



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

Brussels, 26.2.2016  
**SG-Greffe(2016) D/ 2525**

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

**NOTIFICATION PURSUANT TO ARTICLE 297 OF THE TFEU**

**Subject: COMMISSION DECISION (25.2.2016)**

For the Secretary-General,

Robert ANDRECS

Encl. : **C(2016) 1314 final**

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

For the attention of:  
Mr Edward Woods  
Executive Chairman

Fax: +356 21 336 846

Dear Mr Woods,

**Subject: Commission Decision concerning Case MT/2016/1837: market for wholesale call origination on the public telephone network provided at a fixed location in Malta**

**Article 7(3) of Directive 2002/21/EC: No comments**

### 1. PROCEDURE

On 28 January 2016, the Commission registered a notification from the Maltese national regulatory authority, Malta Communications Authority (MCA)<sup>1</sup>, concerning the market for wholesale call origination on the public telephone network provided at a fixed location<sup>2</sup> in Malta.

The national consultation<sup>3</sup> ran from 13 November 2015 to 15 December 2015.

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

<sup>2</sup> Corresponding to market 2 in the previous Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2007 Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

<sup>3</sup> In accordance with Article 6 of the Framework Directive.

## 2. DESCRIPTION OF THE DRAFT MEASURE

### 2.1. Background

The second round review of the market for wholesale call origination on the public telephone network provided at a fixed location in Malta was notified to and assessed by the Commission under case MT/2009/0979<sup>4</sup>. The relevant market comprised wholesale call origination services provided over public fixed electronic communications networks including copper, cable and Broadband Wireless Access networks, including the services provided to third parties as well as self-supply. The incumbent operator, GO plc, has been designated as having significant market power (SMP) and a full range of remedies has been imposed on it (access to wholesale call origination and associated services; non-discrimination; transparency; accounting separation; and price control and cost accounting). In addition, MCA imposed obligations of carrier (pre-) selection (CS/CPS) and wholesale line rental (WLR), previously imposed on a related market, namely the market for retail access to the public telephone network. The Commission commented on the need to monitor the effectiveness of CS/CPS and WLR remedies.

### 2.2. Market Definition and the Three Criteria Test

In line with the previous market review, the relevant product market encompasses wholesale call origination provided to third parties as well as self-supply. It comprises the services provided over public fixed electronic communications networks including copper, fibre, cable, and Broadband Wireless Access networks. MCA considers the geographic market to be national.

MCA carried out the three criteria test<sup>5</sup> and concluded that none of the criteria are met, and that the market for wholesale call origination in Malta is effectively competitive.

In its assessment of the first criterion (presence of high and non-transitory barriers to entry), MCA considers that legal and regulatory barriers to entry into this market are minimal. With regard to the structural barriers, MCA concentrated on the assessment of sunk costs and control of infrastructure not easily duplicated, economies of scale and scope, as well as vertical integration. MCA considers that while indeed upfront investments to deploy a nation-wide network infrastructure are significant, the incumbent's network has been fully duplicated by at least one operator (Melita), and other operators have also rolled out their infrastructures. Moreover, entry barriers have been significantly lowered by the deployment of wireless fixed networks, which entail much less deployment costs as opposed to copper/fibre networks. Finally, the economies of scale and scope, as well as vertical integration, are not considered as posing an insurmountable barrier to entry.

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<sup>4</sup> SG-Greffe (2009) D/7649.

<sup>5</sup> The three criteria are set out in point 2 of the Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

In the assessment of the second criterion (tendency towards effective competition), MCA looked in detail into market share developments, potential for market expansion, indirect constraints and countervailing buyer power. MCA noted that GO's market share is still relatively high (above 66% at the end of 2014, in terms of both retail access lines and volume of the originating calls), although it is slowly decreasing over recent years (from 74% in 2009). The market share of the second largest operator (Melita) is increasing (from 24 to 30% between 2009 and 2014), while the share of four other competitors is also increasing, although they account for a very small part of the market (from 0.1% to 1.9%). Moreover, MCA noted that competitors usually provide their services on the basis of their own infrastructure and that therefore the proportion of traffic based on CS/CPS and WLR has been declining over the years (from 0.5% to 0.2% in case of CS/CPS).

MCA considers that despite the high market shares on the market for wholesale call origination GO is constrained by competitors active outside the market, namely the mobile operators and Over-the-Top (OTTs) providers. MCA noted that the mobile call volume is growing and is significantly higher than the volume of calls in the fixed networks, which has been declining over the years. Furthermore, while no exact figures could be gathered, MCA's customer survey indicates that 18% of retail customers are using OTT services to place local calls. In addition, when assessing countervailing buyer power, MCA concluded that the operators on the demand side of the market for wholesale call origination have sufficient countervailing buyer power to constrain any service provider, including the incumbent. MCA considers that such operators could switch to the largest alternative provider (Melita), which could start providing wholesale call origination without incurring significant additional costs.

Regarding the third criterion (sufficiency of competition law), MCA considers, given the overall conditions, that competition on this market is possible in the absence of ex ante regulation, and competition law will be sufficient to address any potential issues.

### **2.3. Withdrawal of regulatory remedies**

In view of its conclusions concerning the absence of SMP on the market for wholesale call origination, MCA proposes to withdraw all remedies previously imposed on GO. Any existing obligation will expire after 90 days following the publication of the decision, which according to MCA gives the stakeholders sufficient time to make the necessary amendments.

## **3. NO COMMENTS**

The Commission has examined the notification and has no comments.<sup>6</sup>

Pursuant to Article 7(7) of the Framework Directive, MCA may adopt the draft measure and, where it does so, shall communicate it to the Commission.

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

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<sup>6</sup> In accordance with Article 7(3) of the Framework Directive.

Pursuant to Point 15 of Recommendation 2008/850/EC<sup>7</sup> the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission<sup>8</sup> within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.<sup>9</sup> You should give reasons for any such request.

Yours sincerely,

For the Commission,  
Roberto Viola  
Director-General



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

<sup>8</sup> Your request should be sent either by email: [CNECT-ARTICLE7@ec.europa.eu](mailto:CNECT-ARTICLE7@ec.europa.eu) or by fax: +32 2 298 87 82.

<sup>9</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.