Malta Communications Authority

Wholesale voice call termination on individual mobile networks

Identification and Analysis of Markets, Determination of Market Power and Setting of SMP Conditions

4th July 2005

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Executive Summary

A new regulatory framework for electronic communications networks and services entered into force in Malta on the 14th September 2004. The framework is designed to create harmonised regulation across Europe and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. The basis for the new regulatory framework are the five new EU Communications Directives.

The new Directives require National Regulatory Authorities (NRAs), amongst other things, to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions. For a limited period, while those reviews are conducted and until the new Significant Market Power (SMP) conditions are imposed, some of the regulatory regime which existed prior to the 14th September 2004 continue to be in force in line with Article 39 and 40 of the Electronic Communications (Regulation) Act.

This review sets out the Malta Communications Authority's (MCA's) proposal for identifying a market and making a market power determination. Those likely to be effected may forward their comments within the period ending on the 04th August 2005. Arrangements for submitting comments are explained in **Chapter 05**.

As required by Article 4 of the Electronic Communications (Regulations) (Article 7 of the Framework Directive), the MCA's proposals are being sent to the European Commission and to other NRAs.

Summary of Proposals

Identification of Markets

The group of products and services under consideration in this document consist of wholesale call termination services on individual mobile networks. Wholesale services are those sold and purchased by electronic communications providers rather than end users. In this market the wholesale of such services enables electronic communications providers to sell to end users the ability to receive calls on their network.

In relation to these services, the MCA proposes to identify the following economic market in accordance with competition law principles: **wholesale voice call termination on individual mobile networks.**

The details of the definition of this market, and the approach taken by the MCA when identifying these markets, are contained in **Chapter 02** of this document.

Assessment of Market Power

Based on the evidence presently available to the MCA and after having analysed the operation of these markets, and taken due account of the Commission's 'Guidelines on market analysis and the assessment of SMP' (SMP Guidelines), the MCA proposes that for the wholesale call termination on individual mobile network market both mobile network operators (MNOs) – namely Vodafone and Go Mobile - should be designated as having SMP in the relevant market for termination of voice calls on their respective networks in Malta. The main criteria used for justification of the proposed designations are:

- Market share analysis;

- Barriers to entry and potential competition;
- Countervailing buyer power; and
- Pricing structure.

Full details of the MCA's proposed designations and reasoning are contained in **Chapter 03** to this document.

Regulatory Implications

Given the position of dominance held by all providers of wholesale mobile voice call termination – i.e. their ability to behave to an appreciable extent independently of competitors, customers and ultimately consumers – the MCA proposes to impose on designated SMP operators the following obligations:

(a) Access to/and use of specific network facilities;

(b) Non-discrimination;

(c) Transparency;

(d) Price control and Cost accounting; and

(e) Accounting Separation.

Full details of these remedies, including their effect and the reasons for proposing to set these conditions, are contained in **Chapter 04** of this document.

Final Steps

After the MCA has considered any representations made within the period ending on the 4th August 2005, including comments made by the Commission, the MCA may give effect to the proposals, with or without modifications, as presented in this review. The MCA will do this by publishing a further notification(s) accompanied by a further and final Explanatory Statement (Decision). Thereafter, the markets, SMP findings and regulatory remedies will be reviewed at appropriate intervals.

Chapter 01 – Introduction

A new regulatory framework for electronic communications networks and services entered into force on the 14th September 2004. The framework is designed to create harmonised regulation across Europe and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers. The basis for the new regulatory framework are the five new EU Communications Directives:

- 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, which read across all the new directives. Article 8 of the Framework Directive sets out three key policy objectives, which have been taken into account in the preparation of this consultation document, namely promotion of competition, 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.

These four Directives were implemented in Malta on the 14th September 2004. This was achieved via the Electronic Communications (Regulation) Act, 2004 (hereinafter referred to "ECRA") and the Electronic Communications Networks and Services (General) Regulations, 2004 (hereinafter referred to ''ECNSR''). The fifth Directive on Privacy establishes users' rights with regard to the privacy of their communications. This Directive was adopted slightly later than the other four Directives and has an implementation date of 10th January 2003 (Legal Notice 16 of 2003 under the Data Protection Act).

The new Directives require National Regulatory Authorities (NRAs) such as the MCA to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions.

Each market review has three parts:

- definition of the relevant market or markets;
- assessment of competition in each market, in particular whether any companies have Significant Market Power (SMP) in a given market; and
- assessment of what are the appropriate regulatory obligations which should be imposed given the findings on SMP (NRAs are obliged to impose some form of regulation where there is SMP).

More detailed requirements and guidance concerning the conduct of market reviews are provided in the Directives, the ECRA, the ECNSR and in additional documents issued by the European Commission and the MCA. As required by the new regime, in conducting this review, the MCA has taken the utmost account of the two European Commission documents discussed below.

01.1 Market Review Methodology

The European Commission has identified in its Recommendation, a set of markets in which ex ante regulation may be warranted. The Recommendation seeks to promote harmonisation across the European Community by ensuring that the same product and service markets are subject to a market analysis in all Member States. However, NRAs are able to regulate markets that differ from those identified in the Recommendation where this is justified by national circumstances. Accordingly, NRAs are to define relevant markets appropriate to national circumstances, provided that the utmost account is taken of the product markets listed in the recommendation (Regulation 6 of the ECNSR).

The European Commission has also issued Guidelines on market analysis and the assessment of SMP ("SMP Guidelines"). The MCA has also published a document entitled 'Market Review Methodology' outlining the methodology to be used for assessing effective competition in the Maltese electronic communications sector[1]. The MCA is required to take these guidelines into utmost account when analysing a product or service market in order to access whether the market under investigation is effectively competitive or otherwise (refer to Regulation 8 of the ECNSR).

As required Regulation 6 of the ECNSR (Article 7 of the Framework Directive), the results of this market review and the proposed draft measured need to be notified to the European Commission and to other NRAs. The Commission and other NRAs may make comments within the one month consultation period. If the Commission is of the opinion that the market definition, or proposals to designate an operator with SMP or proposals to designate no 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 MCA has collected market data from a variety of internal and external sources, including users and providers of electronic communications networks and services and from consumer surveys commissioned by the MCA, in order to carry out thoroughly its respective market definition and market analysis procedures based on established economic and legal

[1] Link to MCA market review methodology: http://www.mca.org.mt/library/show.asp?id=513&lc=1

principles, and taking the utmost account of the Relevant Markets Recommendation and the Guidelines.

01.2 Consultation

As required by Article 10 of the ECRA, the MCA is to publish the results of the market reviews and to provide operators the opportunity to comment on the findings prior to adopting the final proposals.

Furthermore, Regulation 6 of the ECNSR establishes that prior to adopting the draft measures proposed in the market review the MCA is required to notify the Commission with the findings of the market reviews, the proposed remedies and the outcome of the national consultation process.

In line with our national consultation process, the consultation period will run from the 4th of July 2005 to the 4th of August 2005 during which the MCA welcomes written comments on any of the issues raised in this paper. Further details on the public consultation are provided in **Chapter 05**.

01.3 Liaison with Competition Authority

There is a requirement on the MCA under Regulation 10 of the ECNSR to carry out an analysis of a relevant market within the Electronic Communications sector. This analysis must be carried out in accordance, where appropriate, with an agreement with the National Competition Authorities (NCA) under Regulation 10 of the ECRA.

In line with the co-operation agreement signed on the 20th May 2005 between the MCA and the Office of Fair Competition (OFC)[2], the MCA has initiated a two week consultation process with the OFC. The MCA has forwarded and presented the results of this review to the OFC. To date the MCA did not receive any representations from the OFC and therefore the MCA is of the understanding that the OFC agrees with the findings of analysis. The official position of the OFC in writing is expected in the coming days, which will then be made available to the general public.

01.4 Scope of this Review

This review considers the markets for wholesale voice call termination on individual mobile networks in Malta (hereafter referred to as the 'mobile termination markets'), which includes termination services over mobile networks.

Q1. Do you agree with the scope of the MCA's review for wholesale voice call termination on individual mobile networks in Malta?

[2] Link to Memorandum of Understanding between MCA and OFC: http://www.mca.org.mt/library/show.asp?id=656&lc=1

01.5 Structure of the Document

The rest of the document is structured as follows:

Chapter 02 presents MCA's preliminary conclusions on the definition of the markets for wholesale voice call termination on individual mobile networks in Malta. This section consists of a review of the market definition procedure and its scope, as well as demand side and supply side assessments at the retail and wholesale level;

Chapter 03 presents MCA's market analysis for the mobile termination market and outlines a preliminary view on whether this market is effectively competitive or those undertakings having significant market power.

Chapter 04 provides a discussion of the general principles associated with remedies and outlines the proposed remedies on SMP operators, under the new regulatory framework; and

Chapter 05 provides details with regard to the submission of comments on this consultation document.

Chapter 02 - Market Definition

Regulation 10 of the ECNSR provides that before an SMP determination may be considered, the MCA must identify the markets which are, in its opinion, the ones which, in the circumstances of Malta are the markets in relation to which it is appropriate to consider such a determination and to analyse that market. In identifying the relevant markets, the MCA is required to take utmost account of all applicable guidelines and recommendations issued by the European Commission.

In formulating the MCA approach to market definition, the MCA has paid the utmost regard to the Commission's Recommendation.

Where the proposed market definition differs from the Commission's Recommendation the difference is identified and justification given in the light of the national circumstances which justify this departure, in the manner prescribed by the Commission's Recommendation.

Paragraph 3.1 of the Commission's Recommendation states that *'Because market analysis is forward-looking, markets are defined prospectively taking account of expected or foreseeable technological or economic developments over a reasonable horizon linked to the timing of the next market review*'. The market analysis has been carried out 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 Recommendation states that retail markets should 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 based 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.

In its recommendation the commission advises should analyse the relevant market for 'voice call termination on individual mobile networks'. It based its conclusions on the following reasoning:

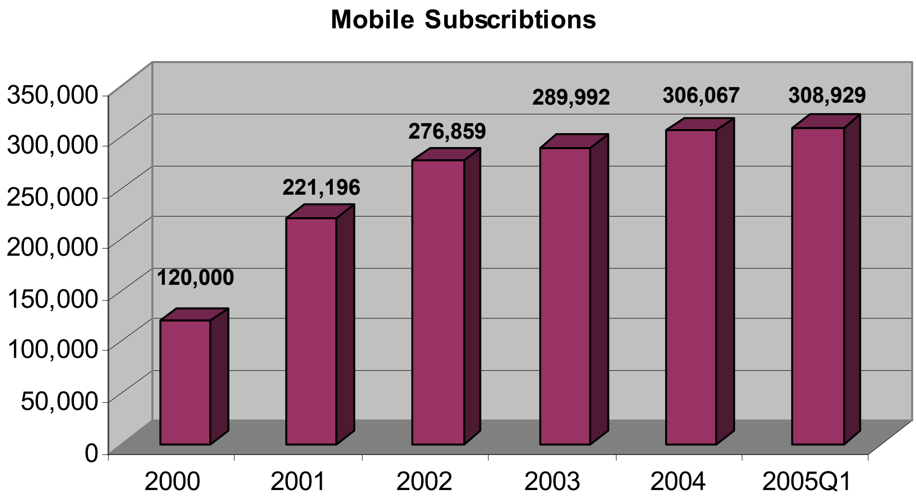
- the role of the Calling Party Pays (CCP) principle;
- lack of demand side substitution at both the wholesale and the retail levels;
- lack of supply side substitution at the wholesale level; and
- the inability of mobile operators to price discriminate between individual mobile numbers.

The MCA has conducted an assessment of the markets for wholesale voice call termination on individual mobile networks in order to validate its appropriateness in the Maltese context, and as preparatory work for the assessment of SMP in this market.

This chapter outlines the MCA's findings setting out the different markets that the MCA has identified, and giving reasoning for the proposed conclusions.

02.1 Background to the mobile sector in Malta

There are two mobile networks in Malta run by Vodafone Malta Ltd. and MobIsle Communications Ltd., operating under the brand name of Vodafone and go Mobile respectively. go mobile launched their services in December 2000 whilst Vodafone started its operations way back in 1990. As at March 2005 the market shares for mobile subscriptions were split at 52% for Vodafone and 48% for Go Mobile. Overall mobile penetration stood at 76% at just under 309,000 subscribers. It exceeds fixed line penetration which is slightly over the 200,000 lines mark. Since the introduction of the second mobile operator in Malta the number of mobile subscribers has experienced an impressive growth as depicted in the graph below.



02.2 Market Definition Process

The purpose of the market definition process is to identify the competitive constraints that electronic communications service providers face. There are two dimensions to the definition of a relevant market: the relevant products to be included in the same market and the geographic extent of the market. The MCA's approach to market definition follows that identified in MCA's market review methodology.

Recital (7) of the Recommendation clearly states that the starting point for market definition is a characterisation of the retail market over a given time horizon, taking into account the possibilities for demand and supply-side substitution. The wholesale market is then identified subsequently to this exercise being carried out in relation to the retail market. This approach is repeated in paragraph 3.1 of the main Recommendation and is exactly that followed by the MCA in the following sections.

02.3 Delineation of the retail mobile termination markets

2.3.1 Retail demand side substitutability

Demand-side substitutability refers to the extent that customers can substitute the products and services under review for alternatives.

Under normal circumstances customers would be price sensitive to the cost of purchasing a good or services and therefore suppliers face a direct pricing constraint from their customers. This however is not the case with mobile termination services. At present the mobile termination market is characterised by the "Calling Party Principle" (CPP), which means that the originator of the call pays for the cost of the call. The recipient of the call incurs no charge for answering an incoming call. The cost of terminating a call is part of the retail rates that subscribers are charged for making a mobile call. Under this system the calling party pays for the voice call but the mobile subscriber receiving the call selects the network where the call is being terminated.

Under CPP system mobile network operators (MNO) do not face a direct pricing constraint and therefore have no incentive to decrease mobile termination rates. It is therefore important to examine the behaviour of the calling party and assess the impact of termination rates on mobile call patterns.

1. Calling Party Behaviour

The MCA has examined customer behaviour and perception at the retail level as part of the holistic approach in reviewing the market. MNOs generally cater for termination charges by reflecting them in their retail tariffs and therefore charge them to their own subscribers.

In assessing constraints on termination rates two important factors need to be considered price sensitivity and customer awareness. These factors impact on the competitiveness at the wholesale level. Another important issue to examine is the existence of alternative means of communication that could act as a substitute to mobile calls. The availability of such substitutes would directly constrain termination rates charged by MNOs.

As a result the MCA has assessed the response of subscribers to changes in the prices of calls and the existence of any products that could act as a substitute to mobile calls.

1A. Awareness of price of calls

In order for subscribers originating a call to be price sensitive they must be aware of the costs of the call and the network being called. An independent qualitative survey commissioned by the MCA in January 2005 showed that 59.3% of respondents were not aware of the cost of a mobile call[3]. This is probably due to the fact that mobile operators provide various tariff plans for different customer groups and different rates for different time windows.

It is important to note that due to the fact that there are only two mobile operators and one fixed network on the island, it is likely that a significant number of consumers are aware of which and to which network they are calling. In Malta the two mobile operators have different prefixes to their numbers, one starting with 99 and the other starting with 79. This facilitates the awareness to which mobile network is being calling. The fixed line operator has a prefix starting with 21 and it is therefore easy for the caller to identify a call to a fixed number.

Number portability is not yet offered locally and once operators offer it may impact on the ability of consumers to identify the network they are calling. The MCA has taken steps to ensure that mobile operators in Malta provide number portability services[4]. The take up of number portability in terms of the actual numbers ported will greatly influence the awareness of which mobile network consumers are calling. The MCA together with MNOs is planning to

[3] Link to mobile consumer perceptions survey: http://www.mca.org.mt/library/show.asp?id=636&lc=1

[4] Link to Number Portability Decision: http://www.mca.org.mt/library/show.asp?id=624&lc=1

introduce a system whereby for a initial period of time (e.g. first month), a caller calling a ported number would be advice by a short voice message that the number called has been ported to a different network. This is likely to mitigate to some extent the lack of awareness by customers when calling a ported number.

Nevertheless, this does not mean that awareness of the network being called is sufficient to create price sensitivity on its own, as callers must be cognisant of the price of a call, as stated above.

The MCA is of the opinion that price sensitivity by the calling party is inadequate to impact mobile termination rates on the wholesale side.

1B. The Use of Alternative Services

In order to influence mobile termination rates, price sensitive callers must have an alternative means of communication which they would be able to use when mobile termination rates increase. If appropriate substitutes exist this behaviour could act as a competitive check on mobile termination rates. The MCA is considering a range of possible demand side substitutes at a retail level, which could act as a constraint on termination rates.

1B.1 Calls to a fixed number

If a customer is faced by high termination rates when calling on a mobile phone s/he may decide to make the call to a fixed number rather than to a mobile number. If it is possible to substitute any call to mobile with a call to a fixed line number it could influence mobile termination rates, as such calls do not involve call termination charges due to mobile operators. This scenario does not however cater for the fundamental principle that mobile numbers are intrinsically by nature 'mobile' and not set at fixed locations as a fixed line number. Therefore a customer calling someone on a mobile number might not have the choice to call that person on a fixed line number. It is therefore not appropriate to consider calls to fixed number as a sufficient strong substitute for calls to mobile in order to constrain mobile termination rates.

1B.2 Mobile to mobile calls as a substitute to fixed to mobile calls

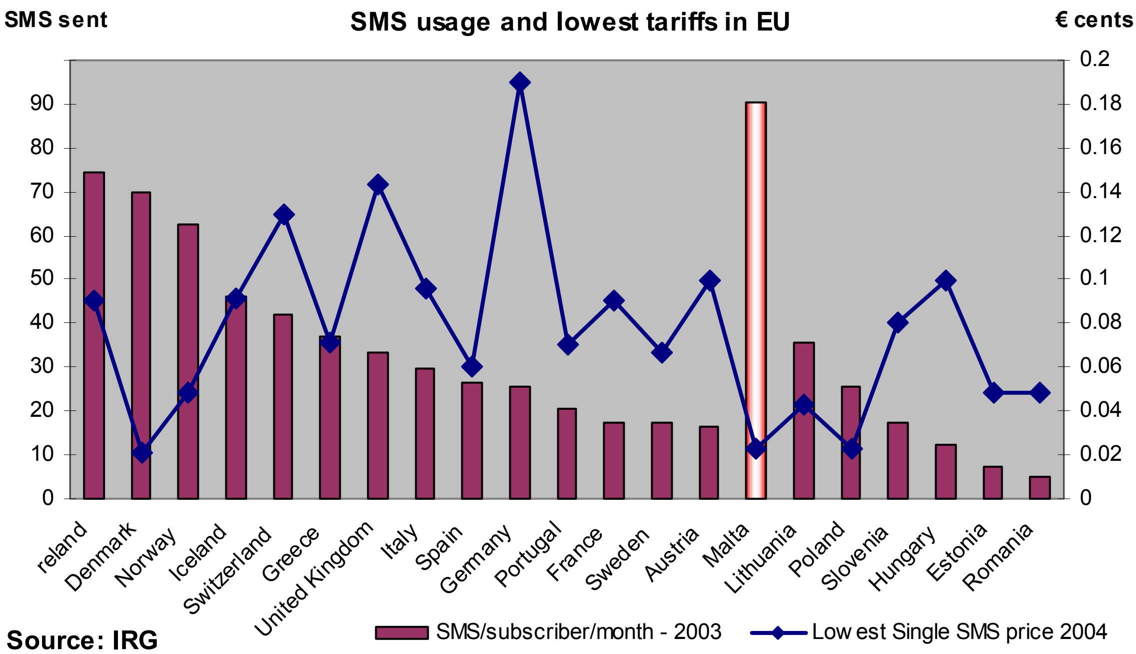
Substitution from fixed to mobile calls to mobile-to-mobile calls is unlikely to impact wholesale termination rates. Such rates are transparent in the sense that there is no discrimination if it is a fixed or a mobile network that originates the call, as the termination rate is identical, whatever the network. Therefore a customer calling a mobile number would be indifferent to whether the call is originated from a fixed or mobile line for the purpose of termination rates. This further reduces the impact on mobile termination rates.

1B.3 Mobile on net calls as a substitute to off net calls and fixed to mobile calls

The option of always originating an on net call seems unlikely to be a realistic alternative. Having to change SIM cards to make a call is not practicable or realistic. The more networks are in operation in a country the more SIM cards would need to be changed every time a call has to be made to another network. The MCA is therefore of the view that the extent of substitution between mobile on-net calls and fixed to mobile calls or mobile off-net calls is insufficient at this time to constrain mobile termination charges, particularly since currently there is no difference in on-net and off-net mobile voice call charges in Malta.

1B.4 SMS as alternative to any type of call

SMS is, in certain circumstances considered as an alternative to a voice call. In Malta the price of an SMS is amongst the cheapest in the EU whilst that of retail voice calls is relatively high. This pricing structure has contributed towards a very high take-up of SMS in Malta. In fact in 2004 Maltese mobile users averaged over 90 SMS sent per month, which ranks the highest in the EU. The figure below depicts this situation graphically.



Source: IRG

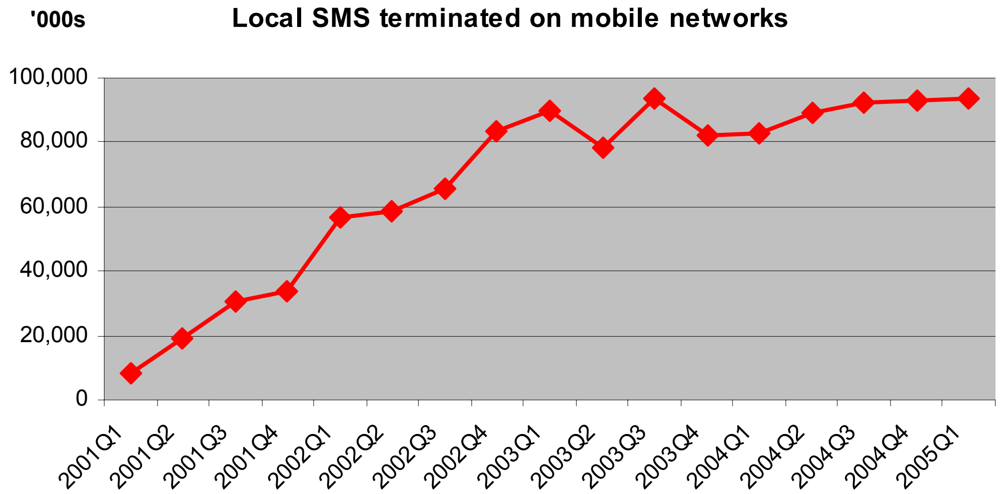
This would suggest that mobile users find SMS as an effective means of communication. Results of a mobile perception survey carried out on behalf of the MCA indicates that, 23.2% of respondents indicated that they *always* consider SMS to be a good substitute for mobile voice calls and 29.2% consider SMS *very often* be a good substitute. Another 21.1% state that SMS is *sometimes* an alternative to a voice call. On the other hand, when asked how they would rate the price of mobile voice calls, 12.1% said that it is *too expensive* and another 48.6% said it is *expensive*.

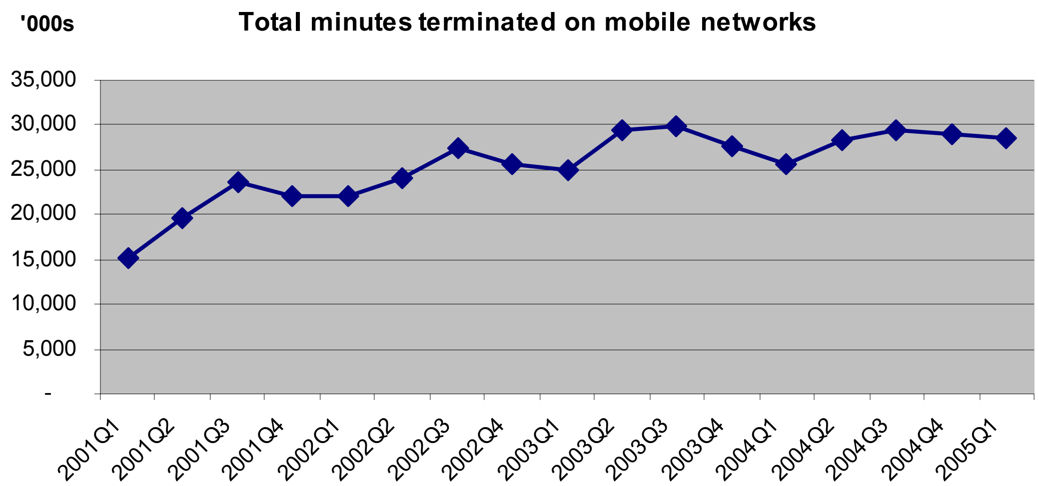
However the MCA does not consider SMS to be a complete substitute to voice calls for a number of reasons. Firstly, SMS differs from voice calls in a number of ways:

1. an SMS can convey only a limited number of characters per message (160 alphanumeric characters);
2. Unlike voice calls, SMS is stored and forwarded between networks; and
3. SMS is not transmitted in real time and can therefore experience delays.

These characteristics make text messages different from mobile voice calls.

Another factor that can be considered in this regard, is the fact that the price differential between mobile voice calls and SMS is such, that SMS is perceived to be an adequate substitute to voice calls when in reality it would not be. In actual fact, market data clearly shows that both SMS and mobile call minutes are increasing as shown below.





This would suggest that, even though SMS usage is very high, SMS and voice calls are complimentary services rather than substitutes. Another point that confirms this view is the fact the when retail SMS rates have decreased no corresponding decrease in mobile minutes was experienced. Instead, both mobile minutes and SMS continued with their upward trend. This suggests that a decrease in the price of SMS did not incentivise customers to substitute voice calls with SMS which in turn would indicate substitutability.

The MCA therefore concludes that SMS usage is not sufficient to constrain mobile termination rates in absence of regulation. In actual fact, mobile termination rates have only decreased following regulatory intervention.

1B.5 Call back Solutions

The MCA has found no evidence that a call back solution is in any way able to impact mobile termination rates. This is further compounded by the fact that retail voice call charges are very similar or identical when calling from one mobile network to another.

After reviewing the aspects discussed above the MCA is of the view that price sensitivity on the part of the calling party is insufficient to impact mobile termination rates in absence of regulation.

2. Called Party Behaviour

The fact that it is the individual originating the call that pays for it, results directly in price insensitivity on the part of the party receiving the call. Subsequently consumers are indifferent to the cost of a mobile termination rate when selecting a network to subscribe to.

It is unlikely that consumers would rate the cost other consumers had to pay in order to contact them as more important than the cost they would incur to make calls. This means that due to CCP arrangement the impact of the called party on mobile termination charges will be minimal.

Closed user groups are specifically tailored to keep traffic within the community of family and friends or business network. Such schemes are targeted to maintain voice calls within the group by offering cheaper calls to numbers within that group. As consumers become more attracted to these groups, the potential constraint on mobile termination rates increases.

However many counter arguments exist in this respect and include the fact that there is no local evidence to confirm the fact mobile users select their service providers based on Closed User Group tariff structures. Other network operators can counter this by offering better on net prices. In Malta, network wide Closed User Groups tariff schemes have not yet been launched commercially by MNOs.

Another important factor to note is that mobile operators will counter any services influenced by price sensitivities on specific customer segments. One such example has been the successful deployment of GSM gateways in the local market. The use of GSM gateways allows MNOs to limit churn and enable much traffic, that would have been originated through a PSTN line to a mobile number, to remain on net. This is achieved by programming a PABX to automatically route calls dialled to mobile numbers to the GSM gateway which then sets-up an ‘on-net’ mobile to mobile call to complete the call.

The only way that mobile termination rates can be constrained is if mobile users are able to receive their incoming calls on networks other than the one they subscriber to. However this would also entail changing SIM cards to be able to receive the call. The MCA does not consider this as a practicable and is not therefore sufficient to constrain termination rates.

With the principle that the Calling Party Pays the MCA is of the opinion that demand side substitutability on the retail level from called parties is limited.

2.3.2 Retail supply side substitutability

Retail supply-side substitution would be possible if there are operators which do not currently provide calls to mobiles that can switch into such provision and thus pose a competitive constraint on mobile termination rates.

For this substitution to be feasible, the new provider would have to be able to provide a service which does not rely on the provision of termination from the MNO to which the called party subscribes.

The MCA does not have any evidence that any such provider is able to start providing calls to mobile that would not depend on the MNO to which the called party subscribes to terminate the calls.

Based on the evidence provided above the MCA is of the opinion that currently there are no effective retail demand side substitutes that could constrain mobile termination charges to the competitive level in absence of regulation.

02.4 Delineation of the wholesale mobile termination markets

2.4.1 Wholesale demand side substitutability

Substitution of wholesale voice call termination on an MNO's network with wholesale voice call termination on a different MNO's network cannot provide any direct constraint on termination charges, since an operator wishing to offer calls to a customer of a specific MNO must purchase termination from that MNO or it will not be able to terminate the calls.

The necessity for a call to be made to a specific mobile number in turn means that there is no demand side substitution as the call cannot be terminated elsewhere.

The MCA is of the opinion that currently there are no demand side substitutes at the wholesale level able to constrain mobile termination rates.

2.4.2 Wholesale supply side substitutability

Supply side substitution occurs when an increase in the price of a particular product or service results in alternative suppliers of other products and services shifting their resources to supply the product whose price increased, without necessarily incurring additional significant investment.

Wholesale supply substitution could come from other MNO's. This would require that users would be able to select the desired network for termination of calls. However under the current 'caller party pays principle', callers cannot select the network they want to terminate the call on. This therefore eliminates any possibility for wholesale substitution.

Broadband Wireless Access (BWA) networks could in theory provide competition in the voice market and therefore impact mobile voice call termination charges. However in Malta the spectrum for BWA is expected to be allocated soon and a great deal will depend on the services offered and the coverage area. The MCA considers that the deployment of BWA would not influence mobile call termination rates within the timeframe of this review.

The MCA has reached the conclusion that there is no supply side substitution for mobile termination services at the wholesale level.

02.5 Termination services on 3G networks

Based on the principle of technology neutrality, voice call termination on a 3G network would be no different to voice call termination on a 2G network in terms of the character of the service provided. The MCA is of the opinion that the termination of voice calls on a 3G network should be included within the scope of this market. To date, 3G services have not been introduced locally. However a call for applications for the assignment of spectrum to offer 3G services was made in March 2005. The assignment is expected to take place by end of August 2005. When 3G services will be provided, the geographic area covered by the undertaking providing such services would be defined as a separate wholesale voice call termination market.

02.6 Relevant geographic market

A relevant geographical market comprises the area in which the undertakings concerned are involved in the supply and demand of products and/or services, in relation to which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different to those areas.

On the basis of this definition, the MCA takes the view that the relevant geographic market for the provision of mobile voice call termination services by individual mobile operators is national in scope.

This view is based primarily on the fact that, as each individual mobile operator is considered to be a separate relevant product market for the provision of voice termination services, the geographic scope reflects the extent of physical coverage that characterises each mobile operator. Furthermore, each operator is licensed on a national basis and offers geographically uniform termination rates.

02.7 Preliminary Markets

Following the analysis presented here the MCA found the following relevant mobile termination markets in Malta:

1. Wholesale voice call termination provided by Vodafone Malta ltd.
2. Wholesale voice call termination provided by MobIsle Communications Ltd

Any new mobile network operator, including 3G network operators would constitute a separate wholesale termination market for the purpose of this market review. These markets would be defined when these new operators will start providing termination services.

Q2. Do you agree with the above preliminary conclusions regarding the market definition exercise?

Chapter 03 - Market Analysis

Having identified the relevant market as discussed in **Chapter 02** the MCA is required to analyse the market in order to assess whether any services provider/s have significant market power as defined in Regulation 8 of the ECNSR (Article 14 of the Framework Directive).

03.1 Method to Assess Significant Market Power

Under the new EU Communications Directives and Article 4(8) of the ECRA, SMP has been newly defined so that it is equivalent to the competition law concept of dominance. Article 14(2) of the Framework Directive states that:

"An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers."

Further, Article 14(3) of the Framework Directive states that:

"Where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking".

Therefore, in the relevant market, one or more undertakings may be designated as having SMP where that undertaking, or undertakings, enjoys a position of dominance. Also, an undertaking may be designated as having SMP where it could lever its market power from a closely related market into the relevant market, thereby strengthening its market power in the relevant market.

In assessing whether an undertaking has SMP, this review takes the utmost account of the Commission's SMP Guidelines as well as the MCA's equivalent guidelines, as referred to in Chapter 01 above.

03.2 Assessment of SMP Against Relevant Criteria

The remainder of this chapter considers whether single dominance is likely to exist in the identified markets. In the MCA's view the assessment is fully compliant with the Commission's Guidelines. The SMP assessment set out is based on the evidence available to the MCA.

Single dominance can be assessed using a large number of criteria, as described in the Commission's and the MCA's guidelines on SMP assessment. In the MCA 's view, the most important ones are

- Market share analysis
- Barriers to entry and potential competition
- Countervailing buyer power
- Pricing structure

3.2.1 Analysis of market shares

Although, high market shares are not in themselves decisive as to whether an undertaking enjoys SMP in a market, the MCA is of the opinion that market shares higher than 50 per cent would necessitate the designation of SMP. Paragraph 75 of the Commission Guidelines states that, "according to established case-law, very large market shares – in excess of 50% - are in themselves, save in exceptional circumstances, evidence of the existence of dominant position."

As concluded in the market definition section, the area covered by each mobile network operator is considered to constitute a separate wholesale termination market. This conclusion is based on the fact that termination on a particular network cannot be substituted by termination on another network. This implies that termination of voice calls over a particular network will have to be terminated on the network of that particular mobile operator. Therefore for the purpose of market share analysis, every mobile operator providing voice calls has a 100 per cent market share in terminating calls on its network. This market share applies for both volumes and revenues of mobile termination minutes.

3.2.2 Potential Market Entry

Termination of voice calls is governed by the calling party pays principle and as described earlier on, this arrangement does not provide any opportunity for any supply side substitutability. Similarly, this arrangement eliminates any possibility for potential competition in the wholesale mobile termination market.

Another major entry barrier is the current level of technological development, which allows MNOs to terminate a call to a mobile number only on the called network. The MCA is not aware of any technology developments that during the timeframe of this review will allow MNOs to terminate the calls of their subscribers on alternative networks other than the network to which the called number belongs.

Potential entry from 3G operators is not likely to create a difference in the structure of the mobile termination market. A new entrant would have to buy termination from the other network operators to enable its subscribers to call users subscribed to other networks and the existing MNOs would have to buy termination from the new entrant to guarantee end-to-end connectivity for their subscribers. This would result in the new entrant having a 100 per cent market share for termination services on its own network.

The MCA is therefore of the opinion that potential market entry will not exert sufficient pressure on mobile termination rates in absence of regulation.

3.2.3 Countervailing buyer power

The existence of customers with a strong negotiating position, which can be exercised to produce a significant impact on competition, will tend to restrict the ability of providers to act independently of their customers. When buyers of a certain product or service are large and powerful, they can effectively stop an attempt to increase prices by service providers.

The extent of countervailing buyer power depends on the ability of large customers to switch to alternative providers or not to purchase the service or product from that particular provider within a short period of time.

The table below illustrates the share of mobile termination minutes purchased by voice telephony providers. It clearly transpires that the fixed network operator Maltacom plc. is the biggest purchaser of mobile termination minutes, although its share is decreasing over time due to increased mobile penetration. Therefore in theory, Maltacom could exert sufficient pressure on both mobile network operators to reduce termination rates or to at least not increase termination prices. Notwithstanding, it is not possible for Maltacom to exert any pressure on mobile operators since Maltacom under the Universal Service Obligations is obliged to terminate all calls in order to ensure end-to-end connectivity. As a result, Maltacom is not considered to have sufficient countervailing buyer power to constrain mobile termination rates.

Termination on Mobile Networks	2001	2002	2003	2004
Fixed to Mobile	65.6%	58.4%	52.5%	46.8%
Mobile to Mobile (off-net)	16.1%	26.3%	33.9%	41.6%
International to Mobile	18.3%	15.3%	13.6%	11.6%

Under the CPP arrangement retail customers are likely to give more consideration to the price of outgoing calls rather than the cost that other users would have to incur when calling them. Therefore, customers are likely to be indifferent to mobile termination charges which their network provider charges. This eliminates the possibility of countervailing buyer power from retail customers on wholesale termination rates.

The MCA is therefore of the opinion that no wholesale or retail customer or group of customers are/is in a position to constrain mobile termination rates during the timeframe of this review.

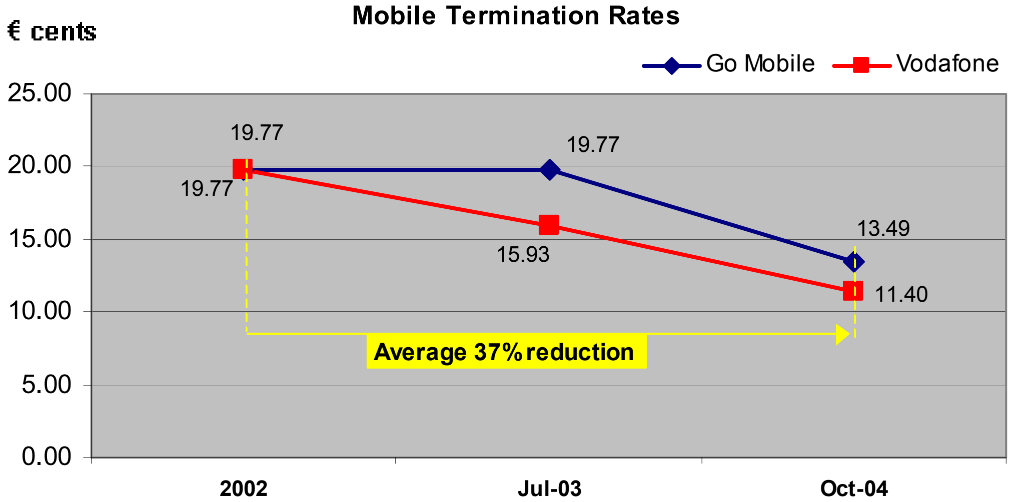
3.2.4 Pricing structure

Mobile subscriptions have increased considerably since the commercial launch of Go Mobile on 2001. Currently there are more than 309,000 mobile subscribers in Malta – many more than fixed line subscriptions which stand at slightly more than 200,000 lines. During the past three years both mobile operators and the fixed local network have reduced termination rates a number of times following regulatory intervention.

The graph below shows the reduction in the mobile termination rates over the past three years. To date decreases in termination rates have been exclusively the result of regulatory pressure from the MCA.[5] Under the old legislative framework the MCA has designated both Vodafone since 2002 and Go Mobile since 2003 as having a dominant position in the mobile telephony market. The regulation of mobile termination rates was based following these decisions.[6]

[5] Decisions on termination rates: http://www.mca.org.mt/library/show.asp?id=266&lc=1 and http://www.mca.org.mt/library/show.asp?id=536&lc=1

[6] Decision on dominance held by mobile operators: http://www.mca.org.mt/library/show.asp?id=335&lc=1



The above suggests that regulatory pressure, and not countervailing bargaining power or self-interest, has been the main factor behind reductions in the mobile termination rates. Without regulatory pressure mobile operators will not have an incentive to lower their termination rates. Furthermore, the MCA notes that following reductions in wholesale termination rates no corresponding decrease in the retail prices of mobile calls was recorded. This suggests that in the absence regulation mobile operators in Malta do not have an incentive to decrease mobile termination rates at a wholesale level and correspondingly at a retail level.

Another important factor to note is that to date mobile operators have not introduced on-net tariffs in Malta. To date a mobile-to-mobile call is charged at the same rate whether it is an on-net or off-net call by both mobile networks. Currently, retail prices in Malta are nearly identical for both mobile operators as can be seen from the table in **Appendix 1**.

The MCA is of the opinion that the pricing structure adopted to date by both mobile operators does not lead to the conclusion that termination rates will decrease further in the future in absence of regulation.

03.3 Preliminary conclusion and SMP designation

The evidence presented above clearly suggests that Vodafone Malta Ltd. and MobIsle Communications Ltd. hold significant market power in the wholesale mobile termination market.

This preliminary conclusion is supported by a number of factors including:

- 100 per cent market share held by each MNO on termination over their network;
- no customer or group of customers are able to exert any countervailing buyer power;
- mobile termination rates have only decreased due to regulatory pressures; and
- the calling party pays principle makes customers indifferent what others are paying to call them and therefore mobile operators do not have an incentive to lower termination rates.

Consequently, the MCA concludes that Vodafone Malta Ltd. and MobIsle Communications Ltd. should be designated as having significant market power individually on their own mobile network.

Q3. Do you agree with the above preliminary conclusions regarding market analysis and proposed SMP designations?

Chapter 04 – Regulatory Implications

As evidenced above, this market review has defined two relevant markets in Malta with respect to wholesale voice call termination on individual mobile networks. Pursuant to the analysis of the market characteristics of these markets, the MCA has concluded that Vodafone and go Mobile have SMP for termination services over their individual markets.

In accordance with Regulation 10(4) of the ECNSR, where an operator is designated as having significant market power on a relevant market in accordance with Regulation 8 of the same ECNSR the MCA is obliged to impose on such operator such appropriate specific regulatory obligations referred to in subregulation (2) of regulation 10 of the ECNSR or to maintain or amend such obligations where they already exist.

Moreover, in accordance with Regulation 37 of the ECNSR requires the MCA, after having designated an operator as having significant market power on a relevant retail market, to impose on such operator such obligations as it considers appropriate to achieve those objectives set out in Article 4 of the Electronic Communications Regulation Act, where the MCA determines, as a result of a market analysis carried out in accordance with regulation 10 of the said regulations, that the given retail market, as identified in accordance with regulation 9 of the same regulations, is not effectively competitive and concludes that obligations imposed under Part III or regulation 39 of the said regulations would not result in the achievement of the objectives set out in Article 4 of the Electronic Communications Regulation Act.

This section thus aims at discussing the actual and potential competition problems that exist in the defined markets, and proposing adequate remedies to address these problems.

04.1 Selecting Remedies – Principles Applied

In accordance with regulation 37(2) of the ECNSR, the MCA is obliged to ensure that any obligations imposed under subregulation (1) of the same regulation 37 shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in Article 4 of the Electronic Communications Regulation Act.

The MCA's has established that the relevant market for voice call termination services on individual mobile networks is not effectively competitive. The market analysis proves that market forces are insufficient to impact call termination rates in absence of regulation. To date decreases in mobile termination rates have only been the result of regulatory intervention and therefore the MCA believes that the imposition of remedies is required. In selecting the remedies to impose on the designated SMP operators, the MCA has considered the nature of the problems identified and based its proposed remedies in line with the principle of proportionality. The MCA is proposing to impose a range of remedies which it considers to be the least burdensome but effective. The MCA has also taken account of potential effects on any related markets.

It is unlikely that any single remedy can put sufficient pressure on wholesale mobile termination rates alone, so the remedies proposed below should be seen as a complementary group which support and reinforce each other.

04.2 Current Remedies

Under the previous regulatory framework the MCA has already identified both mobile network operators as having a dominant position in the provision of mobile telephony services. Vodafone Malta Ltd[7] and MobIsle Communications Ltd[8] had been designated as having a dominant market position in May 2002 and August 2003 respectively. Consequently the MCA has imposed on both operators the following remedies:

- Ensure that the access or service provided meets certain specified quality of service standards, and to keep records and furnish to the MCA details of compliance with those performance standards;

- Interconnect promptly, publish a Reference Interconnection Offer (RIO) and ensure that charges for access / services are cost-orientated, transparent, unbundled and independent of the application to which they are put;

- Operate a cost accounting system which is suitable for implementation of the tariff requirements imposed on dominant operators and the calculation of charges for network elements used to provide interconnection; and

- Be subject to certain regulatory controls over retail tariffs as required by the Regulations.

All of the above obligations are still incumbent on the two mobile network operators with the exception of the last remedy, which has been removed following the adoption of the new regulatory framework in September 2004. Even though the MCA had imposed this remedy on mobile operators, the MCA had refrained from setting or adjusting retail mobile tariffs but has only limited itself to the approval or refusal of changes in such tariffs.

04.3 Competition Problems

The MCA has identified four broad categories of existing and potential competition problems that arise due to the SMP enjoyed in the identified mobile termination markets.

4.3.1 Tacit Collusion

Tacit collusion is a competition problem pertaining to mobile-to-mobile interconnection and occurs when operators use their market power in the termination market in a coordinated manner to the detriment of competition. The possibility of tacit collusion is enhanced by the stability of the Maltese markets, by the similar size and network structures of the two main mobile operators and by the fact that traffic between the networks is largely symmetrical. This could lead to a situation whereby operators could maintain excessive prices (as well as below-cost prices) in the form of reciprocal termination charges.

[7] Decision on dominance held by Vodafone: http://www.mca.org.mt/library/show.asp?id=100&lc=1

[8] Decision on dominance held by Go Mobile: http://www.mca.org.mt/library/show.asp?id=335&lc=1

4.3.2 Excessive Pricing

Since each operator enjoys a 100 per cent market share of the individual termination market, this is likely to incentivise excessive pricing of the termination services. In such cases, recipients of the call do not sufficiently care about the costs other parties have when calling the, therefore there is no countervailing buyer power. This is likely to lead to inefficiencies and a distorted pricing structure.

4.3.3 Price Discrimination

Another potential standard competition problem relates to the possibility of foreclosing the retail market by charging a high termination charge to other networks whereas implicitly charging a lower price internally. This would lead to high costs for off-net calls for other operators at the wholesale level when compared to the lower wholesale costs for on-net calls. Such a price structure would put small networks with a small number of subscribers at a disadvantage, especially if the difference between the on-net termination differs significantly from that of the off-net.

4.3.4 Denial to Interconnect

A refusal to deal in the form of a denial to interconnect is also a potential competition problem that could possible be utilised to foreclose markets by inhibiting a new entrant from being connected to established networks.

04.4 Proposed Remedies

The MCA believes that as a result of the SMP position held by Vodafone and Go Mobile in the wholesale market for the termination of voice calls on their own network, the imposition of remedies is unavoidable.

The MCA is of the opinion that the remedies it is proposing to impose are based on the nature of the competition problems it has identified in the relevant market, and are proportionate and justified in light of the objectives set out in Article 4 of the Electronic Communications (Regulation) Act.

The MCA will however continue to monitor market developments and where appropriate may issue further directions refining these remedies.

4.4.1 Access

The MCA is of the opinion that access obligations are fundamental to ensure voice call termination and interoperability of telephone services. These services should be offered to all public electronic communications network service providers that request it. Under the new regulatory framework the MCA has the function, under regulation 15 of the ECNSR to ensure that electronic communications services providers ensure end-to-end connectivity through appropriate granting of access or interconnection with other networks, without prejudice to an SMP designation.

A mobile operator must have interconnection agreements for the termination of voice calls on its network and must have similar interconnection agreements with all other operators. Currently this obligation is imposed on Vodafone and Go Mobile and both publish a cost oriented reference interconnection offer, which is also subject to transparency and non-discriminatory obligations.

Following the finding of SMP for both MNOs the MCA is of the opinion that the access obligation on both Vodafone and Go Mobile should be maintained. The MCA believes that each MNO should provide network access for the provision of voice call termination services to every public electronic communications network providers who reasonably request such access. Moreover, access to the network should be provided together with any services, facilities or arrangements which are necessary for the provision of such services.

The MCA is therefore proposing to maintain the access obligation on Vodafone and Go Mobile in accordance with regulation 21 of the ECNSR.

The MCA however believes that the access obligation on its own is insufficient to address the failures in the market as highlighted above.

4.4.2 Non-discrimination

A situation may arise where there may be an incentive for an operator to provide wholesale services on terms and conditions that discriminate in favour of a particular undertaking in such a way as to have a material effect on competition.

Besides tackling price-related competition problems, the obligation of non-discrimination can directly target non-price parameters such as withholding of information, delaying tactics, undue requirements, low or discriminatory quality, strategic design of products, and discriminatory use of information - conditions which would disadvantage competing providers and in turn consumers.

There are existing non-discrimination obligations on Vodafone and Go Mobile as current dominant operators. This is intended to avoid a situation where an SMP operator could offer different terms and conditions to different purchasers of voice call termination services and distort competition.

The MCA is therefore of the opinion that the non-discrimination obligation, pursuant to regulation 19 of the ECNSR should be maintained on both Vodafone and Go mobile. This imposition of this obligation will ensure that the SMP operators will not be able to discriminate against alternative operators in order to gain a competitive advantage over competing undertakings.

4.4.3 Transparency

The MCA believes it is proportionate and justified to impose a transparency obligation on mobile operators to demonstrate that they deliver services of equivalent quality to other operators. The imposition of such remedy ensures that alternative operators have sufficient information and clear processes to which they would not otherwise have access. This would assist their entry into the market and directly targets the nature of such problems.

Regulation 18 of the ECNSR authorises the Authority to impose transparency obligations on undertakings holding significant market power in relation to interconnection and, or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.

Moreover, in particular where an operator has obligations of non-discrimination, the Authority may, require that operator which has significant market power to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the services requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices. In such instances, the Authority will be able to impose changes to reference offers to give effect to the obligations imposed under the Act. The Authority may also specify the precise information to be made available, the level of detail required and the manner of publication.

Currently both Vodafone and Go Mobile have the obligation of transparency. This obligation requires both operators to provide information regarding retail tariffs, call termination rates, network and technical specifications and accounting information to the MCA. The MCA is proposing to maintain the transparency obligation on Vodafone and Go Mobile as specified under regulation 18 of the ECNSR. The MCA reserves the right to specify the precise information to be made available, the level of detail required and the manner of publication of this information.

The MCA believes that the imposition of transparency obligations aids in giving the market confidence that services are not provided on a discriminatory basis and helps avoid any possible disputes and accelerate negotiations between existing and potential operators. The MCA believes that the requirements outlined are not excessively burdensome and will assist competition in the market.

4.4.4 Accounting Separation

Part of the effectiveness of the non-discrimination obligation is reliant on the introduction of the obligation of accounting separation to facilitate the verification of compliance for services that the mobile operators provide to other operators.

This obligation is currently imposed upon both Go Mobile and Vodafone as both operators were identified as having a dominant market position under the previous legislative framework.

Separated accounts help disclose possible market failures and provide evidence in relevant markets of the presence, or absence of discrimination. Accounting separation supports the imposition of transparency as it makes visible the wholesale prices and internal transfer prices of the operators products and services. It also allows the MCA to check compliance with obligations of non-discrimination and to address the price competition problems. The MCA considers that the effectiveness of the transparency and non-discrimination obligations is reliant on the obligation of accounting separation to facilitate the verification of compliance.

This obligation is already imposed on Vodafone and Go Mobile and the MCA has already issued guidelines on how this remedy should be implemented.[9] The MCA proposes to maintain such an obligation and believes that if it were to withdraw this obligation, it would have limited means of monitoring non-discrimination and transparency obligations.

4.4.5 Price Control and Cost Accounting

Regulation 22 of the Electronic Communications Networks and Services (General) Regulations authorises the imposition of obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and, or access.

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[9] "Accounting Separation and Publication of Financial Information for Telecommunications Operators - Report on Consultation and Decision", MCA, October 2002 - http://www.mca.org.mt/library/show.asp?id=177&lc=1

The MCA has already mandated this obligation on Vodafone and Go Mobile in July 2002 and April 2004 respectively. This provision is today governed by virtue of the provisions set in Regulation 22 of the ECNSR. The Authority believes that a cost accounting system is necessary to ensure that the price charged by SMP operators are not excessively high in absence of competition.

The MCA is of the view that if it were to relax this obligation, it would not have the necessary means of ensuring price controls in the market and prevent potential market failures. The MCA does not consider that this obligation will constitute an unreasonable burden on MNOs given that both undertakings are already under the obligation to support such a system by virtue of a previous MCA decision and that this has already been in place for some time[10].

The MCA therefore proposes the maintenance of the existing level of cost accounting system obligation on Vodafone and Go Mobile until such time that any further consultation on the issue is deemed necessary.

In March 2005 the MCA published a report following a consultation document published in July 2004 entitled "Interconnection Strategy for the Electronic Communications Sector in Malta"[11] outlining the way forward in ensuring interconnection in the electronic communications market. The report explores several options that the MCA, in close collaboration with all stakeholders, will evaluate in the coming months so as to update its current interconnection strategy. Amongst the topics discussed are the move from Historic cost accounting to Current cost accounting and the introduction of glide paths for mobile termination rates. Currently the MCA has initiated discussions with operators to explore the viability and the best way forward in the regulation of interconnection rates.

04.5 Remedies Imposed on new entrants in the mobile termination market

The MCA is cognisant of the fact the entry of a third mobile operator is imminent and therefore is hereby outlining its intentions with respect to regulation of the new entrant in order to ensure end-to-end connectivity with the existing operators.

As explained earlier on in the market analysis section the new entrant would upon entry in the market have a 100 per cent market share on termination over its own network independently from the actual volumes of minutes that the operator would be able to terminate on its network. Given that the new entrant would only have a relatively small impact on the structure of the mobile market for an initial period of time, the MCA is of the opinion that any regulation with respect to new entrants should be limited and proportionate.

[10] Implementation of Cost Based Accounting Systems for the Telecommunications Sector - Report on Consultation and Decision - July 2002 - http://www.mca.org.mt/library/show.asp?id=132&lc=1

Implementation of Cost Based Accounting Systems and Accounting Separation, MobIsle Communications, April 2004. - http://www.mca.org.mt/library/show.asp?id=583&lc=1

Guidance on Accounting Methodologies for Regulatory Accounting Purposes, March 2003 - http://www.mca.org.mt/library/show.asp?id=245&lc=1

[11] Interconnection Strategy for the Electronic Communications Sector in Malta, March 2005 - http://www.mca.org.mt/library/show.asp?id=593&lc=1

As a result the MCA is proposing to impose the following remedies on the new entrant in the wholesale mobile termination market:

1. Transparency obligation;
2. Non-discrimination obligation;
3. Access Obligation (to apply a fair and reasonable price for interconnection); and
4. Accounting separation obligation – to provide the MCA upon request with specified cost revenues for interconnection services, including internal prices. The MCA will request separated accounts only when its feels necessary, in order to monitor the appropriateness of the interconnection rate charge by the new entrant.

The MCA feels that the imposition of additional remedies such as cost orientation would be disproportionate to be imposed at such an early stage of entry in the mobile market. However, the MCA will monitor closely the development of this market over the timeframe of this review and will consider updating its position at any point in time it deems necessary.

Q4. Do you agree on the proposed set of remedies to be imposed on identified SMP operators?

04.6 Monitoring Market Developments

The MCA considers that it would be sensible to keep a reasonably close watch on market developments following this review. This would ensure that current and proposed obligations on the SMP operator identified earlier on, would be justified throughout the duration of this market review. If the MCA deems necessary or appropriate a new market review would be undertaken at any time in response to changing market conditions.

Chapter 05 – Submitting Comments

All comments are welcome, however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document. The consultation period will run from the 4th of July 2005 to the 4th of August 2005, during which the MCA welcomes written comments on any of the issues raised in this paper.

The MCA appreciates that some of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response.

Having analysed and considered the comments received, the MCA will review this analysis and publish a report on the consultation which will inter alia summarise the responses to the consultation.

In order to promote further openness and transparency the MCA will publish the names of all respondents. Moreover, in the interests of transparency, all representations will be published, except where respondents indicate that a response, or part of it, is confidential.[12] The MCA will take steps to protect the confidentiality of all such material from the moment that it is received at MCA's offices. In the interests of transparency, respondents should avoid applying confidential markings wherever possible.

All responses must arrive at the MCA no later than 04.00pm of the 4th August 2005. Submission received after this time will not be taken into account. Extensions of the consultation deadline will only be permitted where the Authority deems fit, following a written request made by the interested party within the first five (5) working days of the consultation period.

All comments should be made in writing and where possible sent by email to info@mca.org.mt. However, copies may also be posted or faxed to the address below. If any parties are unable to respond in one of these ways, they should discuss alternatives with:

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Malta Communications Authority
''Il-Piazzetta'' Suite 43/44, Tower Road,
Sliema SLM 16
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tel: +356 21 336840
fax: +356 21 336846

[12] In accordance with the MCA's confidentiality guidelines and procedures - http://www.mca.org.mt/library/show.asp?id=544&lc=1

Appendix 1

	1 min peak[1] call (weekdays)		3 min peak call (weekdays)	
	Mobile - Fixed	Mobile- Mobile	Mobile - Fixed	Mobile- Mobile
Vodafone				
Pre-paid Scheme				
eone	30c	20c	90c	60c
etwo	22c	22c	66c	66c
ethree	18c	18c	54c	54c
Family & Friends[2]	12c	12c	36c	36c
Post-paid Scheme				
Lite (calls in bundle)	22c85	22c85	68c55	68c55
Lite (outside bundle)	14c	14c	42c	42c
Active(calls in Bundle)	12c14	12c14	36c42	36c42
Active(outside bundle)	12c	12c	36c	36c
extra (calls in Bundle)	10c54	10c54	31c62	31c62
extra (outside bundle)	10c	10c	30c	30c
Go Mobile				
Pre-paid Scheme				
Ready to go	20c	20c	44c	44c
Ready to go Club[3]	12c	12c	36c	36c
Post-paid Scheme				
On the go (calls in bundle)	26c67	26c67	80c01	80c01
On the go (outside bundle)	11c5	11c5	34c5	34c5
Go together (calls in bundle)	20c	20c	60c	60c
Go together (outside bundle)	10c	10c	30c	30c
Business go (calls in bundle)	12c14	12c14	36c42	36c42
Business go (outside bundle)	10c	10c	30c	30c

Sources: Go Mobile, Vodafone - as at April 05

All charges are inclusive of the applicable VAT rates.

'Calls in bundle' for post-paid schemes has been estimated as the monthly rate divided by the free minutes in bundle.

1. Peak hours for mobile operators are from 8.00am – 8.00pm.
2. Family & Friends scheme includes only 3 numbers (fixed and/or mobile), which the customer can choose to call at reduced rate.
3. Ready to go scheme includes only 3 numbers (fixed and/or mobile), which the customer can choose to call at reduced rate.