



MCA analysis of the market for the provision of wholesale physical and virtual infrastructure access (PVIA) in Malta

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In 2023 the Malta Communications Authority (MCA) carried out an *ex-ante* competition assessment of the wholesale physical and virtual infrastructure access (PVIA) market in Malta, launching a consultation of its findings on the 28th April 2023.¹ This is in line with the MCA's remit to carry out *ex-ante* reviews of electronic communications markets in accordance with Article 9 of the Electronic Communications (Regulation) Act, Cap. 399 of the Laws of Malta.

National regulatory authorities (NRAs) are required to notify the European Commission (EC) with the findings of the market analysis [i.e., market definition, significant market power (SMP) assessment and the proposed remedies], following which the EC may comment on the draft measure within one month, as provided for under the European Electronic Communications Code (EECC).

Following the closure of the national consultation on the 14th July 2023, the MCA assessed the submissions received² and subsequently notified to the EC of its draft measure. The draft measure confirmed the analytical findings elaborated in the consultation document, whereby the MCA determined that GO holds significant market power (SMP) on the PVIA market. Hence, the MCA draft measure proposes the imposition of both active and passive access regulation on GO's physical and virtual infrastructure.³

¹ Link to MCA Consultation: <https://www.mca.org.mt/consultations-decisions/mca-analysis-market-provision-wholesale-physical-and-virtual-infrastructure>

² Three operators submitted feedback to the Consultation exercise, namely GO, Melita and Epic. The MCA also updated the MCCA at all stages of the assessment, including the EC notification stage.

³ The provision of wholesale local (virtual) access in Malta is currently regulated by way of an MCA Decision published in 2013, determining GO with SMP on this market and imposing a remedy on this operator to supply virtual unbundling local access (VULA) to third party operators seeking such access.

Relevant timelines

The MCA notified its draft measure to the EC on the 28th December 2023. The EC registered the MCA notified draft measure as Case MT/2024/2484.

On 29 January 2024, pursuant to Article 32 of the EECC, the EC opened a Phase II investigation into the MCA's draft market analysis, also referred to as an expression of serious doubts.⁴ The investigation may take up to two months to be concluded.⁵ The EC informed the Body of European Regulators for Electronic Communications (BEREC) and the NRAs of its reservations and simultaneously made them public.

On 2 February 2024, in accordance with Article 32 of the EECC, BEREC established a dedicated Expert Working Group (EWG) with the mandate to prepare an opinion on the EC's serious doubts. BEREC is required to publish its opinion on the EC's reservations, indicating whether it considers that the draft measure should be maintained, amended or withdrawn and shall, where appropriate, provide specific proposals to that end.

The BEREC Opinion on the EC's serious doubts

BEREC finalised its detailed analysis of the case on 23 February 2024, whereby it expressed the opinion that none of the EC's four serious doubts are justified. BEREC considers that there are insufficient grounds to justify the withdrawal or amendment of the MCA's draft measure, based specifically on the reservations arising from the EC's serious doubts. BEREC states that it does not agree with the EC that the draft measure:

- (i) is characterised by a lack of sufficient justification that the wholesale market should continue to be regulated;
- (ii) provides insufficient evidence that the PVIA market passes Criterion 2 of the three-criteria test;
- (iii) incorrectly excluded the direct constraint arising from Melita self-supply of cable in its product market definition; and
- (iv) has failed to justify a finding of SMP on the PVIA market arising in particular from an improperly defined PVIA market definition (arising from the exclusion of self-supply of cable as a direct constraint).

⁴ <https://digital-strategy.ec.europa.eu/en/news/commission-opens-depth-investigation-proposed-regulation-wholesale-broadband-market-malta>

⁵ The Phase II investigative process is outlining in the following link: <https://www.berec.europa.eu/en/berec/article-3233-former-article-77a>

The BEREC Opinion was adopted by the BEREC Board of Regulators on 23 February 2024, and published on BEREC's website on the 26 February 2024.⁶

Next Steps

The EC is required to take utmost account of the BEREC's opinion in the finalisation of its investigation. A closure of the EC's Phase II investigation is expected by not later than the 2nd of April 2024. The closure of the Phase II investigation will either see the EC lifting its reservations or require the MCA to amend or withdraw the draft measure within six months of the date of the EC's decision. In the case that the EC takes a decision to lift the reservations, the MCA will take the utmost account of the comments of other NRA's, of BEREC and of the EC and may adopt the draft measure.

⁶ Link to [BEREC Opinion on Phase II investigation pursuant to Article 32 of Directive \(EU\) 2018/1973 – Case MT/2024/2484 Wholesale physical and virtual infrastructure access market.](#)