed -to-fixed (on-net)	0.064	0.149
Fixed-to-fixed (off-net)	0.071	0.169
Fixed-to-mobile	0.239	0.640
Fixed line originating call (prepaid lines)		
Fixed-to-fixed (on-net)	0.073	0.099
Fixed-to-fixed (off-net)	0.082	0.127
Fixed-to-mobile	0.293	0.879
Data as at December 2008 based on figures published by local operators		

Table 1 and 2 suggest that a mobile originating call on average costs more than its fixed line counterpart, irrespective of the user making the call, and irrespective of the type of call undertaken.

Table 1 underlines that, during peak hours, average prepaid mobile-to-mobile call rates (at 31.7 euro cents on-net and 35.8 euro cents off-net) are higher than the average call rates for fixed-to-mobile calls (at 23.9 euro cents postpaid and 29.3 euro cents prepaid). However it is important to note that average call rates for mobile originating calls are not taking into account specific bundle offers, discounts, and free calls to chosen numbers. It could very well be that a good number of prepaid mobile subscribers are actually spending much less for a mobile-to-mobile call than they would spend if they were to make a fixed-to-mobile call. Indeed, there are instances (for example on-net calls to selected numbers) when average call rates go down to 0.09 euro cents per minute.

The MCA also notes that although average call rates for postpaid mobile-to-mobile calls during peak hours (see Table 1 above) are inclusive of access charges, these are still cheaper when compared to average call rates for fixed-to-mobile calls.

Table 2

Average call rates during off-peak hours	**One minute duration €**	**Three minute duration €**
Mobile originating call (prepaid plans)		
Mobile-to-mobile (on-net)	0.269	0.715
Mobile-to-mobile (off-net)	0.315	0.874
Mobile-to-fixed	0.315	0.874
Mobile originating call (postpaid plans)		
Mobile-to-mobile (on-net)	0.173	0.519
Mobile-to-mobile (off-net)	0.222	0.665
Mobile-to-fixed	0.166	0.497
Mobile-to-fixed (outside bundle offers)	0.157	0.471
Mobile-to-fixed (inside bundle offers)	0.172	0.516
Fixed line originating call		
Fixed -to-fixed (on-net)	0.064	0.149
Fixed-to-fixed (off-net)	0.07	0.165
Fixed -to-mobile	0.239	0.640
Fixed line originating call (prepaid lines)		
Fixed-to-fixed (on-net)	0.099	0.099
Fixed-to-fixed (off-net)	0.103	0.111
Fixed-to-mobile	0.293	0.879
Data as at December 2008 based on figures published by local operators		

Table 2 shows that average call rates for prepaid mobile-to-mobile calls during off-peak hours are not cheaper when compared to average call rates for fixed-to-mobile calls. The MCA however notes that, during off-peak hours and during weekends, operators offer prepaid subscribers a number of free and discounted calls, with the end result most likely being lower average mobile call rates than those quoted in Table 2.

In addition, the MCA notes that average call rates for mobile-to-mobile calls made by postpaid subscribers during off-peak hours are also cheaper when compared with fixed-to-mobile calls.

The above analysis underlines that there is no demand-side substitution between fixed-to-mobile and mobile-to-mobile calls, and this irrespective of the type of subscription, location, and time band when such a call must be undertaken. Furthermore, many people today are constantly 'on the move', especially during peak hours, and therefore have no option other than to use their mobile handset to make a mobile-to-mobile call, and if urgently required, a mobile-to-fixed call.

Tables 1 & 2 also show that average call rates for both prepaid and postpaid mobile-to-fixed calls are much more expensive than fixed-to-fixed calls. This means that an individual within reach of his/her fixed line handset would not substitute a fixed-to-fixed call with a mobile-to-fixed call[11].

Table 3

End-users perceptions survey		Is a mobile call a good substitute to a fixed line call?				
Yr	Respondents	Always/Often	Sometimes	Rarely	Never	Do not know?
2005	953	45.3%	29.0%	8.2%	8.7%	8.7%
2007	1000	23.6%	31.0%	23.4%	14.3%	7.7%

Table 3 shows that more than 35 per cent of respondents to the 2007 perceptions survey carried out by the MCA stated that a mobile call is rarely or never a good substitute to a fixed line call. For another 31 per cent of respondents, a mobile call is a good substitute to a fixed line call only occasionally, most probably when required to make immediate contact with the person being sought. This supports the view that it is unlikely for customers to switch a fixed line call with a mobile call, unless required for immediate contact, implying that demand-side substitution between the two type of calls is very weak.

This review also takes into account the call rates charged by local operators for calls to international destinations. Table 4 clearly indicates that mobile international calls terminating on fixed lines in the UK and the US and other important routes are on average 4 to 6 times more expensive than PSTN-based calls, and 20 to 25 times more expensive than IP-phone based (VOIP/CS-VOIP) calls.

Table 4

Retail tariffs for international calls terminating on a fixed line number during peak hours (rates incl. VAT)					
	UK € per minute	Italy € per minute	USA € per minute	Australia € per minute	Japan € per minute
Mobile call					
Vodafone Malta	0.930	0.930	0.650	0.930	2.030
Go Mobile	0.750	0.750	0.750	0.750	1.860
Fixed line call					
Go - International Direct Dialling In	0.165	0.147	0.165	0.165	2.013
Go - TEN21	0.035	0.035	0.035	0.035	0.035
Melita	0.035	0.035	0.035	0.035	0.058
Sky Telecom	0.035	0.035	0.035	0.035	-
Data as at January 2009					

In the case of international calls terminating on mobile numbers, mobile originating calls are on average 3 to 10 times more expensive than IP-phone based (VOIP/CS-VOIP) calls. When compared to PSTN originated calls, mobile originated international calls are 1.5 to

[11] This reasoning is supported by findings in the MCA's *'End-users perceptions survey – fixed telephone services'* carried out in July 2007. In fact, 48.9 percent of respondents who owned a mobile phone replied that they would make the same use of their mobile handset if the price of fixed local calls had to increase by 5 to 10 per cent. 18.3 per cent even said they would us their mobile handset even less, probably because these users are very price conscious and therefore keen to reduce their mobile consumption in order to compensate for the increase in the cost of fixed calls.

3.5 times cheaper, except for calls to the US, where mobile originated calls are 4 to 4.5 times more expensive than PSTN originated calls.

Table 5

Retail tariffs for international calls terminating on a mobile number during peak hours (rates incl. VAT)					
	UK € per minute	Italy € per minute	USA € per minute	Australia € per minute	Japan € per minute
Mobile call					
Vodafone	1.090	1.090	0.750	1.090	2.210
Go Mobile	0.930	0.930	0.650	0.930	2.030
Fixed line call					
Go - International Direct Dialling In	1.630	1.630	0.165	2.935	5.870
Go - TEN21	0.230	0.330	0.035	0.230	0.230
Melita	0.326	0.326	0.035	0.233	0.233
Sky Telecom	0.230	0.326	0.035	0.230	-
Data as at January 2009					

Price differentials for international calls are such that even following a 5 to 10 percent hypothetical increase in the price of international fixed line calls, tariffs for such calls would still be lower than their mobile counterpart.

Supply-side analysis

Undertakings may decide to enter a product or service market in the event of a small and permanent increase in the price of a relevant product and service. This must happen fast enough in order to prevent the price rise of the product from being profitable for the hypothetical monopolist that implemented the said price increase.

In this regard, the MCA has considered whether a 5 to 10 percent increase in the price of calls originated from fixed lines might entice a MNO to switch production within a reasonable time frame and start offering fixed line calls.

For an MNO to start offering fixed call services it would require either the construction of a fixed access network, or the development of a wireless product that closely resembles the fixed access product, or, alternatively, investment in CPS. In the case of deployment of a new network there are significant sunk costs involved and long timeframes. Therefore it is unlikely that the SSNIP would entice switching. Investing in a CPS option is far more realistic within the timeframe of this review and involves much less investment costs. However, given the current fixed call rates, it is unlikely that an MNO would consider switching production following a 5 to 10 per cent increase in price.

Conclusion

Given the different functionality and the price differential between mobile originating and fixed line originating calls, it is very unlikely that during the timeframe of this review customers would switch from fixed originated to mobile originated international calls, unless required for immediate contact.

All the above considerations suggest that mobile originated calls and fixed line originated calls are more complementary in nature than substitutable. There is therefore no justification to define a single market comprising both type of calls.

From a supply-side point of view, the MCA believes that the high costs involved in developing nationwide network infrastructure render supply-side substitution between mobile originated calls and fixed line originating calls highly unlikely.

2.6 National and international calls

The next step into this market delineation exercise is to determine the different type of fixed line originated calls which fall within the scope of this market review, and whether such calls should be considered under the same market or else under distinct markets.

The MCA first looks into national and international calls so as to determine whether customers substitute between these two types of calls, and whether suppliers switch production following a price increase for a national or international call.

Demand-side analysis

From a user's functional point of view, a call to a national number cannot be substituted with a call to an international number. The former will terminate on a local network, and the latter on a foreign network. Furthermore, international call rates differ according to the terminating destination of the call. Countries are usually grouped together and a rate is then applied to each group. This pricing procedure is very different from that applied to national calls.

Supply-side analysis

The MCA has considered whether a non-transitory 5 to 10 percent increase in the price of international calls by a hypothetical monopolist would entice a provider of national calls to compete with the monopolist and to start providing international calls within a reasonable time frame. In order to offer international calls and related products and services, the same provider would be required to establish international connectivity and to enter into agreement with foreign operators to terminate its originating calls to destination.

The MCA notes that local operators which are currently providing national calls are also providing international calls, and that it is highly unlikely for any of these operators to switch completely in the provision of international calls in the event of a 5 to 10 per cent increase in the price of such calls. All operators are indeed expected to continue offering both national and international calls within the timeframe of this review.

Conclusion

International calls feature appreciably different conditions of competition than those observed for national calls. Given the ease with which existent operators providing national calls are already offering international calls, there is no scope for observing supply-side substitution. It is also evident that, from a demand-side perspective, national and international calls are not substitutable.

The MCA therefore concludes that national calls and international calls fall within two separate markets, namely the market for national call services provided at a fixed location (the national calls market), and the market for international call services provided at a fixed location (the international calls market).

2.7 Fixed-to-fixed and fixed-to-mobile calls

The section above identified two types of retail fixed line calls, namely national and international calls. The MCA notes that retail fixed line originating calls can be terminated either on a fixed line number (a fixed-to-fixed call) or else a mobile number (a fixed-to-mobile call). To determine whether national or international fixed-to-fixed calls and national or international fixed-to-mobile calls fall within the same relevant market the MCA has undertaken a demand-side and supply-side substitutability analysis as follows.

Demand-side analysis

At first glance, it can be argued that a fixed-to-fixed call is a likely substitute to a fixed-to-mobile call. However, substitution between the two types of calls is restricted by a number of factors.

Firstly, not all fixed line telephone subscribers own a mobile subscription and, vice versa, not all mobile subscribers have a fixed line subscription. Secondly, there is a price differential between fixed-to-fixed and fixed-to-mobile calls, which could potentially influence customer choice. The cost of making a fixed-to-mobile call is indeed more expensive than making a fixed-to-fixed call. This suggests that, if the calling party is aware that the called party is not reachable via a fixed-to-fixed call, he/she might still opt not to make a fixed-to-mobile phone unless required to do so for immediate communication.

Notwithstanding the above, the MCA notes that providers of fixed line telephone services tend to offer customers a cluster of call types. This means that, when purchasing retail call services, consumers purchase a cluster of call types ,including fixed-to-fixed and fixed-to-mobile calls. This suggests a single market for fixed-to-fixed and fixed-to-mobile calls.

Supply-side analysis

The MCA considers whether a hypothetical monopolist providing fixed line telephone services would be able to profitably increase prices of fixed-to-mobile calls above competitive levels, without potential providers of fixed-to-mobile calls entering the market and undermining the price increase.

As argued above, providers of fixed line telephone services tend to offer an entire cluster of call types in that when consumers acquire calls, they do not purchase fixed-to-fixed calls and fixed-to-mobile calls separately.

The introduction of Carrier Select (CS) and Carrier Pre Select (CPS) services has made it easier for new and potential market entrants to start providing retail fixed line calls. If a hypothetical CS or CPS operator starts providing fixed-to-mobile calls, then it would be relatively easy for that operator to start providing fixed-to-fixed calls, and this in a relatively short period of time following a hypothetical price increase of such calls. Indeed, the infrastructure required by a CS or CPS operator to provide fixed-to-mobile calls is essentially the same for providing fixed-to-fixed calls. This reasoning also holds true for undertakings which have their own network infrastructure already in place.

Conclusion

The MCA maintains the view that fixed-to-fixed calls and fixed-to-mobile calls fall within the same relevant market. In this sense, national fixed-to-fixed calls and national fixed-to-mobile calls fall within the scope of the national calls market, whereas international fixed-to-fixed and international fixed-to-mobile calls both fall within the scope of the international calls market.

2.8 Internet calls

Consumers make calls to the Internet if they need to access a local dial-up internet connection. Dial-up internet access is achieved with the user dialling a number allocated to the chosen Internet Service Provider (ISP).

Demand-side analysis

The MCA notes that operators offering voice call services over a fixed line tend to offer users a cluster of (domestic) call types, including calls to the Internet. In this sense, consumers purchase calls to the Internet on similar terms and conditions (including pricing) applying to other domestic calls.

Supply-side analysis

The MCA has considered whether a non-transitory 5 to 10 percent increase in the price of voice calls originated from fixed lines would entice a provider of Internet calls to start offering such calls within a reasonable timeframe.

The MCA notes that the introduction of CS and CPS services has made it easier for potential new entrants to start providing voice call services. It is indeed relatively easy for any hypothetical CS or CPS operator providing Internet calls to start offering fixed voice calls in response to a small but significant non-transitory price increase for such calls.

Conclusion

The MCA considers calls to the internet to fall within the scope of the national calls market.

2.9 Calls to geographic and non-geographic (non-internet) numbers

Technically, both geographic calls and non-geographic calls are originated and carried in exactly the same way over the fixed line network.

Demand-side analysis

The MCA notes that operators offering voice call services over a fixed line tend to offer users a cluster of call types, including national calls to non-geographic numbers (predominantly linked to premium rate services and freephone services). However, a user wishing to call a fixed geographic number would not normally consider a call to a non-geographic number as a feasible substitute.

Still, when purchasing calls, consumers do not purchase calls to geographic and non-geographic numbers separately.

Supply-side analysis

The MCA has considered whether a non-transitory 5 to 10 percent increase in the price of calls to a geographic number would entice an existent provider of non-geographic calls to start supplying calls to a geographic number within a reasonable time frame.

Technically, there is nothing to preclude a CPS operator providing calls to non-geographic numbers to start supplying calls to geographic numbers, in a relatively short period of time, following a hypothetical price increase. Given that a CPS operator invests in the infrastructure required to provide all type of calls (geographic and non-geographic) through CPS, it would then be well placed to start offering such calls. This reasoning also holds true for undertakings that have their own access network infrastructure in place.

Conclusion

The MCA is of the opinion that there is sufficient supply-side substitution between national fixed geographic calls and national fixed non-geographic calls. It therefore considers calls to non-geographic numbers to fall within the same relevant market for calls to geographic numbers.

2.10 IP-based calls

IP-based call services can be classified into two categories, managed IP call services (VOIP) and unmanaged IP call services (internet telephony).

Managed IP-based (VOIP) call services are controlled or managed by the service provider and could be offered either on a stand-alone basis or else as an add-on to a broadband connection, possibly even part of a multi-play package.

Unmanaged IP-telephony incorporates internet telephony services (i.e. voice over internet services), which are usually PC-based and sometimes even phone-based. Voice over internet services are nomadic in nature.

As in previous sections to this Chapter, the MCA has to determine whether managed and unmanaged IP-based calls both fall within the scope of the same market review.

A. Managed IP-based calls

Managed IP-based calls are provided by the PSTN incumbent Go plc, the cable incumbent Melita plc, Sky Telecom Ltd, Vodafone (Malta) Ltd, and a number of Internet Service Providers (ISPs).

Both the PSTN and cable incumbents are currently offering a comprehensive package of IP-based calls over their publicly available telephone networks, and this to all users which have an access line connection to Go and Melita respectively. Similarly to the traditional PSTN network operator, the cable operator offers services that allow users to make IP calls to other users on the cable network (on-net calls) and calls to other public telephone networks (off-net calls), calls to mobile numbers, calls to non-geographic numbers, and VOIP international calls.

With respect to VOIP international calls, Go has been providing a Carrier Selection-based international call service called 'Ten21' since July 2005. This service is available to all its subscribers as a secondary service to the traditional PSTN international calling facility. Consequently, Go subscribers have the possibility of either using the international number, or use the carrier selection code 1021, followed by the international E.164 number from the same telephone set.

Sky Telecom is currently providing CS/CPS-based call services through the utilisation of a VOIP gateway provided by Go. To get access to Sky telephone services a user would either dial a code (carrier selection), or else have all the calls routed automatically to the VOIP service provider via Carrier Pre-Selection. Sky Telecom is providing both national and international CS/CPS-based call services.

Vodafone is currently offering an IP telephone service to its customers through its WiMAX network. In practice, Vodafone is offering Voice over IP as an add-on to its broadband packages. Technically, Vodafone is offering a voice over broadband (VoB) service as the telephone service can only be purchased in addition to a broadband connection.

The MCA finally notes that local ISPs are using the Hybrid CS model to provide international calls. This model allows users to buy a prepaid card or to open an account with the ISP offering the service. A user first needs to make a local call from a fixed line or mobile phone to the ISP's number. Once the system authorises the user to make a call a dial tone is heard. The user dials the desired number and is connected. Unlike the pure CS/CPS model described above, the retail local call to the ISP is paid by the user to the telephony operator (PSTN or mobile) and is separate to the cost paid to the VOIP operator.

Demand-side analysis

Calls provided by the PSTN incumbent, the cable incumbent, the CS/CPS operator, and ISPs have similar functional attributes and therefore, in principle, should be considered as being substitutable to each other. Market developments clearly indicate that customers are not refraining from switching between one operator and the other. The shift in the market is evident, subscribers for Melita and Sky are increasing, at the expense of Go's subscriber base. In the case of international calls, a surge in market shares for ISPs between 2002 and 2004 has been reversed since 2005, with the 'Ten21' service gaining most of the losses suffered by ISPs.

The MCA notes that Vodafone has recently launched its IP telephone services, as an add-on to a broadband connection. This means that customers wishing to switch from any other operator to Vodafone must first invest in a broadband internet connection before actually being able to make IP-based voice calls (VoB calls) over Vodafone's network.

The MCA also notes that, irrespective of functional and pricing similarities between VoB calls offered by Vodafone and calls offered by other operators, different access requirements pose a constraint on the potential demand-side substitutability between the two types of calls. In this regard, the revised EU Recommendation states that 'generally consumers will not upgrade to a broadband service solely for the purpose of accessing voice services'. Indeed, consumers opt for a broadband connection primarily to get access to higher-speed Internet services and not essentially to avail of VoB calls.

Migration to VoB services in the market appears to be happening independently of price differences that may exist between narrowband and broadband telephone services. Furthermore many customers who have a broadband internet connection have kept their narrowband telephone service(s), indicating that they consider broadband and narrowband telephone services as complementary services rather than substitutes.

Supply-side analysis

The MCA has considered whether a non-transitory 5 to 10 percent increase in the price of PSTN calls by a hypothetical monopolist would entice another service provider offering calls over a different infrastructure to switch production and start offering PSTN calls within a reasonable time frame.

The MCA notes that it is highly unlikely for the cable incumbent to purchase the necessary wholesale inputs required to provide PSTN-based services. Instead, this provider would intensify its efforts to win a larger market share of the PSTN market, mainly by encouraging consumers to switch from PSTN-based telephone services to those based on cable infrastructure. For similar reasons, it is also highly unlikely for Vodofane, Sky and ISPs to purchase the necessary wholesale inputs required to convey PSTN calls.

Conclusion

The MCA considers IP-based calls offered by Go, Melita, Sky Telecom, and ISPs as being sufficiently interchangeable or substitutable, and that therefore all should be considered under the same relevant market, according to the type of call.

On the other hand, for the reasons explained above, VoB calls (i.e. calls conveyed over broadband) are not sufficiently substitutable and interchangeable to IP-based calls offered by local operators. This means that VoB services do not fall within the scope of this market review.

B. Unmanaged IP-based calls

Unmanaged IP-based calls are offered through what are known as PC-based models, requiring a PC and an Internet connection. There are two broad types of PC-based service namely:

- those that only enable users to make calls to other PC users over the Internet; and
- those that enable users to make calls to any E.164 number from their PC. In this case, the user enters into a commercial agreement with a local VOIP service provider, which could possibly be other than the user's broadband access provider or ISP;

PC-based VOIP call services are not managed by an intermediary or service provider. Such services are in fact managed by the end-user after having installed a particular type of software on the computer. This software enables PC-based VOIP services, namely VOIP calls, to be carried over the public internet. However, the use of such software does not guarantee any quality of service (QOS) standards.

The revised EU Recommendation suggests that 'on the basis of quality differences and product characteristics, unmanaged VoB services appear for the time being to be less of a substitute for narrowband telephony than managed VoB, but that distinction may disappear over time as the quality of unmanaged VoB services improves and technical features change'.

Conclusion

PC-based Internet telephony does not fall within the scope of this market review.

2.11 Residential and non-residential markets

One major consideration in this market delineation exercise refers to whether the MCA should distinguish between two types of customers, namely between residential and non-residential customers, and therefore whether to distinguish between residential and non-residential call markets.

The distinction between residential and non-residential call markets was upheld in 2005 in view of the conclusions with respect to the market analysis for local fixed access. Indeed, the MCA has defined separate markets for residential and non-residential access on the justification that operators are able to distinguish between residential and non-residential customers when these apply for access services. The MCA argued that operators could therefore adopt different pricing strategies and billing arrangements according to the type of user.

The revised EU Recommendation on relevant markets proposes that the distinction between residential and non-residential customers does not apply in the majority of Member States. Given this development the MCA is analysing whether this conclusion could apply to Malta as well.

Demand-side substitutability

Operators in the retail calls markets can differentiate between residential and non-residential users on the basis of information acquired from various sources. It can be argued that, in this way, operators would then be able to offer different products/services to their customers specifically tailored to their needs. Nonetheless, it is not clear whether customer targeting requires such a clear cut distinction between the residential and non-residential type of customer.

In reality, residential and non-residential fixed calls are functionally homogenous in terms of quality of service and means of provision. It is true that there are instances where marketing strategies differ, such as in terms of pricing plans and discount schemes. However, such differences might not justify the existence of separate markets. In essence, the price-quality relationship of both national and international calls and related products and services is actually determined on the basis of a common competition platform, namely volume of usage and not customer type.

It has also become a matter of choice and preference for end users to subscribe either to an operator differentiating between the residential and non-residential type of customer, or else subscribe to another operator which does not apply such differentiation. Locally, the PSTN incumbent distinguishes between residential and non-residential customers. If, for example, the PSTN incumbent were to increase the price of calls made by non-residential customers, it is very likely that a non-residential user would consider switching to another operator which does not differentiate between residential and non-residential customers, and which charges cheaper prices.

As a matter of fact, the PSTN incumbent Go plc lost over 3,400 residential subscribers and approximately 2,000 non-residential subscribers to its competitors during Q2 2008. The bulk of these subscribers switched to Melita, which saw its subscriber base expand by over 6,800 during the same period. Of particular significance in this shift is the fact that Melita does not differentiate between residential and non-residential customers.

Locally, a good number of end-users have access to more than one operator providing retail call services. Most of these end-users make use of national and international call services provided by Go and Melita. In most probability this is indicative of the fact that users need time to try new service providers before they actually decide whether or not to switch brand or else decide to keep access to two or more service providers[12].

Overall, competitors to the PSTN incumbent are making important inroads both in terms of subscriptions and call volumes. In itself, this ensures that all operators have the necessary commercial incentives and market pressures that guarantee the availability of good quality fixed calls services at reasonable prices. It is also evident that users today have different packages and bundles on the market to choose from – packages and bundles varying with respect to access charges, call rates, quality and type of service, and other factors.

[12] This reasoning also reflects outcome in the MCA's *'End-users perceptions survey – fixed telephone services'* carried out in July 2007. In fact, when asked why they are keeping more than one telephone service, 23 percent of respondents replied that they are still testing the new service before removing the other.

Over 70 percent of respondents who are getting a new telephone service replied that they will discontinue using telephone services provided by Go.

Supply-side substitutability

As already indicated above, local operators cater for all types of customers, with some differentiating between residential and non-residential customers and others not. No operator is currently providing call services just to a particular type of customer mentioned above. The MCA believes that even if this was the case, a hypothetical increase in the price of national or international calls is likely to entice operators, providing either residential packages or non-residential packages, to switch production.

Conclusion

The distinction between residential and non-residential users in the provision of national and international telephone services remains arbitrary, actually dependent on the strategies deployed by operators providing fixed line telephone services. For example, the second largest operator providing fixed line telephone services does not distinguish between residential and non-residential customers.

Based on the analysis presented above, there is clear market evidence that shows that from a demand and supply-side perspective the services provided to residential and non-residential customers are practically identical.

In these circumstances, the MCA shall discontinue the demarcation between residential and non-residential users in the analysis of retail calls markets.

2.12 Relevant geographic market

According to EU Commission guidelines, a relevant geographic market 'comprises an area in which the undertakings concerned are involved in the supply and demand of the relevant products and services in which area the conditions of competition are similar or sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different'. The Commission's SMP Guidelines also refer to the use of two criteria in determining the geographical scope of a relevant market, namely the area covered by a network, and the existence of legal and other regulatory instruments.

On the basis of the above-mentioned guidelines, the MCA found sufficient evidence to justify a national market definition for retail call services. The market delineation exercise suggests that there is sufficient demand-side and supply-side substitution in the provision of voice call products and services offered from a fixed location, given that such products and services are being provided by operators located within the same geographical area.

The MCA has also considered whether there are specific national circumstances that would justify the existence of a sub-geographic market. One such circumstance could arise when a property developer plans for and provides access facilities to public telecommunications under an exclusive agreement between the developer and a service provider, reserving the aforementioned facilities for the exclusive use of the respective 'authorised' operator.

In view of the above, specific attention was given to property development at Tigne` Point. The MCA notes that the developer, namely MIDI plc, has entered into a commercial agreement with SIS Ltd[13], a fully licensed telephony and internet service provider, to offer fully digital IP telephony and data services under the brand name SISCOM within the confines of the Tigne` Point development. This case is of particular

[13] A joint venture between Siemens and MIDI plc.

interest to this market review given that it could also constitute a precedent for similar cases in the future.

The MCA has looked into whether such an agreement poses a significant barrier to entry for market players located outside Tigne` Point, and whereby customers are restricted from switching to these operators in response to a 5 to 10 per cent price increase in national or international telephone services provided by SIS.

The MCA notes that the initial obstacles faced by local operators, namely Go and Melita, in providing access networks at Tigne` Point have been overcome. This means that operators can actually provide national and international call services within this area. It must be underlined that local legislation, namely Article 4(2) of Chapter 81 of the Utilities and Services Regulation Act, states that:

'The Malta Transport Authority may, after consultation with the Malta Communications Authority, also order the collocation or the use of the same facilities in relation to any cables, wires or other accessories used or to be used for the provision of any electronic communications service or any other any utilities or services by a provider of such electronic communications service or other utilities or services in any trenches, pits, ducts or on any poles, stays or brackets, cut, placed, erected or affixed by another provider of an electronic communications service or of other utilities or services; and any such order shall be notified to the provider who shall have erected or affixed the facilities to be the subject of collocation or to be so used, at least ten days prior to the carrying out of any of the works aforesaid'.

The above legislation ensures that, even in the case of exclusive agreements, the MTA, following consultation with the MCA, may intervene to impose terms and conditions on the issues specified in Article 4(2), whilst having due regard to the interests of customers and operators. This effectively means that existing tenants at Tigne` Point and customers buying a property within this area should have non-discriminatory access to the service provider of their choice, either through the developers' access facilities, or else using the networks installed by operators through the existent facilities within the respective confined area. Moreover, the MCA is also obliged to ensure that the Universal Service Provider (USP), namely Go, is able to meet any request for its services made by a tenant at the said location.

Tigne` Point tenants can therefore switch to suppliers located outside the confined area, especially in response to a 5 to 10 per cent price increase in retail call services provided by SIS. Competitive conditions within the Tigne` Point area are therefore sufficiently similar to those prevailing at a national level. This suggests that pricing behavior and pricing arrangements at Tigne` Point are actually determined at the national level, and that SIS Ltd is actually constrained from charging higher prices for its retail call services. The Tigne` Point development should therefore be considered part of the national geographic market.

The MCA maintains that the relevant geographic market for the provision of national (domestic) and international call services from a fixed location in Malta is national in scope. This view is supported by the fact that all authorised or licensed operators providing retail call services are doing so on a national level, without actually differentiating in terms of pricing, and in terms of availability between different geographic regions.

2.13 Views of respondents and the MCA's response

This section sets out the views of respondents as expressed in their submissions to the market definition exercise. The main issues raised by respondents relate to:

A. The development of the retail calls markets in Malta;

B. Fixed-to-mobile substitution; and

C. The geographic dimension of the retail calls markets.

D. Market access rates in exclusive areas

A The development of retail calls markets in Malta

One respondent asserts that it does not agree with the way that the MCA interprets the development of the relevant retail calls markets in Malta. The respondent argues that contrary to what the MCA suggests, competition in the fixed calls markets has only started in 2007. The respondent amongst other things states that the introduction of CS and CPS regulation only occurred in 2006[14] and the subsequent entry of such operators was marked by a number of problems in setting up operations.

At a later stage of its submission the same respondent also argues that it is premature to conclude that the relevant market has been effectively liberalised and argues that the presence and intervention of the regulator is still indispensable to ensure effective competition.

The MCA underlines that there is enough evidence to suggest that the local retail calls markets are effectively competitive. Since the time of the first round of market reviews, the local retail calls markets experienced the arrival of three operators, two of which have rolled out their own network infrastructure.

The arrival of Melita, Vodafone Malta, and Sky Telecom has accelerated the launch of a range of new products and services thus increasing the choice for end users. Switching between operators increased, with new operators experiencing growth in their subscriber base. Correspondingly, market shares for new entrants increased whilst market shares for the PSTN incumbent declined.

The MCA also notes that a certain amount of pressure has also been exerted on retail prices, leaving operators with no other option than to ensure a better price-quality relationship of the products and services offered to the consumer.

Overall, the market has evolved to such an extent that no market power can be profitably exercised. Local operators are indeed constrained from raising prices above competitive levels. This, together with the advent of new technology, the launch of new products and services, and efforts to consolidate the local customer base, should also ensure a positive impact on existing competition within the timeframe of this review.

The MCA will continue monitoring market developments and remains committed to issue a new market analysis at any point in time in response to any deterioration in the competitive level of the market, notwithstanding existing wholesale regulatory obligations, such as CS and CPS access conditions, in related upstream markets.

[14] In Malta, Carrier Selection and Carrier Pre-Selection regulatory obligations came into effect in May 2004. Link to relevant document: http://www.mca.org.mt/infocentre/openarticle.asp?id=434&pref=1

B Fixed-to-mobile substitution

One respondent highlights the phenomenon of fixed-to-mobile substitution and states that there is considerable evidence of fixed-to-mobile (FTM) substitution in Malta, at least in the national calls market. The respondent makes reference to the increased preference of mobile-to-mobile (MTM) calls over FTM calls, even where a fixed line is immediately available to the caller. The respondent also adds that the average duration of a mobile voice call is rather short and argues that this tends to lessen any perception of significant differences in total price between fixed and mobile calls. Ultimately, the respondent underlines the need for an examination of the effects of the reduction in mobile wholesale rates on call patterns at retail level.

The MCA has in fact considered fixed-to-mobile substitution in its market definition exercise noting that fixed line originating traffic has declined between Q1 2005 and Q2 2008. Meanwhile, mobile originating traffic increased, as clearly depicted in Chart 2 in this document. However, the MCA points out that the decline in fixed line originating traffic has not been sufficiently compensated by the increase in mobile originating traffic. This suggests that consumers are as yet more inclined to use their fixed line telephone handset, especially to make longer calls and fixed-to-fixed calls, given that fixed line calls are relatively cheaper when compared to mobile originated calls.

Charts 3 and 4 to this document also indicate that local outgoing traffic follows particular patterns in that, for example, mobile originating traffic terminating on fixed lines has not seen any significant quarter-on-quarter changes during the period under review. Similarly, fixed line originating traffic terminating on mobile numbers has not seen any significant changes during the same period.

The MCA also underlines that fixed-to-mobile substitution was more evident during 2005 and 2006. Both fixed line and mobile originating traffic stabilised somewhat in 2007 and the first half of 2008.

This document also underlines that a mobile originating call of a one minute duration, on average, costs more than its fixed line counterpart, and this irrespective of the user making the call, and irrespective of the type of call undertaken. This explains why the average duration of a mobile voice call is rather short when compared to a fixed line call. The MCA cannot therefore agree with the respondent's claim of increased preference of MTM calls over FTM calls, even where a fixed line is immediately available to the caller.

With respect to the effects of the reduction in mobile termination rates (MTRs), the MCA believes that such reductions should in principle have an impact on mobile retail prices since MTRs are an important cost element in setting mobile retail tariffs. However, the MCA notes that although MTRs declined between 2005 and 2008 as mandated by regulatory intervention, local mobile network operators (MNOs) have been slow in pushing mobile retail tariffs down, especially retail tariffs for MTF calls and off-net MTM calls.

Looking again at Chart 2, it can be argued that, to a certain extent, the declines in local MTRs led to changes in local call patterns, with falling fixed line originating traffic against an increasing mobile originating traffic. Nonetheless, one cannot ignore the fact that call patterns are in many ways determined by necessity, given that more people today are constantly 'on the move' leaving them no option other than to use their mobile handset to reach a mobile number (a MTM call), and if urgently required, use their mobile handset to reach a fixed line number (a MTF call). Overall, the above reasoning suggests that, although to a certain extent a reduction in mobile wholesale rates affects call patterns at a retail level, this effect cannot be clearly determined especially since the margin between MTRs and retail mobile rates remains relatively high.

C The geographic dimension of the retail calls markets

One respondent states that it disagrees with the statement that competitive conditions in the MIDI development are broadly similar to those at a national level, outlining that SISCOM, the telecommunications provider partly owned by MIDI, enjoys special treatment in terms of conditions and process for access to the development. The respondent also claims discriminatory behaviour by SISCOM in favour of Melita plc.

The MCA reiterates that there are no specific national circumstances that would justify the existence of a sub-geographic market. In this regard, the MCA has considered whether the current agreement between SIS Ltd., operating under the brand name of SISCOM, and the developer of Tigne` Point, namely MIDI plc., poses a significant barrier to entry for market players located outside Tigne ` Point.

The MCA first looked into whether a 5 to 10 percent price increase in national and international telephone services would induce customers in the relevant confines of Tigne` Point to switch to similar services provided by operators located outside the relevant area. Given that operators located outside Tigne` Point can actually supply customers (tenants) in the relevant area in response to small price changes, and given that these operators set their prices and market their services on a national basis without any distinctive pricing and marketing strategies for specific areas, it appears appropriate for the MCA to consider competitive conditions within Tigne` Point as being sufficiently similar to those prevailing at a national level. The MCA therefore believes that it is also appropriate to delineate one national geographic market for Malta.

D Market access rates in exclusive areas

With reference to a respondent's claim that it is unfairly paying MIDI above reasonable market rates to access the development and to satisfy its universal service obligations, the MCA recommends that this issue is first raised with the Malta Transport Authority, as this Authority administers the Right of Way for Utilities and Services (Fees) Regulations governing matters related to fees paid to the Malta Transport Authority by any national operator that enjoys a right of way. Furthermore, the respondent may also lodge a complaint with the MCA so that it can investigate this claim according to its powers at law. The MCA finally underlines that, since the respondent itself is already operating within the confines of Tigne` Point on commercial terms and conditions applicable at the national level, this confirms the MCA's conclusion that the relevant geographic market for the provision of national and international telephone services is national in scope.

2.14 Delineation of the retail calls markets

In respect of the market delineation exercise, and in accordance with competition law principles, the MCA identifies two retail calls markets in Malta, namely:

1. National telephone call services provided at a fixed location; and
2. International telephone call services provided at a fixed location.

The MCA does no longer uphold the distinction between residential and non-residential markets.

The MCA includes all traditional call services and managed IP-based call services in the identified retail calls markets, but excludes fixed access, mobile originating calls, voice over broadband (VoB), and unmanaged IP-based calls.

Chapter 03 - Market Analysis

3.0 Outline

Retail calls markets are no longer identified by the EU Commission as markets susceptible to *ex ante* regulation. In such circumstances, the MCA has to apply a three criteria test in order to determine whether *ex ante* regulation is still warranted in the local retail calls markets.

Regulatory intervention by the MCA would only be possible if the assessment of the three criteria confirms that:

A. the market is subject to the presence of high and non-transitory barriers to entry, being either of a structural, legal, or regulatory nature;

B. the market has those characteristics, such as barriers to entry, which does not allow it to tend towards effective competition without regulation and within the timeframe of this review; and that

C. competition law by itself is inadequate to address any potential market failure in the absence of *ex ante* regulation.

The MCA also underlines that although VoB call services provided by Vodafone (Malta) Ltd. have been excluded from the market definition (due to the fact that customers must first invest in a broadband internet connection before actually being able to make IP-based voice calls over Vodafone's network), Vodafone still features throughout the market analysis as it can exert an indirect constraint on the local retail calls markets.

3.1 The Three-Criteria Test

The MCA will undertake a three-criteria test to determine whether regulatory intervention is still warranted in the Maltese retail calls markets. In this regard, the MCA has identified a number of indicators to consider when assessing conditions for market entry, the dynamic aspects of competition in the market, and the relative efficiency of competition law in the absence of regulatory intervention. The MCA's assessment is forward-looking in nature, taking into account a prospective two-year timeframe.

3.2 Assessment of the first criterion

The Recommendation states that 'structural barriers to entry result from original cost or demand conditions that create asymmetric conditions between incumbents and new entrants impeding or preventing market entry of the latter'. As already indicated above, the EU Commission qualifies barriers to entry as being either of a structural and/or regulatory/legal nature.

Based on the above considerations and the 2002 Commission Guidelines, the MCA holds the view that, in order to assess the magnitude of structural barriers to entry, it should consider the following indicators:

- Existence of economies of scale and economies of scope;
- Barriers to switching for consumers;
- Existence of sunk costs;

- Control of infrastructure not easily duplicated;
- Vertical integration; and
- Product/service differentiation.

The MCA notes that it is not aware of any significant barriers to entry into the retail calls markets that are of a legal or regulatory nature. General administrative authorisations and other general regulation are not believed to pose high barriers to entry in these markets.

The MCA also notes that the assessment of the first criterion shall examine whether barriers to entry are deemed to be high and non-transitory in the context of a modified Greenfield Approach. The MCA shall take into account in its analysis the regulation which applies in other upstream or wholesale markets that are closely related to the relevant retail calls markets, such as wholesale obligations on access and cost orientation. The MCA notes that wholesale regulation could eliminate some of the structural barriers to entry into the retail calls market listed above such as the control of infrastructure not easily duplicated and vertical integration.

The indicators selected to assess the prevailing and prospective conditions for market entry are described in the sections below.

A. Economies of scale and scope

The fixed costs associated with providing retail call services are subject to significant economies of scale and scope. More specifically, established national networks - namely the PSTN, cable, and BWA (Wi-Max) networks managed by Go, Melita, and Vodafone respectively – can attain potential cost advantages and efficiencies in providing retail call services.

Of relevance in this regard is the fact that established network operators are horizontally integrated, offering multiple services directly to the consumer. Horizontal integration enables established networks to benefit from economies of scope, where the average costs of production are lower given that these are shared over a greater range of services. Cost savings are indeed possible where common processes are used in the provision of a group of products/services.

The ability of established networks to benefit from economies of scope suggests that it will be difficult for any other operator to set up its own network to start providing retail fixed calls. However, the MCA notes that Go was mandated to offer a wide range of wholesale products, thereby reducing the level of sunk network investment required, for example, by CS and CPS operators. This makes it less difficult for a new market entrant to recover its start-up costs thereby mitigating the effects that economies of scope pose to the entry of new competitors in the Maltese retail calls markets.

Economies of scale for the retail calls markets exist when the number of lines served by each network operator or service provider increases, thereby reducing the average costs per line. In addition, other costs related to investment in the network or investment in technology are also minimised on a per-unit basis, given that such investment would be serving a larger number of users.

This suggests that CS and CPS providers, and other established network operators in competition with the incumbent, must strive to achieve significant scale efficiencies. Each undertaking would have an interest to widen its market as much as possible in a short period of time. A wider market share would secure a larger number of subscriber lines and possibly larger traffic volumes.

The MCA notes that operators competing with the incumbent have enhanced their presence locally at the expense of the latter, as clearly evidenced by developments in the customer base. This suggests that although economies of scale for the incumbent remain high, these are not and should not pose a significant constraint on market entry.

In light of the above, the MCA believes that economies of scale and scope do not pose a sufficient constraint on market entry.

B. Barriers to switching for consumers

Barriers to switching for consumers may pose a significant constraint on market entry. These barriers are mainly linked to consumer awareness and perceptions, such as awareness of alternative choices and suppliers, and perceptions about the ease or difficulty of switching among service providers.

It can be said that in such circumstances, it is the incumbent operator Go that has an advantage over other operators. Consumers, the majority of which are already subscribed with this operator, may at first be reluctant to switch to other operators given their long-term relationship and loyalty to their fixed line service provider, and possibly their lack of awareness of alternatives available on the market.

Although survey evidence in 2007 may have suggested some reluctance by customers to switch between operators, this might actually be explained by the fact that up till then competition in the market was not necessarily being felt by users of fixed line telephony, thereby leaving customers uncertain on what to do. The 2007 survey in fact indicates that a good number of people were subscribed to more than one operator, and this suggests that people needed some time to compare products and services before actually switching supplier.

However, the landscape of the fixed line subscriber base has changed substantially since then, with significant shifts reported in market shares for both subscription preferences and traffic patterns. For example, between Q2 2007 and Q2 2008, the PSTN incumbent lost approximately 5 per cent of its subscriber base and approximately 15 per cent of its outgoing fixed line traffic.

The MCA also believes that consumer awareness has improved over the last year mainly because it is relatively easy to obtain information on what service providers have to offer, and switching has been made relatively easier and cheaper, such as with the introduction of number portability. Operators are also keen to increase their subscriber base, and they know that switching costs must be kept at a minimum for them to enhance their rate of success. In fact, most operators are nowadays waiving the costs associated with switching. For example, on many occasions no connection fees are being charged by Melita and Sky.

In light of the above, the MCA concludes that barriers to switching are not significant and therefore do not pose a constraint on market entry.

C. Existence of sunk costs

Sunk costs are upfront costs that a new entrant must incur when investing in access products necessary to enter the retail calls markets. Given that sunk costs are not recovered on exit, the new entrant must ensure that return on investment at least covers sunk costs. On the other hand, the incumbent would have already made its investment and eventually recovered its sunk costs due to its long term market presence. This asymmetry in investment expenditure and return flows would make it very difficult for a new market entrant to compete effectively with the incumbent in the retail calls markets.

A new entrant has various options by which it might enter the retail calls markets and eventually start providing fixed call services. It can either choose to invest in a switched access (PSTN) network, or an own-built network (cable network, or BWA network), or else make use of the incumbent's network to provide CS and CPS services.

The former option requires a large upfront investment, most of which will be sunk costs given that the investment cannot be recovered if the entrant decides to exit the market. On the other hand, the possibility of access to CS and CPS services reduces significantly the costs for alternative operators to enter and start operating in the retail calls markets.

The MCA underlines that local fixed line service providers has either invested in their own-built network such as the cable network and the BWA (Wi-Max) network, whilst others make use of the incumbent's network so as to provide CS and CPS services. In this sense, potential entry in the market has not been deterred by the cost and time required to build a network that competes with that of the incumbent. This also suggests that the existence of sunk costs does not represent a significant deterrent to entry in the retail calls markets.

D. Control of infrastructure not easily duplicated

As already stated in previous sections, it might not be economically feasible for an operator to replicate any of the existing access networks or else to establish an own-built network. Investing in electronic communications infrastructure is very often an extensive and costly exercise representing a significant barrier to entry for potential market entrants.

Indeed, a large part of the investment required for the deployment of fixed networks cannot be recovered on exit and must therefore be considered as a sunk cost. A potential market entrant will therefore find it hard to incur an investment where the returns do not justify initial investment costs. Nonetheless, the MCA reiterates that the existence of sunk costs does not represent a significant barrier to entry in the retail calls markets for the reasons explained in the previous section.

It can however be argued that the owner of access infrastructure may also have the incentive and ability to discriminate against other undertakings in a way which eliminates the possibility of a competitive market. Nonetheless, in the presence of wholesale regulatory obligations mandated by the MCA this kind of behaviour should be averted. Operators also have other options of entering the retail calls markets other than investing in building their own access network. In this sense, the inability to replicate existing access networks should not impinge negatively on market entry.

E. Vertical integration

An undertaking may decide to enter a market by investing in both upstream access to infrastructure markets and downstream service provision markets. Such an undertaking would then be called a vertically integrated service provider.

Presence at the higher and lower levels in the chain of provision raises the incentive and ability for such an undertaking to discriminate against existent and potential competitors who are wholesale customers, and also provides an incentive and ability to leveraging from the upstream segment of the market to the downstream segment. This practice is known as vertical leveraging.

Through vertical leveraging, a vertically integrated service provider would be restricting competition in what otherwise would have been a competitive market by making it more difficult for potential service providers to enter and start offering their products/services in these markets. Vertical leveraging may be price related or otherwise. Non-price leveraging strategies include discriminatory use or withholding of information, delaying tactics, quality discrimination, and the imposition of undue requirements on, and with respect to, alternative service providers.

In Malta's case, Go and Melita are the largest vertically integrated operators, in that they are active at the wholesale level and the retail level on a nationwide basis. Then there is also Vodafone, which has also recently established its presence at the wholesale and retail levels of the call markets. In a way this shows that competition in the local retail calls markets is characterised by operators which have deployed their own-built network to provide a full diversified range of voice and data services to the public.

It may also be argued that vertically integrated operators can hypothetically make it difficult for new entrants at a retail level to obtain the necessary inputs at competitive prices, and at reasonable terms and conditions. However the MCA notes that existent regulation at the wholesale level has been instrumental in mitigating price and non-price discriminatory behaviour. This also explains why a number of operators are already making use of the incumbent's network to provide CS and CPS services.

Overall, the MCA concludes that vertical integration does not represent a significant barrier to entry in the retail calls markets, even due to the fact that the existence of sunk costs does not sufficiently deter market entry.

F. Product/service diversification

It may be argued that existent or potential service providers, who opt to make use of the incumbent's network rather than invest in an own-built network to provide retail call services, might consider or perceive their inability to provide a bundle of fixed line telephone services (comprising access and calls) as a significant barrier to expansion or entry in the relevant markets.

However, the MCA does not believe that product or service diversification acts as a barrier to entry in the markets covered by this review. In reality, a number of operators are making use of the incumbent's network to provide CS and CPS services. This choice has actually allowed entry in the market which otherwise would not have occurred, in view of the sunk costs involved in establishing an own-built network. There are other problems which might be encountered when using the incumbent's network but their effects are mitigated through regulation at the wholesale level mandated by the MCA.

3.3 Views of respondents

One respondent states that the incumbent's infrastructure has been duplicated by alternative operators that own alternative access network infrastructures. The respondent states that the nationwide presence of Melita's cable network and Vodafone's WiMax networks already indicates a healthy level of infrastructure competition. The same respondent also refers to an operator that owns a licence to build another nationwide infrastructure, whereas operators such as SISCOM have to date deployed access networks in high density and potential high revenue generating areas.

The MCA agrees with the view that nationwide deployment of various network infrastructures indicates a healthier competitive environment. In this document, the MCA takes into account the roll-out of alternative network infrastructures and technological platforms, such as the deployment of the cable network by Melita plc. and the deployment of BWA networks by Vodafone Malta and Go plc.

Conclusion on first criterion

The MCA considers that the retail calls markets are not subject to the presence of high and non-transitory barriers to entry, these being either of a structural, legal, or regulatory nature.

3.4 Assessment of the second criterion

The Recommendation states that 'even when a market is characterised by high barriers to entry, other structural factors in that market may mean that the market tends towards an effectively competitive outcome within the relevant time horizon'.

In its assessment of the second criterion, the MCA is considering the following indicators:

- Existent competition;
- Market shares;
- Price developments;
- Potential competition; and
- Barriers to expansion.

These indicators, which have been selected to assess the prevailing and prospective conditions for market entry, are described in the sections below.

A. Existent competition

National Calls

The national calls market has changed considerably over the last three years, especially upon the arrival of new market players, rapid technological developments, and the launch of new products and services.

Until June 2005, the national calls market was characterised solely by the PSTN incumbent operator, Go plc. This operator effectively had a 100 per cent market share in this market. Implicitly, the same operator had a 100 per cent market share in terms of revenues for national call services.

July 2005 saw the launch of an IP-based voice call service by Melita plc., the incumbent cable operator, allowing customers to make on-net calls and international calls only. Upon concluding interconnection agreements with the PSTN incumbent and merging with its retail ISP OnVol, Melita plc. launched the first nationwide deployment of a full-VOIP-based telephone service under the brand name 'Hello' offering its customers an entire range of call types, including off-net calls.

In 2006, a new carrier preselection operator, namely Sky Telecom Ltd., started offering calls by CPS. This CPS operator is hosted by the PSTN incumbent, Go plc.

A further development in the market came about with the introduction of voice call services over BWA networks. On the 12th October 2005 the MCA allocated frequency spectrum to three undertakings for the deployment of a national BWA network. The MCA actually granted three BWA licenses in 2006, one to the ISP consortium Cellcom Ltd., one to Mobisle Communications Ltd. (Go Mobile), and another to Vodafone Malta Ltd. Both Vodafone Malta Ltd. and Go Mobile have rolled out their BWA network.

International Calls

In January 2003 a number of ISPs started to offer international calls services using VOIP technology. Then, in July 2005, a Carrier Selection service branded 'Ten21' was launched by Go plc., whereby users dial the prefix 1021 prior to the international number for the call to be conveyed. A few days before the launch of the 'Ten21' service, the cable incumbent, Melita, launched an IP-based call service branded as 'Hello', enabling its subscribers to make international calls at cheap rates. This service is provided over Melita's bi-directional cable network and is independent of a broadband connection. Therefore, customers having only a cable access point at home can also avail themselves of this service by acquiring the necessary equipment.

Other operators offering international calls include Sky Telecom Ltd, Vodafone (Malta) Ltd, and a small number of ISPs that offer VOIP telephony services

B. Market Shares

The MCA has assessed market trends with respect to the subscriber base and outgoing traffic volumes.

Subscriptions

Table 6 shows that the number of fixed line subscribers increased by 17,148 between Q2 2007 and Q2 2008. Albeit this increase, Go's subscriber base declined (see Chart 5) with its market share falling from over 91 per cent in Q2 2007 to slightly over 80 per cent in the corresponding period of 2008.

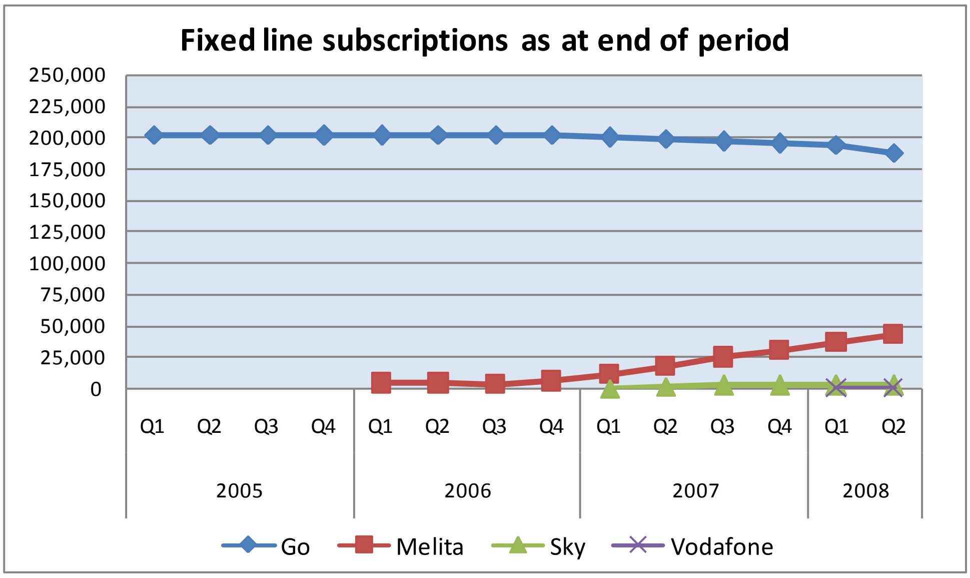
Table 6

Subscribers as at end of period	Go	Melita	Sky	Vodafone	Total
2007 Q2	199161	17619	1540	0	218320
2008 Q2	188671	43632	2739	426	235468

Table 7

Market shares on the basis of subscriptions (%)	Go	Melita	Sky	Vodafone	Total
2007 Q2	91.22	8.07	0.71	0.00	100.00
2008 Q2	80.13	18.53	1.16	0.18	100.00

Chart 5



'National' outgoing fixed line traffic

National outgoing fixed line traffic has declined substantially during the last few years. Between Q2 2007 and Q2 2008, outgoing fixed line traffic declined by approximately 7 per cent. This drop in outgoing fixed line traffic is mainly attributed to a 20 per cent decline in traffic originating from Go, as shown in Table 8 below.

On the other hand, national fixed line traffic originating from Melita and Sky Telecom increased significantly as shown in Chart 6 below.

Table 8

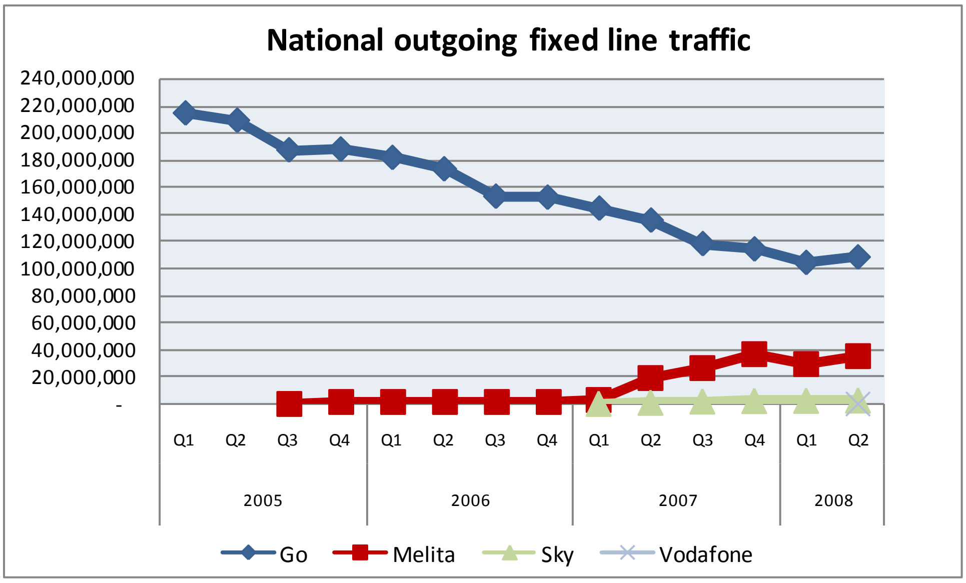
National outgoing fixed line traffic	Go	Melita	Sky	Vodafone	Total
2007 Q2	135,813,446	20,388,387	1,102,396	-	157,304,229
2008 Q2	108,595,507	34,915,319	2,780,076	61,386	146,352,288

Table 9 shows that, in terms of traffic volumes, only the incumbent PSTN operator and the incumbent cable operator had a market share that exceeded the 20 per cent threshold by the end of Q2 2008.

Table 9

Market shares for national outgoing fixed line traffic (%)	Go	Melita	Sky	Vodafone	Total
2007 Q2	86.34	12.96	0.70	-	100.00
2008 Q2	74.20	23.86	1.90	0.04	100.00

Chart 6



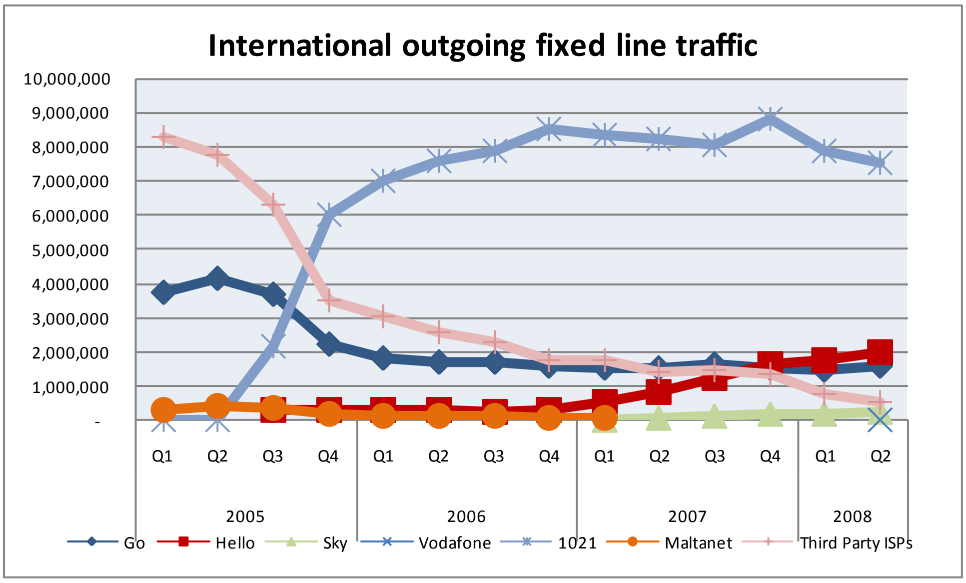
International outgoing fixed line traffic

Prior to 2003, international call services were being provided by just one operator, namely Go plc. Monopoly power enabled Go to charge high tariffs for conveying calls to international numbers. The cost of making an international call through Go's network ranged from €0.58 to €6.17 per minute, depending upon the country being called.

In 2003, a number of ISPs started offering international call services. Five months after their arrival, Go's market share in international call traffic had already declined by approximately 40 per cent. As the quality of international call services offered by ISPs improved, the take-up of these services surged further, with more people starting to call abroad more frequently. From around two million international minutes registered in Q2 2003, ISPs managed to increase their traffic to around 9 million international minutes in Q3 of the following year.

Strong traffic levels for ISPs were maintained up till Q1 2005. With the arrival of Melita's 'Hello' international call service and Go's 'Ten 21' service, the scenario for ISPs changed dramatically.

Chart 7



Within six months, ISPs nearly lost all they gained in 2004. On the other hand, through its 'Ten 21' service, Go managed to recoup strongly in terms of market shares, increasing its international call traffic from around 2.1 million minutes in Q3 2005 to around 7.6 million minutes in Q2 2008. A substantial increase in a relatively short period of time. Correspondingly, international traffic for third party ISPs declined heavily, from around 6.3 million minutes in Q3 2005 to 1.4 million minutes in Q2 2007, to less than 530,000 minutes in Q2 2008.

Table 10

International outgoing fixed line traffic	Go		Melita	Sky	Vodafone	Third Party ISPs	Total
	IDD PSTN	TEN21					
2007 Q2	1,542,701	8,213,181	823,860	82,112	-	1,383,110	12,044,964
2008 Q2	1,603,154	7,560,947	1,980,366	187,370	15,395	529,874	11,877,106

Table 11

Market shares for international outgoing fixed line traffic (%)	Go		Melita	Sky	Vodafone	Third Party ISPs	Total
	IDD PSTN	TEN21					
2007 Q2	12.81	68.19	6.84	0.68	0.00	11.48	100.00
2008 Q2	13.50	63.66	16.67	1.58	0.13	4.46	100.00

The MCA also notes that, between Q2 2007 and Q2 2008, the 'Ten 21' service registered a decline in international fixed line traffic as shown in Table 10 above. Other declines were observed for Go's IDD PSTN service and for local ISPs, which has in fact seen their market share shrink by more 6 percentage points in just a year. Much of these declines has been absorbed by Melita and, to a limited extent, by Sky Telecom.

Responses to end-users perceptions surveys carried out by the MCA reconfirm the trends highlighted in Table 11. In 2005, 38.4 per cent of respondents stated that they used VOIP services provided by ISPs when making international calls. On the other hand, in 2007, only 4.5 per cent of respondents stated that they used ISPs' services when making international calls, whilst 73.5 per cent stated that they make use of Go's 'Ten21' service.

Table 12

End-users perceptions survey		Service used when making international calls						
Yr	Respondents	Ten21	ISPs	IDD PSTN	Hello	Sky	Mobile	Both PSTN and VOIP
2005	276	Not available	38.4%	22.8%	Not available	Not available	Not available	10.5%
2007	514	73.5%	4.5%	14.6%	1.2%	0.4%	0.8%	Not available

One of the main reasons behind the market shifts observed in Table 11 reported may be attributed to the fact that customers view the 'Ten21' service, and similar services provided by Melita and Sky, as a much more 'user-friendly' alternative to international call services offered by third party ISPs. For example, 'Ten21' customers claim that they do not need to purchase pre-paid calling cards, enter long pin codes, or else constrain themselves to time-windows to utilise their pre-paid credit.

In view of the analysis presented above, the MCA believes that there are pressures in the retail calls markets resulting from competition. Go's declining market shares in the national calls market, the gains registered by Melita and Sky, the rise and fall of ISPs, and the pressures on the Ten21 service from competing services, are all indicative of such pressures.

C. Price developments

The MCA has also carried out an analysis of prices for national and international calls. The timeframe of the analysis varies according to the type of call.

Given the different packages being offered by local operators and the different charging systems being applied, the MCA is presenting its analysis in terms of averages.

The MCA also notes that Go's prices are currently regulated, and that any changes to these prices must therefore be notified to the MCA in line with existent regulatory requirements.

National Calls

During the last twelve months average national call rates charged by local operators have remained practically the same, at levels indicated in Tables 1 and 2 to this document. On the other hand, new fixed line telephone packages were launched, making available a wider selection of products and services from which the general public could choose from.

The MCA believes that the drive to launch new packages served to enhance the average price-quality relationship of the products on offer, making it possible for customers to choose that package which is more tailored to their needs. This element of innovation was crucial in promoting competition in the market because it actually presented an opportunity to buy better quality products and services without actually having to spend much more.

On comparing average national call rates charged by local operators, Table 13 shows that Go's charges for national fixed-to-fixed calls are on average higher than those charged by Melita, both for a one-minute call and a three-minute call. On the other hand, both Melita and Go charge similar rates for fixed-to-mobile calls.

Average national call rates charged by Go for fixed-to-fixed calls are lower than those charged by Sky Telecom for a one-minute call, but higher than those charged for a three-minute call. With respect to fixed-to-mobile calls, average call rates charged by Go are higher than those charged by Sky.

In turn, Melita's average national call rates for fixed-to-fixed calls are lower than those charged by Sky, but not for fixed-to-mobile calls.

Table 13

Average national call rates	Peak/Off-peak hours	
	One minute duration €	Three minute duration €
Go - postpaid		
Fixed -to-fixed (on-net)	0.075	0.092
Fixed-to-fixed (off-net)	0.083	0.118
Fixed-to-mobile	0.261	0.783
Go Easyline - prepaid		
Fixed -to-fixed (on-net)	0.119	0.158
Fixed-to-fixed (off-net)	0.119	0.158
Fixed-to-mobile	0.364	1.092
Melita - postpaid		
Fixed -to-fixed (on-net)	0.006	0.018
Fixed-to-fixed (off-net)	0.016	0.048
Fixed-to-mobile	0.232	0.464
Melita - prepaid		
Fixed -to-fixed (on-net)	0.000	0.000
Fixed-to-fixed (off-net)	0.020	0.060
Fixed-to-mobile	0.291	0.873
Sky Telecom - postpaid		
Fixed-to-fixed (on-net)	0.112	0.336
Fixed-to-fixed (off-net)	0.112	0.336
Fixed-to-mobile	0.224	0.672
Sky Line - prepaid		
Fixed-to-fixed (on-net)	0.140	0.140
Fixed-to-fixed (off-net)	0.140	0.140
Fixed-to-mobile	0.224	0.672
Note: Figures does not include access charges		
Data as at December 2008		

It is important to note at this point that Table 13 does not present an exhaustive picture of pricing in the national calls market. For example, there are instances where the operator offers a number of free on-net and off-net fixed line calls against a monthly access fee. Nonetheless, the MCA believes that Table 13 stands as a very good indicator of what is being offered in the market and the prices being charged.

The MCA can conclude that with the arrival of new market players and the launch of new packages on the market, average national call rates have declined since the last market review, thereby ensuring a better price-quality relationship of the products and services available to the consumer.

International Calls

The cost of making an international call was very high prior to 2003, with prices ranging from €0.58 to €6.17 per minute depending upon the country being called. Eventually, as new service providers entered into competition with Go plc., prices had to adjust accordingly. ISPs first ventured into the market with an average price of €0.06 per minute to most of the major countries around the world, although one has to note that, in addition to this, users incurred a standard charge of €0.12 per 5-minute pulse.

Eventually, in 2005, the 'Hello' and 'Ten21' international call services have been launched by Melita and Go respectively. For both services, customers were charged a call rate of €0.03 per minute to all major countries.

The market definition exercise to this document has already analysed international call rates charged by local operators. Go's international call rates for traditional PSTN calls terminating on fixed lines range from €0.017 to €2.42 per minute depending upon the country being called. Prices charged by the same operator for traditional PSTN international calls terminating on mobile networks range from €0.07 to €3.02. Rates vary according to the day and time of the call.

'Ten21' call charges start from €0.03 per minute for calls terminating on both fixed and mobile overseas numbers. Furthermore, there is only one rate for any particular country, irrespective of the day and time of the call. Service is available for both Go postpaid and Go *Easyline* subscribers.

Similarly, Melita's international call rates start from €0.03 per minute for calls terminating on fixed overseas numbers. There is only one rate for a particular country, irrespective of the day and time of the call. International call rates for calls terminating on mobile overseas numbers vary according to the country involved. However, rates are standard across any day and time of the call.

The MCA can conclude that current international call rates are much lower to those prevailing in 2003 and 2004. The first breakthrough to these rates came about with the arrival of ISPs in the market. Competition intensified further when in 2005 both the PSTN incumbent and the cable incumbent launched their own international IP services. This development has proved vital in bringing about further price reductions and a more vibrant international calls market.

D. Potential competition

Potential competition refers to the prospect of new undertakings entering the market within a short period of time, and possibly constraining incumbent firms. The threat of potential entry may prevent firms from raising prices above competitive levels, leading to a situation in which no market power can be profitably exercised.

To a certain extent, potential competition is influenced by technological developments and innovation in the relevant market. Furthermore, regulatory intervention in related wholesale markets may in fact limit barriers to entry and thereby make it less difficult for an existent or new undertaking to enter and launch its products/services in a particular market.

With respect to the local retail calls markets, the MCA has not identified significant barriers to market entry. Instead the MCA notes that, over the last few years, the retail calls markets witnessed the arrival of new market players and the launch of new products/services to the general public. Pressures to reduce prices have also increased, leaving no other option to local operators than to ensure that they are not outplayed in the market on the basis of quality and price.

Potential competition in the retail calls markets is expected to increase within the timeframe of this review, with the launch of new products and services and further consolidation of the local customer base. In addition, the deployment of BWA networks could very well have a positive material impact on competition.

It might also be argued that given the dependence of Other Authorised Operators' (OAOs) on the incumbent's PSTN network, OAOs may be constrained in the type of products/services they are able to launch on the market. This in itself suggests that dependence on Go's network may inhibit the provision of fixed line telephone services with a better price-quality relationship, indirectly deterring OAOs from expanding their customer base. However, the MCA believes that regulatory intervention at the wholesale level would ensure that all the necessary wholesale inputs are made available for those operators willing to enter and compete in the market.

The MCA believes that competition can grow within the timeframe of this review as all conditions are right for market entry and product/service development. As already mentioned above, new products and services with a better price-quality relationship are expected in the coming months, and this to the benefit of the local consumer.

E. Barriers to expansion

There are circumstances wherein growth and expansion on the part of service providers, particularly new market entrants and potential competitors, is inhibited by markets which are mature and saturated. If opportunities for growth and expansion are restricted, a relative price increase from a dominant undertaking may therefore not result in a loss of market share to competitors.

There is also a strong correlation between barriers to entry and barriers to expansion. In fact, the higher the barriers to entry, the more significant barriers to expansion will be for potential competitors.

The MCA however notes that, with respect to the local retail calls markets, there is no evidence to suggest that barriers to expansion may be inhibiting competition. New market players have seen their market shares increase, both in terms of subscriptions and traffic volumes. New products and services have already been launched on the market, with others expected to be launched soon, especially with the full deployment of the BWA networks. This makes it very difficult for local operators to contemplate price increases, given the tough competition that they are all facing.

The MCA also reiterates that, in relation to barriers to entry, regulation at the wholesale level may be sufficiently effective at ensuring enhanced competition in the retail calls markets.

3.5 Views of respondents

One respondent expresses the view that this market review does not discuss the strong competitive constraints exerted by mobile calls on the fixed calls market. The respondent states that it is undeniable that mobile calls exert a robust indirect constraint on any provider of fixed line calls, particularly in the national market.

As highlighted in previous sections to this document, the MCA maintains that fixed and mobile calls are not substitutes, and are therefore not part of the same market. This conclusion is based on two main considerations, namely functionality and price. In terms of functionality, a mobile originated call contrasts with a fixed line originated call in that it can be originated independently of location whilst a fixed line call can only be generated from a fixed access point. This factor limits substitution between the two type of calls. In fact, substitution can only happen in one direction, with a user substituting a fixed line originated call to a mobile originated call and not vice versa, and this when the customer is located outside the reach of a fixed line connection and is left with no other option than to use a mobile phone.

In terms of pricing, the MCA notes that there are a number of structural differences in the pricing strategy applying for fixed and mobile calls, making it rather difficult to compare mobile tariff plans with fixed line tariffs. Nevertheless, the MCA undertook such an exercise in the market definition part to this document.

MCA findings indicate that the cost of a prepaid MTF call of a one minute duration is substantially higher than a one minute FTF call. Indeed, a one minute prepaid MTF call on average costs around 35.8 euro cents compared to an average cost of approximately 7.3 euro cents for a FTF call. Correspondingly, a postpaid MTF call of a one minute duration costs, on average, 16.6 euro cents. This means that when an individual with a mobile subscription is within reach of his/her fixed line connection, that person would opt to a fixed line originated call to reach a third party on a fixed line number.

On the other hand, MTM calls are on average cheaper compared with FTM calls. A one-minute postpaid MTM call is, on average, 32 percent cheaper than a FTM call of a similar duration. In the case of prepaid MTM calls, the MCA believes that such calls could very well be cheaper than FTM calls, especially when taking into account specific bundle offers, discounts, and free calls to chosen numbers. All in all, this suggests that an individual would opt for his/her mobile handset when and if trying to reach a third party on a mobile number, and this happens irrespective of location and the proximity to a fixed line handset.

The above-mentioned price differentials between mobile originated calls and fixed line originated calls support the MCA's view that mobile calls do not exert a robust indirect constraint on the provision of fixed line calls.

Conclusion on second criterion

The MCA considers the retail calls markets as being effectively competitive, and to remain competitive within the timeframe of this review.

3.6 Assessment of the third criterion

The Recommendation states that, 'the decision to identify a market should also depend on an assessment of the sufficiency of competition law to address the market failures that result from the first two criteria being met'.

The Recommendation also adds that, 'competition law interventions are unlikely to be sufficient where the compliance requirements of an intervention to address a market failure are extensive or where frequent and/or timely intervention is indispensable'.

In its assessment of the third criterion, the MCA has to consider restrictions on competition that may still arise in the retail calls markets as a result of abusive behaviour by incumbent operators on related wholesale (upstream) markets. A major cause for concern is leveraging of market power, taking the form of vertical and/or horizontal leveraging. In the case of vertical leveraging, dominance in an upstream market may give rise to a margin squeeze, or price squeeze, or even result in denial of access to an essential input to the downstream market through excessive pricing and discriminatory behaviour[15].

A horizontally integrated operator with a presence in many electronic communications markets may also have the incentive to attempt horizontal leveraging between related markets. The ability to lever power horizontally from one market to another may deter potential entry in the relevant markets. For example, horizontal leveraging could be exercised by Go plc. or Melita plc. as they operate in a number of horizontal wholesale and retail markets. Prices may be set below costs in potentially competitive markets, while the losses are covered by profits from other markets. In this way, competitors would be driven out of the potentially competitive markets.

The MCA however recalls that the aforementioned competition problems have been mitigated by regulatory intervention at a wholesale level. For example, the MCA has imposed access obligations, as stipulated under Regulation 21 of the ECNSR, requiring Go plc., as the operator with SMP status in the wholesale call origination market, to provide access on reasonable terms and conditions.

In the context of horizontal leveraging, regulatory intervention at wholesale level has taken the form of an obligation on Go plc. to publish call origination pricing as part of its Reference Interconnection Offer. By virtue of the obligation of transparency which the MCA imposes on Go plc., the said operator is obliged to continue publishing reference offers related to call origination. Such offers are to be sufficiently unbundled, include pricing, terms and conditions, and service level agreements as directed by the MCA. Go is required to provide itemised billing at the wholesale level. This would ensure that Go provides other operators with effective access to its wholesale inputs.

The obligation of access, coupled with the obligation of transparency and in particular the publication of Reference Interconnection Offer (RIO), should stultify the power of Go plc. to exert pressure on other operators competing with its downstream services at a retail level.

As for discriminatory behaviour, the principal remedy at wholesale level is that of non-discrimination in the provision of access and, or interconnection. In accordance with Regulation 19 of the ECNSR, Go plc, as a vertically integrated provider, would be obliged to apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and to provide services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners. The obligation of non-discrimination is deemed an essential tool for the curtailment of foreclosure practices. To strengthen this obligation, the MCA has also mandated the complementary obligations of transparency and accounting separation.

Another potential problem that may be foreseen in the retail calls markets is predatory pricing. A dominant firm in an upstream market may have an incentive to employ cross-subsidisation as a way to sustain a strategy of predatory pricing. However, the MCA notes that in the presence of regulation at a wholesale level, a strategy of predatory

[15] Vertically integrated service providers may have an incentive to provide wholesale services on terms and conditions that discriminate in favour of the firm’s own retail activities. For example, these providers may charge competitors higher prices for wholesale services than charged for own retail activities, or else resort to other anti-competitive tactics such as withholding of information, delaying tactics, and undue use of information.

pricing taking the form of a margin squeeze would not necessarily be successful in foreclosing competition and increasing prices in the retail calls markets.

On the other hand, local operators, especially the PSTN incumbent, cannot afford to act in an uncompetitive way and increase retail call prices. As already discussed in the market analysis to this document, competitive pressures are clearly evident in the way market shares are developing. For example, the PSTN ,Go, is facing a consistent decline in its market share both in terms of subscriptions and outgoing traffic. This, in itself, should preclude Go from increasing prices at the retail level, in the event that ex ante regulatory intervention is removed.

Furthermore, the MCA believes that the Office for Fair Trading (OFC) could effectively deal with restrictions on competition in the market which might arise as a result of some form of anti competitive behaviour that has been referred to above. The MCA therefore believes that competition law by itself is an adequate tool with which to address potential market failures in this regard.

3.7 Views of respondents and the MCA's response

One respondent argues that it has to be ensured that adequate regulatory structures are in place before de-regulation is considered. The respondent asserts that it fears that competition law is not sufficiently effective and efficient to tackle the complaints and other problems currently faced by the MCA.

The MCA reiterates that given the level of market development, competition law will suffice to deal with any competition problems that might arise in the market.

The MCA also underlines the importance of regulation imposed in upstream wholesale markets which are related to the retail calls markets. The MCA notes that the analysis carried above determined that regulation in related wholesale markets helps to mitigate certain competition problems arising in downstream retail calls markets, in the absence of retail ex ante regulation.

Conclusion on third criterion

The MCA considers that competition law by itself is adequate to address any potential market failures in the retail calls markets.

3.8 Overall conclusion

A three criteria test has been carried out to determine whether regulatory intervention is still warranted in the Maltese retail calls markets.

The conclusions for this test are outlined below:

A. No high and non-transitory barriers to entry, being either of a structural, legal, or regulatory nature;

B. Markets under review are effectively competitive and are expected to remain so within the timeframe of this review;

C. Competition law by itself is adequate to address any potential market failure in the absence of *ex ante* regulation.

The above findings suggest that any ex ante regulatory intervention in the retail calls markets should be removed.

Chapter 04 - Regulation

4.0 Background to regulation

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

However, in accordance with Article 9(2) of the ECRA, where the MCA concludes that a finding of dominance cannot be ascertained, the MCA is not allowed to impose or maintain any specific ex-ante regulatory obligations. In the case where no SMP designation is made and where regulatory obligations already exist in the market, the MCA, in accordance with Regulation 10(3) of the ECNSR, is to withdraw such obligations placed on undertakings subject to an appropriate period of notice to be given to all parties affected by such withdrawal of obligations.

4.1 Existing obligations

Prior to the revision of the EU Recommendation, the retail calls markets currently under analysis were considered susceptible to *ex ante* regulation. In accordance with its powers under the EU Regulatory Framework for Electronic Communications, the MCA had identified Go (formerly known as Maltacom) as having a dominant market position in the provision of national calls in the residential and non-residential markets, and a dominant market position in the provision of international calls in the residential and non-residential markets.

In accordance with Article 9(3) of the ECRA and regulation 10(4) of the ECNSR the MCA has acted in pursuit of its statutory obligations to ensure adequate access, interconnection and interoperability of services without prejudice to any measures which may be imposed on undertakings designated as SMP operators and subject to obligations listed in regulations 18 to 22 of the ECNSR (wholesale obligations) and regulations 37 to 39 of the ECNSR (retail obligations).

In the previous reviews, the MCA imposed a number of wholesale and retail remedies on the SMP operator, namely Go plc., regulating the provision of national and international telephone services as detailed below.

Existent regulation at the wholesale level obliges Go to:

- Provide sufficient access to wholesale inputs, so that call services may be offered over the existing infrastructure;
- Implement Carrier Selection and Pre-Selection, without any unreasonable restrictions;
- Ensure that interconnection and access are accomplished promptly and efficiently and at charges which are based on principles of transparency and cost-orientation;
- Ensure that tariff structures, quality, and terms and conditions are transparent and non-discriminatory;

- Ensure that the information and services provided to the CS and CPS services are offered in a similar fashion as those provided to its downstream retail service provider;
- Make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices;
- Continue publishing a Reference Interconnection Offer (RIO) which is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the services requested; and
- Maintain cost accounting systems, including the cost orientation of prices, and accounting separation to facilitate the verification of compliance with the obligation that requires Go to provide services to other operators under the same pricing conditions as provided for its downstream arm.

In accordance with Regulation 37(3) of the ECNSR, the MCA has also imposed retail obligations on Go plc. to ensure that the undertaking concerned does not charge excessive pricing; does not inhibit market entry or restrict competition by setting predatory pricing; does not show undue preference to specific end-users; and does not unreasonably bundle services.

In order to mitigate these risks the MCA supplemented the above-mentioned wholesale obligations with retail regulatory measures, mentioned in Regulation 37 of the ECNSR, requiring Go plc. to:

- Adhere to the price control obligation requiring the use of cost oriented national call tariffs (not applicable to international call tariffs) so as not to charge excessive prices for specific national telephone services, nor to attempt to restrict market entry by charging unreasonably low prices or unfairly squeezing the margins of competitors or potential competitors to the detriment of competition;
- Maintain a cost accounting system, including related regulatory accounts, which are based on generally accepted accounting practices;
- Adopt accounting separation to avoid cross-subsidisation practices that leverage market power from one retail market to another;
- Charge transparent and non-discriminatory tariffs, which shall be appropriately published;
- Ensure that transparent and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access and use of publicly available telephone services is available to end-users and consumers;
- Guarantee equality of treatment except for objectively justifiable restrictions compatible with national and international regulation;
- Inform the MCA of any modifications to terms and conditions including tariffs, prior to their coming into effect; and to
- Ensure that services are not bundled into a single tariff without also offering each of the constituent services under separate tariffs, unless MCA's prior approval is obtained.

All of the above regulatory obligations have been mandated on Go plc. to ensure that the objectives set out in Article 4 of the ECRA are actually attained. These are all presently incumbent on the aforementioned operator.

4.2 Withdrawal of regulation

The MCA has carried out a detailed analysis of the market conditions in the retail calls markets as set out in Chapter 3 to this document. Chapter 3 concludes that the retail calls markets are effectively competitive.

Given this conclusion and the provisions under Article 9(2) of the ECRA, the MCA has no legal power to impose new regulations at the retail level, and/or maintain any of the existing 'retail' regulation in these markets. Consequently the MCA is withdrawing all existing retail regulations as established under the MCA decisions entitled 'National telephone services provided at a fixed location' published in 2006, and 'International telephone services provided at a fixed location' published in 2007. This is without prejudice to any other general obligations of undertakings at law.

The MCA underlines that whilst all obligations are being withdrawn from the retail markets specified above, the withdrawal of regulation shall not in any way affect existing wholesale obligations imposed on Go plc. published in the decision for 'Wholesale call origination, termination, and transit services provided over fixed networks' published in September 2006. Any wholesale obligations listed in the decisions 'National telephone services provided at a fixed location' published in 2006, and 'International telephone services provided at a fixed location' published in 2007, were made for ease of reference and continuity and are clearly not imposed in the retail markets.

Finally, the MCA notes that in order to have a smooth transition from a full regulated market to a non-regulated one, the existing retail obligations are to be withdrawn 30 days following the publication of this decision, and this in accordance with Regulation 10(3) of the ECNSR. The MCA believes that this notice period is justified and sufficient to allow for all stakeholders to make necessary arrangements for the new regulatory approach to this market.

4.3 Monitoring and reviewing of the markets

The MCA considers that given the dynamic nature of the retail calls markets and the fact that all existing retail regulation is being withdrawn, it is vital to keep a very close watch on the progress of these markets.

To this end, the MCA intends to analyse market trends and developments on an ongoing basis, and remains committed to issue a new market analysis at any point in time in response to any deterioration in the competitive level of the market. The MCA is also determined to take emergency remedial action, in accordance with its powers at law, should a significant problem in the market occur as a result of the removal of any of the present obligations, in order to safeguard competition and protect the interest of end-users.

Appendix

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

Uffiċċju tad-Direttur Ġenerali

Office of the Director General

17 February 2009

T09800

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) review and market analysis concerning retail public telephone call services provided at a fixed location.

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 two retail calls markets, namely:

1. National telephone call services provided at a fixed location; and

2. International telephone call services provided at a fixed location.

However, given the dynamic nature of these markets and given that some of the developments identified in the report have taken place recently or may still have to materialise it would be appropriate to constantly monitor these markets and thereby confirm, or otherwise, the findings of the present market analysis.

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

OFFICE FOR FAIR TRADING CANNON ROAD, ST VENERA SVR 1411 - MALTA
TELEPHONE (+356)21 446250-5 FAX (+356)21 496879
E-mail fair.trading@gov.mt